Review Article

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Avoiding the Mishaps in Healthcare Provision

Geneva M Edwards MD, MHA, BSN, RN

Medical Investigator, Unlawful Medicine LLC, Buford, Georgia.

***Correspondance:**
Geneva M Edwards, Medical Investigator, Unlawful Medicine LLC, Buford, Georgia, Tel: 770-727-8199; Fax: 678-828-5990; E-mail: drgedwards@aol.com.

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ABSTRACT

Legal Medicine consists of a broad range of legal, medical, and ethical issues, as well as human rights and rights of individuals. This discipline specialty is necessary in the healthcare profession because healthcare providers have a duty to act in a patients' best interest always. If healthcare professions fail to meet this duty they can and will be charged in a court of law. Medical Malpractice is defined as the legal cause of action that occurs when a healthcare professional deviates from the standard of care in his or her profession, thereby causing harm to a patient and happens when a patient is harmed by a healthcare professional who failed to meet the standard of care. When a healthcare provider does not meet the standard of care, they have breached their contract with their patient.

The concept of the standard of care is often discussed among healthcare providers, and yet the legal definition of this term is frequently not understood. It is estimated that 7–17 malpractice claims are filed per 100 healthcare providers every year with emergency healthcare providers on the front lines in healthcare provision and therefore are frequently involved in medical malpractice cases. Many healthcare professionals need to review evidence-based practices that focus on standard of care and review the best research and clinical expertise to assist them in meeting the needs of patients, far beyond optimum care provision; helping them avoid any mishaps along the way.

Keywords

Healthcare provision, Legal medicine, Medical malpractice, Provider-patient relationship.

Introduction

Over the years, the healthcare profession has evolved into a business, an organization that is plagued with an epidemic, an ailment known as "Negligence". When you compare the healthcare profession yesterday to today, you will find similarities as well as differences. As far as differences, today, our society is no stranger to malpractice lawsuits and have no problem focusing in on healthcare providers, holding them responsible and liable for all their actions in care provision. Yesterday, back in the fifties, healthcare providers, especially doctors were looked upon as Gods and could do no wrong. Even in the sixties and seventies, healthcare providers were highly respected. But now things are quite different. There are lawyers who invest tons of money in advertisements, encouraging patients and their family members to focus on healthcare providers and the care they provide. Unfortunately, this coercion predisposes healthcare providers to medical malpractice suits on, an ongoing basis [1].

Standard of Care

The concept of the standard of care is often discussed among healthcare providers, and yet the legal definition of this term is frequently not understood. When healthcare providers find themselves in legal trouble it usually falls within this area of care provision. Legally, the term standard of care refers to an ethical or legal duty of a professional to exercise the level of care, diligence, and skill prescribed in the code of practice of his or her profession, or as other professionals in the same discipline would in the same or similar circumstances. Failure to meet the standard of care is considered negligence, and the healthcare provider will be held liable for any damages caused by such negligence. The problem with the standard of care is that it is not subject to a specific definition and is judged on a case by case basis. The standards

specifically for professionals are established by the practice of other professionals in their community of work. For example, in the healthcare profession there is a medical standard of care; defined as the level and type of care that a reasonably competent and skilled healthcare professional, one with a similar background who works in the same medical community, and would have provided care under the same circumstances that led to the alleged malpractice claim. These providers are often called upon as "expert witnesses" [2].

Medical Ethics

Healthcare providers have a duty to act in the patient's best interest always, refraining from exploiting the patient. This is a called a fiduciary relationship. Any behavior on the part of a healthcare provider that violates the limits of a professional relationship is called a boundary violation. If a healthcare provider violates the boundary, it predisposes the patient to harm. Boundary violations are different from boundary crossings. For example, if a provider happens to see a patient in a social setting, that is a boundary crossing, neither harmful nor unethical to the patient if the provider does not violate the patient's confidentiality. On the other hand, if the provider planned to meet the patient in a social setting, this is a boundary violation. Potential areas of exploitation by a provider include personal or social boundary violations, business relationships, and sexual activity [1]. Examples of personal or social boundary violations 1) Seeing a patient in personal settings for the convenience of the provider, 2) A provider loaning patient money or, 3) A provider burdening the patient with their own personal and/or confidential information.

