CHAPTER 3

HEALTHCARE ENVIRONMENT: INNOVATION, TECHNOLOGY, AND LEGAL ISSUES IN NURSING

INNOVATION AND HEALTHCARE TECHNOLOGY

Leading in the 21st century requires innovation and adaptation to the environment. Innovation may involve a simple change or a radical redesign of the system, but using something different seems to be the answer (Warner & Burton, 2009). To prepare competent practitioners, versed in the practice environment today, innovation is necessary in nursing practice and nursing education.

Innovation is defined as creativity that is characterized by originality and expressiveness, according to the American Heritage Dictionary of the English Language (2009). Innovation is that essential component of nursing practice that permits response and adaptation to the many variables presented in the practice environment. Innovation and creativity support dynamic nursing practice; creativity is enhanced with intrinsic motivation, a nurturing environment, an ability to function independently, and a willingness to take risks (Fasnacht, 2003).

A leader can enhance creativity by building an environment of trust and interpersonal relationships, along with promoting a willingness to listen and spirit of cooperation. In addition, according to Longo (2013), key strategies to enhancing creativity include providing time for educational offerings, providing time for creative work, and encouraging calculated risk-taking and acceptance of personal responsibility.

Risk-Taking and Changing the Healthcare Environment

Leaders as coaches can support risk-taking by welcoming calculated risks into the work environment and encouraging positive risk-taking. The benefits of taking the risk for employees provides practice and participation in decision-making, increases confidence, increases a sense of control, decreases anxieties and fears, and can increase motivation.

Taking risk is engaging in behaviors that have potential to be harmful or dangerous, yet at the same time provide opportunity for some kind of outcome that can be perceived as positive (Tull, 2009). *Risk* in general can be defined as the "effect of uncertainty on objectives." Uncertainties include events (which may or may not happen) and uncertainties caused by ambiguity or a lack of information. It also includes both negative and positive effects on objectives (ISO 31000, 2009).

As Mark Twain said, "Twenty years from now you will be more disappointed by the things you didn't do than by the ones you did. So throw off the bowlines, sail away from the safe harbor, catch the trade winds in your sails. Explore. Dream. Discover" (Twain, n.d.).

Technology as an Innovation That Affects Practice

Technology to compute information has roughly doubled every 14 months between 1986 and 2007. Information technology as an integral part of life encompasses communication, documentation, and consumerism. Today the terms "information technology" and "informatics" are interchangeable. The primary goal of information technology is simply information management.

Continued developments in informatics support advances in clinical care, administration management, research, and education.

The goal of technology is to have the right information always available at the right time. Data management supports informed decision-making. Information systems provide leaders and managers with day-to-day information on patient flow and acuity, resource use, staffing levels, and costs and budgetary balance. There continue to be advances in moving healthcare information technology forward in the form of national forces, nursing forces, patient safety, and cost.

The national forces at work began with the creation of the President's Information Technology Advisory Committee in 2005, which became the Office of Science and Technology in 2012. The timeline for electronic health records (EHRs) began with a call for their use in 2004. Federal legislation under President George W. Bush required that all medical health records be electronic by 2014, and provided initial subsidies to make this happen. This was the same timeline for establishment of National Coordinator for Health Information Technology (NCHIT), a part of which was the creation of the 2008–2012 Strategic Plan with two goals addressing healthcare delivery: patient-focused health care and population health.

The goal of patient-focused health care is to provide higher quality, cost-effective care using electronic information exchange among healthcare providers, patients, and their designees. The strategic plan to reach this goal requires facilitating electronic exchange of health information while preserving privacy and security, increasing interoperable exchange of information, promoting nationwide adoption of EHRs and personal health records, and establishing collaborative governance guiding health information technology infrastructure.

The goal of population health allows for access and use of electronic health information to support public health, biomedical research, quality improvement, and emergency preparedness. The strategic plan to reach this goal requires advancing privacy and security policies, principles, procedures, and protections for information access in population health. Reaching the goal of population health also will require enabling an exchange of health information to support population-oriented uses, promoting nationwide adoption of technologies to improve population and individual health, and establishing coordinated organizational processes supporting information use for population health.

