Dear Mary

by Mary Annas

Dear Mary is a monthly feature in which readers can ask about any nursing care issue that concerns them. Answers will be supplied by Mary Annas or a consulting nurse, physician, lawyer, or ethicist where appropriate. Readers are also invited to comment on the answers.

Dear Mary,

I am an LPN who works part-time in a nursing home. I have for some time been troubled by a practice that is common here and would like you or your editors to comment on it. When one of our patients requires some medical care in addition to that which the patient is currently receiving, the doctor usually asks the patient's family what they feel should be done.

I have seen patients who I believe should be hospitalized, but are not because the family does not want their treatment continued in a hospital setting. Is it proper for the family to make this decision?

Nancy
Buffalo, N.Y.

Dear Nancy,

"Elder abuse" may be at least as serious a problem as child abuse. Often nurses are the only ones who can observe such abuse, and may be the only ones who can effectively prevent it. In a recent example in Massachusetts, involving a 78 year old man who needed kidney dialysis to stay alive, a court had agreed with the family to terminate the treatment on the basis that the man was incompetent by reason of senility and would have wanted the treatment terminated if he could have made the decision himself (Earle Spring). Two nurses at the nursing home challenged this decision, and filed statements with the court that they believed the patient was lucid at times and had expressed a desire to continue dialysis when lucid. Their action eventually led to a reversal of the decision to terminate treatment and a re-opening of the case. While some in nursing have been critical of these nurses (why did they wait so long?; were they just out for publicity?, etc.) it seems to me that what they did was courageous and proper if they believed that their patient was being improperly terminated from a life-maintaining treatment. I will, however, let my editor comment more specifically on the legal issues your question raises. It may also interest you to know that very often nurses in extended care facilities make the decision not to treat themselves by not calling a physician at certain times, e.g., when the patient runs a temperature of 101 to 101.9° F. twice within 24 hours. Brown, NK and Thompson, DJ: *Nontreatment of Fever in Extended Care Facilities*, 300 New Eng. J. Med. 1246, 1250 (May 31, 1979).

Like all other patients, nursing home patients have the right to consent to or refuse treatment for themselves, and this responsibility cannot legally be given to another without a judicial determination that the patient is incompetent and a guardian appointed. Nursing home staff and physicians should not confuse a family's financial responsibilities with treatment responsibilities. The family may have agreed to pay the patient's bill, but in no way does this empower them to make treatment decisions. The physician is responsible for providing good and accepted medical care to the patient. If the physician determines that hospitalization of a patient is indicated, then the patient should be hospitalized and treated with consent which is legal. The nursing staff have an obligation to protect the patient if he is not receiving good and accepted medical care, as the nurses did in the Massachusetts case to which Ms. Annas referred.

J.L.G.

Dear Mary,

I am a recent baccalaureate graduate working in a rural community health agency. All of the care which I deliver is supposed to be under the "supervision" of a physician. In reality, my patients never see their physicians except in the rare instances when they are hospitalized, and in addition I have difficulty reaching the physicians even for telephone consultations. Consequently, many times I am in the position of having to make treatment decisions which I believe should be made by the physician, such as decreasing a patient's Digitalis dose, or increasing the number of weekly visits I make to a patient for dressing changes. The other nurses in the agency experience the same problems, and though we are able to support one another in our concern, we are unsure of how to improve the situation.

Paul
Davenport, Iowa

Dear Paul,

Since I am unfamiliar with the setting you describe, I am referring your question to my editor.

Most agencies are set up as you describe, with nurses providing care under the "supervision" of a physician. The economic soundness of this practice is discussed in this month's feature article. As a practical matter, under this system it is unrealistic to think that physicians can provide hands-on supervision, nor is this necessary. The problem with this practice is that over time the arrangement becomes more flexible and less clearly defined. Then, responsibilities become more difficult to delineate. The nurses in your agency need to utilize an existing resource which you have described —your unity and ability to support one another. It can be most productive for you as a group *to approach your agency administration to express the need for some clarification of lines of communication and responsibilities. There should be written protocols for such items as periodic review by physicians of patient records and established call-in times when the nurses can contact the physicians.*

Second, I do not agree with your characterization of the decisions you describe as "medical." It is well within the scope of nursing practice in any setting *to interpret clinical findings and alter nursing actions accordingly. Certainly the nurse's findings are to be discussed with the physician so that a medical determination of the proper long-term course of action can be made, but the nurse is responsible for making nursing judgments about nursing functions.*

J.L.G.

Legal Controversies in Nursing

A series of conferences designed to provide nurses with up-to-date practical information concerning the legal responsibilities which affect contemporary nursing practice are being sponsored by the American Society of Law & Medicine. George Annas, Jane Greenlaw and other faculty members will address issues of legal, ethical and professional concern to staff and managerial nurses. The programs scheduled thus far for 1980 include:

Houston, Texas	April 3-4
Arlington, Virginia	May 8-9
Boston, Mass.	June 15-17

For registration information write: Conference Coordinator, American Society of Law & Medicine, 520 Commonwealth Ave., Boston, Mass. 02215.

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