Violation through business relationship

Business endeavors which involve the provider taking advantage of confidential information (personal or health) that the patient has shared with them are unethical and is inappropriate behavior. The provider-patient relationship is vulnerable to unethical behavior because of the intimate relationship the two shares. Providers must understand that the sole purpose of the provider-patient relationship is to guide the decision-making process in healthcare plans; a monument to care.

Providers should also understand that once they have developed a relationship with the patient, confidence in them and the care they provide have been established. There are times when the provider-patient relationship is misguided by the provider, causing misunderstanding and confusion of the patient. Unfortunately, this often results in boundary violations. When this happens, the provider-patient relationship becomes what it should not be, inappropriate [3].

Medical Malpractice

A healthcare provider has a duty of care to patients; an established contract. The contract is not required to be in writing to be valid. There are two main types of contracts, expressed contracts and implied contracts. An expressed contract is clearly stated in written or spoken words. A payment contract is an example of an expressed contract. Implied contracts are those in which the acceptance or conduct of the parties, rather than expressed words, creates the contract. For example, a patient who stretches out their arm for a blood draw or for an injection is creating an implied contract, giving the healthcare professional consent to proceed [4].

Healthcare providers are held to a higher standard than the general members of the public. This higher standard affects both their clinical and personal lifestyle when they are not at work. Therefore, it is their behavior and conduct that they are held most accountable to.

When a healthcare provider does not meet the duty of care, it is called a breach of contract. There may be misconceptions that the only healthcare provider who has a contract with a patient is a physician. However, any healthcare provider who provides patient care and/or performs medical procedures has a contract with the patient, including a physician, dentist, lab technician, nurse, pharmacist, or other healthcare professional [1].

According to the National Institute of Health, medical malpractice is defined as professional negligence by a healthcare provider who provides treatment below the standard of care, causing harm, injury or death to a patient. Emergency room providers are on the front lines of healthcare and are frequently involved in medical malpractice claims. It is estimated that 7–17 medical malpractice claims are filed per 100 healthcare providers every year [5].

Negligence is a common medical malpractice claim, involving inappropriate, unqualified, or sub-standard care provision of a patient by a physician, dentist, nurse, pharmacist, or other healthcare professional. Negligence is the chief model of liability concerning contentions of medical malpractice, making this type of lawsuit part of Tort Law. To successfully claim negligence, a patient must show tangible compensable injury caused by the negligent healthcare provider [6].

Elements of malpractice

There are 4 elements of medical malpractice, a professional duty owed to the patient, breach of duty, injury caused by the breach and resulting damages. All four of these elements must be proven for a successful malpractice lawsuit.

Examples of common medical malpractice suits

Birth injuries, documentation errors, inappropriate provider-patient relationships, medication errors, mistreatment or failure to treat, lack of informed consent, negligence, nursing home abuse and negligence, unsafe practices, patient falls w/injury, unauthorized practices and wrongful deaths [7].

Preventable hospital deaths

More than 1000 people die daily, approximately 444, 000 die yearly from preventable hospital errors. Medical errors now claim the third leading cause of death in the United States. Patients are not dying from the illnesses that caused them to seek hospital care in the first place. Patients are dying from mishaps that hospitals and/or healthcare professionals could have prevented [8].

Medication errors

According to the 2015 Forbes report, medication errors happen quite often, not to mention the medication errors that go unreported. An estimated 1 million medication errors occur each year, contributing to more than 7,000 deaths annually. On average, there is 1 medication error every day for every patient in an inpatient setting. Medication errors have been recently observed in almost 50% of all surgical procedures with the most frequent observed mistakes in the labeling of medications, incorrect dosages, neglecting to treat a problem indicated by the patient's vital signs, as well as documentation errors. Medication errors among patients in outpatient settings are primary caused by transcription errors, either by the provider's handwritten prescription or by the pharmacist who misreads the provider's handwritten script when completing the prescribed medication order. Also, there are times when patients misread the label on the medication or decide to adjust the medication prescribed according to their own understanding [9].

Let's take a closer look at how we can prevent medication errors. According to recent research, the best-known way for hospitals to protect patients from medication errors is by adopting a technology to prevent the misreading of prescriptions; a technology called computerized physician order entry (CPOE). This computer software allows a provider to enter medication orders for a patient on a computer that contains patient information such as key lab values, clinical condition, allergies, etc. Once the provider enters a medication order, the CPOE checks the safety and appropriateness of the order and sends it electronically to the pharmacy. The CPOE system would also alert the provider to a misplaced decimal in a medication order. One of the greatest advantages of the CPOE system is that it abolishes the need for pharmacists to interpret a provider's handwriting [10].