Nursing Forces at Work

Nursing continues to help drive healthcare information technology along a timeline:

- 1993: National Center for Nursing Research
  - Building clinical databases
  - Methods to evaluate nursing information systems
- 1997: National Agenda for Education & Practice
  - Educate nurses in core informatics content
- American Association of College of Nursing (2006-2008-2011)
  - Core competencies in healthcare technologies

Healthcare information technology contributes to evidence-based care through a standardization of terminologies and structure in documentation. In addition, the use of digital information, the standards allowing for data exchange between heterogenous entities, the ability to capture data relevant to actual care provided, and competency among practitioners to use data will all contribute to evidence-based care (Bakken, 2001).

The Institute of Medicine (IOM) Reports (2001–2003) support the use of healthcare information technology to improve practices and promote patient safety. Informatics is a core competency for all healthcare professionals and is seen as an important force in improving health care. Areas of focus for the IOM center on:

- National information infrastructure
- Computerized clinical data
- Clinical decision support
- Use of the Internet
- Integration of evidence-based practice.

The American Nurses Association also has promoted the use of healthcare information technology beginning with the 1994's *Standards of Practice for Nursing Informatics* and *Scope of Practice for Nursing Informatics.* In addition, the Committees for Nursing Practice Information Infrastructure and National Information and Data Set Evaluation Center are in place to support nursing practice with technology.

PATIENT SAFETY AS A DRIVING FORCE FOR HEALTHCARE INFORMATION TECHNOLOGY

Many patient safety databases use aggregated data to identify safety issues. Examples include the vaccine adverse event reporting system through the Centers for Disease Control and Prevention (CDC), the U.S. Food & Drug Administration, the National Nosocomial Infection Surveillance System through the CDC, and the Quality and Safety Initiative by Robert Wood Johnson Foundation (2010), which is based on IOM's five core competencies (patient-centered care, teamwork and collaboration, evidence-based practice, quality improvement, and informatics). Other processes that support safe practice and quality patient outcomes include using a bar coding system for medication administration and computerized provider order entry systems.

The Leapfrog Group (2000) was formed in response to high costs of health care without the ability to assess quality or compare healthcare providers, and consisted of large American corporations. Their 2009 mission was to improve safety, quality, and affordability of health care. They also work toward encouraging availability of information to consumers to facilitate informed healthcare decisions and using incentives and rewards to promote high-value health care. They collect voluntary data from healthcare organizations that they publish for consumer use on their website (Leapfrog Group 2009).

Increasing the Use of Healthcare Information Technology

Marketplace forces are driving increased use of healthcare information technology. Organizations are responding to the forces of competition, the need for economic survival in a competitive marketplace, the drive for professional accountability for the costs of diagnostic and therapeutic interventions and choices, and patient outcomes and satisfaction.

Meaningful Use for Healthcare Information Technology

Generally stated goals for the increased use of healthcare information technology include improving quality, safety, and efficiency. Technology is being used to engage patients and families in the process of healthcare delivery. Improving care coordination across the continuum of care helps to improve the overall health of the public and population at large. Meaningful use for healthcare technology also helps to ensure privacy and security for personal health information.

Requirements for Healthcare Information Technology

Today's requirements for effective healthcare technology can be condensed into an information technology system that can track and quantify the costs of care, the process of care, and the outcomes of care. There is also a need for information technology that can document the care being delivered in a fast, efficient, and consistent manner.

Investing in Nursing Informatics

Best practices include promoting the use of health information technology systems that improve documentation and reduce time spent on documentation. The best practice systems also provide patient data for quality improvement and provide patient data for research.

Supporting Practice

Four major domains of data in healthcare information technology support the delivery of care for the client, the provider, the leader, and research (Huber, 2010). Client care is supported through the client's medical record, including the evaluation process, the gathering of all clinical data, documentation of client outcomes, and achieved care outcomes. In addition, it is necessary to gauge client satisfaction and to assess and document the costs and access to care.

Healthcare information technology supports practice and the provider through personnel records and links to client records and national databases. General information that can be gathered includes professional data, caregiver outcomes, job enrichment opportunities, and job/work satisfaction. Information technology also provides an opportunity to gather information on physician satisfaction and job stress and/or intent to leave. There are opportunities to provide decision-maker variables and support for general care delivery through access to standards and databases.

Nurse leaders rely on administrative databases for issues related to management and resource oversight. Efficient practice is supported through access to databases containing real-time information in areas such as costs, productivity, turnover, and income. A global view of the organization includes databases that contain overall systems outcomes.

Healthcare information technology supports the evidence-based practice environment through existing and newly gathered data and relational databases. In general, the technology supports knowledge base development, practice-based evidence, and evidence-based practice. Research databases provide a clinical data repository, information, the ability to warehouse information, and an accessible data repository.

The Role of Nursing Informatics

Nursing informatics as a practice specialty is having a major impact on the way care is planned and delivered in the current healthcare environment. Nursing informatics refers to that component of informatics designed for and relevant to nurses and includes information management, knowledge from sciences other than nursing, and the importance of informatics within all areas of nursing practice.

The Specialty of Nursing Informatics

In a technologic world where information turns over rapidly, nursing informatics provides and facilitates nursing education in informatics and technology, and allows nurses to analyze, design, and implement information and communication systems. In addition, nursing informatics specialists, commonly referred to as *informaticists*, conduct and participate in effectiveness research to advance nursing epistemology.

Leadership Competencies in Healthcare Information Technology

Nurse leaders need a working knowledge of healthcare information management and technology, with a foundation in basic software skills (spreadsheets, word processing, email, social media, Internet use, and database management). Correctly used, technology supports financial management, process improvement, and quality improvement. Additionally, healthcare information technology supports general business intelligence and benchmarking for assessment and comparison of performance, while clinical information systems support the care delivery process.

Today's Healthcare and Information Technology

Documentation is an integral part of providing healthcare services today. Looking at the need for documentation for patient care and regulatory and accrediting bodies, a function of technology is to provide modification rather than redundancy of information and uniform rather than individualized care processes. Technology supports parallel rather than serial processing of patients through a transparency of technology. Technology and computers work their magic behind the scenes, where the user should perceive only the results and not the process unless so desired.

Technology and Documentation

Healthcare information technology provides for standardized language and terminology that improves quality outcomes and decreases medical errors. Documentation pathways link assessments, interventions, and outcomes for all users to provide the right information at the right time. Technology provides links to literature and nursing research to promote an evidence-based practice environment. Technology is changing the paradigm of documentation and promoting culture shifts, with increasing use of the electronic health record.

The American Nurses Association and Documentation Standardization Efforts

The American Nurses Association (ANA) has been actively involved in promoting standard documentation for healthcare records and nursing practice, beginning with the USA Nursing Minimum Data Sets (NMDS). The NMDS supports nursing care and patient demographics in nursing education, health information system designs, and clinical research. For leaders, the ANA has developed the Nursing Management Minimum Data Set (NMMDS), which provides data on the environment, nursing care, and financial resources and is used to obtain information to manage the environment and provide comparable data for benchmarking.

Management Information Systems

Management information systems (MISs), essential to the business of health care, represent an almost staggering investment of resources to ensure that the systems needed to conduct business, document clinical care, capture trends, and meet the demands of regulatory bodies and purchasers are in place. The rapidity with which technology is changing means not only an initial investment, but also ongoing capital and operational expenditures.

Organizations related to healthcare MISs have come into existence in recent years, as have careers in this area. Medical records administrators and clinical librarians are but two of the careers that have changed dramatically with the advent of MIS. Indeed, these job titles themselves are nearly obsolete. It is not uncommon to see a chief information officer (CIO) integrated into the executive level of the organizational chart of healthcare organizations.

The acronyms *WAN* (wide area network) and *LAN* (local area network) are common terms to the majority of administrators and clinicians alike. Now an entire vocabulary of technology terms sits alongside the medical lexicon.