Errors arising from a provider's clinical documentation

A very important fact learned in basic nursing school: "If it wasn't documented, it didn't happen". Many malpractice suits arise from inadequate documentation, erroneous documentation, and/or no documentation at all.

Failure to document significant changes

Many medical errors arise from clinical documentation issues, such as failure to document, evidence of infection, wound appearance, wound size, drainage and/or odor present in wound, signs of dehydration such as increased weakness, fatigue, and tingling pain in hands, etc., and failure to document the initiation of emergent care for falls w/injury or other changes noted in the patient's status from a fall [11].

When healthcare provision and the law collide Case Studies Florida Teen Charged with Running Illegal Medical Office, 2016: Unauthorized practice of medicine

Malachi Love-Robinson 18, a Florida teen was charged with practicing medicine without a license and theft after he allegedly performed an exam on an undercover agent and took almost $3,500 from an 86-year-old woman seeking treatment for stomach pain. Robinson was a naturopathic practitioner and Florida does not issue licenses for naturopathic doctors, or those who reject the use of medicines. Naturopathic practitioners can recommend natural remedies, vitamins, and are not in trouble unless they diagnose a patient with symptoms. The undercover agent after Robinson examined him asked him what did he think was wrong with him and once Robinson informed him that he had an infection, he then violated the law and was therefore arrested. Robinson also committed fraud by false advertising about his age, his credentials and for stealing a patient's credit card [12].

People v. Dr. Tseng, 2015: Wrongful deaths

A California practitioner was sentenced to 30 years to life in prison for second degree murder of 3 of her patients who fatally overdosed on her prescribed controlled substances. This is the first healthcare provider convicted of murder in the United States for recklessly prescribing drugs to patients, was accused of ignoring the red flags about her prescribing habits, including the overdose of a patient in her clinic and nine phone calls in less than three years from authorities informing her that patients had died with drugs in their system [13].

State Board v. Dr. Emailzadeh, 2015: Inappropriate provider-patient relationship

A Florida healthcare provider loses his medical license in 2015 after being accused of molesting 6 female patients. He took away the trust patients have for their healthcare providers. Records show that the pain doctor sometimes molested his patients while they were immobilized, as he was injecting drugs into their spine [14].

State Board v. Watt, 2015: Inappropriate provider-patient relationship

In 2015 the North Carolina medical board indefinitely suspended the license of Alan Henderson Watt, a former Physician Assistance at Cone Behavioral Health Center in North Carolina. Watt had cared for a female patient with PTSD and ADHD for more than 2 years, and developed a sexual relationship with her during that time [15].

McQuitty v. Dr. Spangler, 2009: Birth Injury/Informed Consent

In 2009, the court found that an informed consent lawsuit in Maryland can stand where the healthcare provider withholds material information about a proposed course of medical treatment, or about an ongoing course of medical treatment. The patient filed a negligence; alleging that the healthcare provider breached the duty to obtain her informed consent. The allegation is that when the healthcare provider failed to inform the mother, who was hospitalized for a partial-placental-abruption, of risks and available alternative treatments related to material changes in her pregnancy: a second partial-placental-abruption, oligohydramnios, and intrauterine growth restriction. McQuitty's baby was born with severe Cerebral Palsy and the Maryland court awarded the family over $13 million dollars [16].

Meek v. Southern Baptist Hospital of Florida, 2006, Lack of documentation

A patient developed complications after a uterine artery embolization (UAE) procedure to top uterine bleeding. The healthcare provider ordered frequent leg exams to note potential nerve injury, a known complication of a UAE. The nurses who cared for the patient claimed that they performed the leg exams as ordered to note potential nerve damage. However, there was no documentation that the leg examinations were performed and this malpractice suit resulted in a $1.5 million verdict for the patient, Susan Meek [17].

Gerato v. University of Florida Shands Hospital 2006

The surgical team of Shands Hospital in Florida, unknowingly perforated one of the arteries in her brain during a procedure. From that point on errors continued, leading to the tragic outcome of her becoming paralyzed. The court held the entire surgical team liable and awarded Gerato $23 million dollars in this medical malpractice suit [18].