Local area network refers to several personal computers linked together through a server. The concept is somewhat akin to an office that has several phone lines, each connected to the others, although able to be used independently.

Wide area networks are made up of LANs, and the system can be enlarged exponentially. Connections are affected by specialized networking software and are transparent to the user.

Nursing has its own association, the American Nursing Informatics Association, whose members are involved with or interested in the field of nursing informatics. The ANA describes *nursing informatics* as a scientific discipline that is broader in scope of practice and incorporates disciplines other than nursing, such as computer science and information science.

Electronic data transfer fosters the integration of care across the continuum. However, the promise of the fully functional computerized medical record is yet to be realized. As those who practice in the field of informatics have learned, the complexity of health care is such that the anticipated migration from paper to "bits and bytes" has yet to occur on a large scale.

Nonetheless, the *electronic health record* will eventually become a near-universal reality. An understanding of semantics related to the computerization of medical and health records is useful. The *automated medical record (AMR)* is considered a "first-level" product that brings together information from other sources. The AMR is delivered electronically to an end-user for her or his use in caring for the patient. However, the end-user cannot immediately enter data (respond to) what she or he has received (i.e., the AMR is not interactive).

The next level is termed the *computerized medical record system,* in which paper-based products now become available electronically through scanning. The *electronic medical record* is the third-level product; it provides capability for electronic data entry, electronic signature, data integrity, and audit tools. The *electronic patient record* is the fourth-level product; it brings together information about the patient from more than one organization, thus supporting the argument for a universally agreed-on "e-language" and code. Finally, the *electronic health record* is the fifth-level product, including information about the person's well-being from multiple sources, not only about her or his medical problem (Carter, 2008).

The Internet

The World Wide Web represents a phenomenon without parallel. The instantaneous availability of information and the ability to connect with the person next door or colleagues half a world away does indeed make planet Earth seem a bit smaller.

The Internet is changing the way medicine—and by extension, nursing—is practiced. Patients are engaged in self-care as never before. They approach their providers with the latest articles about illness, medications, treatments, and research in hand. Expectations have changed; relationships have been altered. While the concepts of *patient as partner* or *patient as leader of her or his health team* are not yet universally embraced, they are clearly on the horizon.

Telehealth is no longer in the realm of science fiction. The Office of the National Coordinator of Healthcare Technology now exists as a division within the Health Resources and Services Administration, itself a division of the U.S. Department of Health and Human Services (http://healthit.hhs.gov/portal/server.pt).

In telehealth, nurses use laptops and small video cameras to videotape the patient in her or his residence in real time. The recording can be transmitted immediately to other health-care providers so that assessment and needed intervention can occur in the moment. The transmission is not constrained by time or distance; thus, patients in remote locations can enjoy the same level of consultation as those who live adjacent to medical centers. Radiologists read digitized images from a location far removed from the diagnostic imaging department. Laboratory data are transmitted via secure servers from location to location.

Telehealth provides to real-time access to healthcare services. The patient and provider interact at the same time with the ability to store and forward communication to additional healthcare providers, if necessary. Telehealth facilitates electronic capture of diagnostics for specialist interpretation.

An extension of telehealth is *telehomecare*. Recognizing the need to provide access to services to clients in need, telehomecare is the ability to monitor and deliver care at home through a variety of services. Examples of telehomecare services include portable monitoring devices, automatic pill dispensers/reminders, and biometric garments.

Other examples of technology supporting the care environment include e-intensive care units for remote monitoring of critical care patients and teletrauma that is used in rural hospitals for second opinions and advice from trauma care experts. The goal in using the technology is to enhance patient care and provide access to healthcare services in rural areas of the country.

Telenursing

A new and developing specialty is *telenursing*. Telenursing is used in various settings, including colleges, hospitals, and healthcare insurers' patient outreach programs. The practice of telenursing creates more collaborative and autonomous roles for nurses and also contributes to cost-containment efforts.