Steps to avoid the mishaps in healthcare provision

Listed above are only a few of case studies involving medical malpractice suits, there are so many more that affect the healthcare provision. When caring for a patient, a provider's priority is to maintain a patient's safety at all time. Safety includes a wide range of techniques and practices. This includes providing a safe environment for patients always in areas we as providers have control of. Here are a common prevention tactics to avoid mishaps:

Safe Medication Administration to Prevent Medication Errors

If the 5 R's (Right Patient, Right Dose, Right Drug, Right Route and Right Time) were always followed when overseeing medications there would certainly be less medication administration errors [19].

Proper Clinical Documentation

As stated before, "if it wasn't documented it wasn't done." Many malpractice suits of negligence have been successful because of improper documentation which includes poor or no documentation at all. Clinical documentation in a patient's record should read like a book so anyone who reads it will clearly understand what's going on with the patient and the treatment plan that is followed. Risk manager's programs in clinical settings emphasize the importance of proper documentation and strive for healthcare providers to document detailed facts of a patient's care, in a timely manner [20].

Initiating and Maintaining Fall-Prevention Programs

To prevent falls and injuries to patients, maintaining a safe milieu is a must when patients are receiving care. Approximately 700,000 to 1,000,000 patients experience falls in United States Hospitals annually, 30 to 50% of those falls result in serious injuries and fatalities. According to the 2016 2nd quarter sentinel report of the Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the root cause analysis of hospital falls show that there are many factors that contribute to patient falls, which include the following: Poor physical assessment of patients by healthcare providers, insufficient communication among healthcare staff, hospital providers and staff not following safety practices, provider-patient overload in patient care assignments, and lack of orientation provided to patients of their new environment when they are admitted to the hospital.

All patient falls are not avoidable, but according to research published by the National Institute of Health (NIH), 1/3 of all hospital falls are preventable. These findings make it imperative for hospitals to construct and maintain a fall prevention environment, one that prompts staff, patients and family members to avert falls and the use of standardized fall risk assessment tools are all methods hospitals should successfully practice, decreasing the number of patient falls within their healthcare organizations [21].

Preventing Pressure Ulcers

Maintaining patient safety covers all areas in healthcare provision, including prevention and care of pressure ulcers in patients. Preventing pressure ulcers has been a great concern of nursing care for many years. Pressure ulcers are more common in the elderly population because of compromised immune systems which comes with aging, acquired morbidities and co-morbidities. Pressure ulcers are also more common in nursing homes because the patients are kept sedentary and positions maintained in bed and/or wheelchairs.

The development of pressure ulcers may be in inevitable in some patients but the most important technique a provider can initiate is a prevention treatment plan, one that promotes frequent turning, protein-rich nutritional supplements to promote healing, and proper clinical documentation of wound progression (size of wound, area involved, drainage, odor, surface area, etc.). Clinical documentation from a wound specialist should also be available in the patient's chart to exhibit that the wound care is guided in perfection [22].

Conclusion

I don't believe that there is one healthcare provider who intentionally places a patient in danger or has a desire to harm or cause injury to a patient. However, healthcare providers are pressured in many ways that often produce an unsafe environment for their patients. For example, time is often a factor and providers many times find themselves caring for more patients than they have time to properly care for. Hospital employers do not always support healthcare providers working beyond their tour of duty and these results in rushing to get the job done, including proper clinical documentation, within assigned work hours. Some healthcare providers work long hours and work overtime as needed. Research has proven that heavy workloads, because of inadequate staffing, result in nurses providing care beyond the point of effectiveness. In fact, according to the Institute of Medicine, more medical errors are made when providers work long hours and excessive overtime [23].

Carelessness is a by-product produced of providers who do not take the time or have enough time to perform their necessary duties in healthcare provision. There are two sure ways providers

can be successful in avoiding the mishaps in healthcare provision. One way is to communicate effectively. Patients are less likely to sue if their provider has gained their confidence with pleasant, direct communication, explaining in detail pending procedures, etc.), another way a provider can prevent the mishaps in healthcare provision is to practice safe-care measures combined with providing quality care, always. Avoiding mishaps in healthcare provision may be challenging but, regardless of how difficult this may be at times, these are the only definite ways a healthcare provider will protect themselves from malpractice suits [23,24].

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