Challenges to Telehealth/Telenursing

As new and emerging forms of care delivery develop, issues and challenges arise. Reimbursement and medico-legal issues, along with technical issues, are common challenges. There are opportunities for research as technology facilitates new forms of practice and outreach to determine the outcomes and effectiveness of new care delivery systems.

There are few barriers in the virtual world save for the electronic security "firewalls" purposely incorporated into information systems. Many organizations take advantage of the firewall concept to create intranet systems that allow communication only within defined boundaries.

As with any seemingly wondrous invention, the Internet also brings with it a cautionary tale. The accuracy and source of information must be carefully scrutinized. It is incumbent on healthcare professionals to assist patients and families in distinguishing information that is of high quality from that which is questionable or even harmful. Vigilance also is called for with regard to "hackers" who break into systems, sometimes with the intent to harm, at other times simply for the thrill of proving they can "scale the wall."

Technology as an Innovation

Innovation is nursing practice that permits response and adaptation to the many variables presented in the practice environment. Healthcare information technology is at the foundation of effective current practice, promoting effective management of resources for nurse leaders who are highly dependent on up-to-date and efficient use of information that requires integration of patient, staff, and economic variables.

Nursing is the largest and most labor-intensive component of hospital costs, using on average 50% of operating budgets. Nurses are also the most constant presence at point of care. Technology has been shown to promote patient safety, quality efforts, access to care, and cost containment. Nurse leaders are in a key position to be actively involved in all healthcare information technology activities to evaluate products and systems, lobby for the purchase of products and systems, and utilize all technology available to support care delivery in today's healthcare organizations.

Consumers and Electronic Health Records

As information technology changes nursing practice and health care, consumers will have to become a part of this paradigm shift in delivery practices. Technology sets the stage for consumers to begin taking more responsibility for their health care. Provider–patient relationships are changing as consumers become more informed, seek information on the Internet, and begin to maintain personal health records.

The personal health record provides individuals an ability to communicate with their authorized providers and maintain and manage their own personal health information. Three main formats currently exist: software applications for computer or flash drive, web-based services to store information remotely, and hybrids. The benefit of the personal health record is its ability to promote collaborative care and facilitate personal management of disease treatment. There are challenges to the personal health record that generally involve the issues of data security, data standards, and data presentation. There are also concerns related to costs, provider reluctance, and maintaining unique patient identifiers.

As with all new technologies, the challenges to personal health records are ones that will continue to be addressed as patients and providers increase in user numbers. Personal health records as a technology will support the continuum of care by providing the right information at the right time.

Healthcare information technology in general reaches beyond the walls of healthcare organizations and intensive care environments across the continuum of care to palliative care. Technology requires ongoing training on medical devices and ultimately managing medical technology in a patient-safe way.

LEGAL ISSUES IN PROFESSIONAL PRACTICE AND INSTITUTIONAL LIABILITIES

Law That Affects Organizations and Practice

Two areas of the law that most involve healthcare leaders and managers are employment law and malpractice. The major employment laws include the Family Medical Leave Act (FMLA), Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Occupational Health and Safety Act (OSHA). The general liabilities related to these laws include violation of the FMLA, discrimination, retaliation, wrongful termination, wage and hour violations, and violations of OSHA. Strategies to decrease employment law liabilities include documentation of all issues and employee encounters; reporting up the chain of command; unilaterally enforcing policies, procedures, and laws; and consulting legal council. Laws and regulatory issues are covered in depth in Chapter 6.

Malpractice issues for nurse leaders include personal negligence in clinical practice; liability for delegation and supervision; and staffing issues such as adequate numbers of staff with increased patient acuity and limited resources, floating staff from one unit to another, and the use of temporary or agency staff to augment staffing. Nurse leaders are charged with a duty to orient, educate, and evaluate; failure to attend to these issues can result in malpractice claims. Nurse leaders also are charged with strict product liability for the actions of staff. Lastly, negligent hiring may be an area of malpractice if staff is hired without the appropriate license and credential verification.

Corporations have a duty and responsibility to their patients and staff. The duties implied include maintaining a safe facility and safe equipment; providing competent, qualified, trained, and licensed individuals to provide care; providing proper orientation and supervision of the staff; and maintaining appropriate policies, procedures, and bylaws. Additional responsibilities and liabilities include *respondeat superior* (vicarious liability); ostensible authority; corporate negligence; Emergency Medical Treatment and Active Labor Act (EMTALA) claims; and mandatory reporting at the federal and state level for issues of neglect, child abuse, and elder abuse.

Tort Law and Medical Malpractice

Tort law includes negligence and professional negligence. A *tort* is a civil wrong that allows the injured individual to seek damages. Damages (compensation) are paid to the injured by the individual who caused the harm. Tort law is civil law and protects others from unreasonable and foreseeable risks of harm. A tort is a civil wrong other than breach of conduct and civil law provides a remedy for injured person to seek damages.

Types of torts include both negligence and professional negligence. *Negligence* is conduct falling below legal standards that protect members of society from harm. Professional negligence is conduct of professionals that falls below a professional standard of due care. Torts include assault and battery, libel and slander, and wanton and willful conduct.

Professional negligence varies in definition from state to state. Professional negligence is generally described as a failure to apply a professional standard of care. Medical malpractice is professional negligence. In professional negligence, a nurse's conduct is compared to what a reasonable nurse would do in the same situation/circumstance.

The terms *negligence* and *malpractice* are sometimes confused with one another or assumed to be synonymous. This is not the case. *Negligence* is

- The failure to do what a reasonably careful and prudent person would do under the same or like circumstances *(omission)* or
- The doing of something that a reasonably careful and prudent person would not do under the same or like circumstances *(commission).*

Briefly, negligence is the failure to exercise reasonable or ordinary care.

Malpractice goes beyond negligence. Four elements must be present for malpractice to occur:

- *Duty:* How would a reasonable and prudent provider behave under the same circumstances?
- *Breach of duty:* Did the provider breach the standard of care in this particular situation?
- *Causation:* Was the unreasonable, careless, or inappropriate behavior on the part of the provider the proximate cause of the injury or insult?
- *Injury:* Did injury to the patient/client occur?

If any one of these elements cannot be proved "beyond a reasonable doubt," then a malpractice claim may be dismissed.

Professional negligence claims against nurses are based almost exclusively on personal injury. These claims also have resulted from various types of negligent conduct. Current negligence claims have involved product liability and, most recently, complementary/alternative healthcare options suggested by nurses to patients for personal use.

Defenses against allegations of professional negligence include untimely filing of the case (filing after the statute of limitations runs out) and an assumption of risk whereby the plaintiff knew "it" was dangerous, had facts about the danger, and chose to take on the danger. Another defense is immunity from suit such as the common "Good Samaritan act." Overall, the best strategies for prevention of malpractice include striving for continued best practices, and being professional, pleasant, and people-oriented.

A charge of negligence can arise from any action or failure to act that results in patient injury. Most often this occurs from an unintentional failure to adhere to a standard of clinical practice. The best defense is a good offense. Knowing the factors contributing to the increase in the number of malpractice cases against nurses helps to build a good defense, and in today's health care, the greatest number of cases are reported in acute care healthcare organizations, followed by long-term-care facilities (nursing homes, rehabilitation facilities, transitional care units).

Insurance

Two types of liability are of concern to those in the health professions: (1) personal liability and (2) corporate liability**.** *Personal liability* holds that individuals are responsible for their own actions. *Vicarious liability* is an extension of personal liability and holds that certain parties may not be negligent themselves, but their negligence is assumed because of association with the negligent individual. *Corporate liability* holds that an organization is responsible for its conduct.

Healthcare organizations are, by the nature of their business, heavily insured to protect against liability and, by extension, their employees also are insured. The doctrine of *respondeat superior* (let the master speak) allows the courts to hold employers responsible for the actions of the organization's employees when the employees are performing services for the organization. This concept sometimes gives nurses and other healthcare professionals a false sense of security in that they assume they cannot be sued individually in the case of actual or perceived wrongdoing. Indeed, patients may sue both the institution and the individual practitioner. Thus, nurses are advised to carry their own personal liability insurance.

Documentation

The need for precise, accurate documentation has been reinforced repeatedly in the field of nursing. "If it's not documented, it's not done" is an oft-repeated mantra within the profession. New challenges lie ahead as computerized documentation systems become more widespread without benefit of standardized rules, processes, and technical languages. Although such guidelines will come in time through various regulatory bodies, the initial products are being activated at the institutional level. At the present time, electronic documentation systems are no more consistent than their paper-and-pencil counterparts (Smith, Smith, Krugman, & Oman, 2005).

The Medical Record

Documentation takes place in the form of a patient's medical record. The medical record serves as a complete and accurate record of a patient's condition. The record also serves as a basis for evaluating healthcare operations resources by providing research data and helping to determine reimbursement by third-party payers.

The medical record is a legal document and admissible in a court of law and provides a summary of a patient's hospital stay with treatments and outcomes noted. The record is generally owned by the hospital, but the patient owns the information it contains. The record is confidential and should not be discussed with anyone not in direct care of the patient.

In general, the medical record should be documented accurately and in a timely fashion and should contain elements of assessments, plan of care, medical interventions, and evaluations of the treatments. The record can assist with a malpractice defense if completed appropriately, or can hinder a malpractice defense if documented poorly. Defense attorneys value accurate, clear, and concise documentation and consider the medical record to be the best defense in a malpractice suit.

Legal Impact of Medical Errors

The Institute of Medicine reports that medical error is the leading cause of death in the United States. As currently reported, more people die from medical errors than from breast cancer, HIV, or motor vehicle crashes. The Archives of Internal Medicine reports that medication errors occur nearly 1 out of every 5 doses. Factors in the healthcare environment, including cognitive lapses (e.g., lack of attention, interruptions, "slips"), a tendency to generalize, confirmation bias, and overconfidence, contribute to medical errors.

Factors Affecting the Practice Environment and Liability

Nurse leaders are faced with challenges in the healthcare environment due to financial constraint and constriction of the environment. Greater productivity and efficiency challenge access to healthcare services while the public demands equitable access and funded healthcare services. In addition, there are changes in healthcare reimbursement based on government policy.

The litigious environment of health care is affected by the fact that the public and citizens know their rights relating to health care. They are more knowledgeable about health matters and are aware of government intervention and policies regarding patient involvement in care. Patients have the right to participate in decision-making matters relating to their health supported by law, and no longer accept the old paternalistic paradigm of healthcare delivery.

Another factor to consider in the review of legal issues is as simple as the aging population. People are living longer and, as a result, there are increasing numbers of older Americans with multiple healthcare needs and increasing numbers of aging Americans requiring complex care.

The last factor contributing to a complex legal environment for the delivery of health care is a shift in the practice setting from hospitals to primary care clinics, directed by government and reimbursement factors and the continual practice of transferring patients between acute and chronic care settings, and then back home as care needs change.

Nurse Leaders at the Forefront of Culture Change

Changing the culture paradigm is a responsibility of a nurse leader in today's healthcare environment. A strategy for changing the culture includes facilitating a move to assess events beyond blame, because errors do and will always occur. Other responsibilities relating to events include the duty to:

- Prevent events/errors when possible
- Report events
- Remedy injuries related to events
- Promote a culture of safety.

Other strategies to change the culture include promoting identification of safety issues as opportunities for performance improvement, ensuring a non-punitive environment for event reporting, reinforcing communication within the healthcare team and with patients and families, and encouraging patients to participate in their care.

Nurses must recognize the fact that today's healthcare environment contributes to the rise in malpractice claims against nurses. Increased autonomy and responsibility of nurses bring about greater risk of error and liability. Effective risk control strategies begin with the personal responsibilities of maintaining competencies and nursing skills through continuing education efforts; ensuring accurate, objective, and thorough documentation in all records; and examining personal professional practice to understand the challenges and risks.

Keeping current with the most common personal and organizational allegations is a good place to begin, because nurse leaders can identify their own vulnerabilities in the practice environment and take appropriate action to protect their practice and license.

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