Nurse Drug Diversion and Nursing Leaders' Responsibilities

Legal, Regulatory, Ethical, Humanistic, and Practical Considerations

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ABSTRACT

Nurses who divert drugs pose significant threats to patient safety, but also become a liability to healthcare organizations and the nursing department where the diversion occurred. Healthcare and nursing leaders have a responsibility to ensure that security systems are in place to prevent diversion and protect patients if nursing impairment is suspected as a result of drug diversion. Nursing leaders must consider legal, regulatory, ethical, humanistic, and practical considerations in resolving this issue.

Scenario

You are the nurse executive (NE) of a small, rural, critical care access hospital in northeast Washington State. Over the past 3 months, the narcotics records from labor and delivery area have not reconciled 4 times. Specifically, the records have documented a total of six 5-mg vials of fentanyl (ULTIVA) missing. Despite exhaustive investigation by the charge nurse and nurse manager, no one has been able to locate the missing medication or develop a fact-based logical explanation of what transpired. The nurses on the unit suspect that either the pharmacy sent boxes with missing vials that or the perioperative crew, who are in the adjacent wing, "borrowed" the vials and failed to document their use. The pharmacy is suspicious that the drugs have been diverted. The narcotics locker is a manual system accessed by 2 keys. The narcotics log is also a manual process, where nurses document the administration of narcotics and then perform a narcotic count for reconciliation at the end of the shift. (Received from C. Hollenback's Nexus paper from Gonzaga University's Department of Nursing, August 4, 2010.)

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Maryanne Ingalls: A Stellar Nurse With a Hidden Problem

Maryanne Ingalls is the relief charge nurse for the labor and delivery unit. She is the most highly respected, clinically expert nurse in the department and has been with the hospital for 4 years. She is often willing to pick up extra shifts and help out with the frequent staffing crises faced by the hospital, given its situation of being unable to hire staff for 2 vacant full-time positions. She has just left the office after confessing that she had diverted the medication and stating she is entering an inpatient treatment facility tomorrow, specifically designed for healthcare professionals. She has requested this information be not shared with anyone, and she has begged to be allowed to return to her position once she has successfully completed the program. She says she will be willing to submit to random urine screens on her return. What should the nurse manager and nurse executive's next course of action be?

Drug Diversion: A Threat to Patients and Healthcare Organizations

Nurses who divert drugs pose significant threats to patient safety, but also become a liability to healthcare organizations and the nursing departments where the diversion occurred. Healthcare and nursing leaders have a responsibility to ensure security systems are in place to prevent diversion and protect patients if nursing impairment is suspected. The American Nurses Association (ANA) has taken a stance on nursing impairment and defines professional impairment as a nurse who is unable to meet the requirements of the professional Code of Ethics established by the ANA as a result of cognitive, interpersonal, or psychomotor skill dysfunction from excessive use of alcohol or drugs.[1] The fictitious scenario of Maryanne Ingalls, a stellar charge nurse at a labor and delivery department in a hospital in Washington, details a stereotypical nurse culpable of drug diversion. Ms Ingalls admitted to diverting 5 vials of fentanyl, a powerful narcotic agent, for personal use and agreed to seek inpatient rehabilitation treatment for her problem. Nursing leaders have an obligation to address legal, regulatory, ethical, humanistic, and practical considerations in resolving the issue, as well as to become cognizant of the symptoms of chemical dependency.

Legal

From a legal perspective, diversion of drugs is defined as the unlawful channeling of regulated pharmaceuticals, including the misuse of prescription medications.[2] Discovery of narcotic diversion in a hospital organization requires full disclosure to senior officials within the organization, including the pharmacy manager, compliance officer, and human resources personnel. Ms Ingalls's request for confidentiality applies only to personnel without vested involvement in the situation.

A thorough investigation of the drug diversion must occur immediately to search for system failures. Involved patient records must be carefully examined for falsification and omissions. The investigation would provide the NE with ample evidence to evaluate if Ms Ingalls violated state nurse practice acts and/or committed minor infractions or a felony offense. The commitment of a felony offense could lead to further disciplinary actions by the state board of nursing (BON), local, and/or federal authorities. Accurate and detailed documentation of the investigation is imperative. Documentation must be objective and specific, but should be confidential and revealed only to the appropriate authorities.[3] Mandatory reporting and disciplinary actions are required in many states, and penalty and other proceedings are dependent on the investigation.[4]

In addition, the NE has a legal responsibility to investigate if organization policies and procedures were violated. If these were breached, further systems review would be warranted to assess for flaws and deficiencies that could have contributed to the diversion. In this fictitious scenario, the primary failing in the system was the manual narcotic dispensing system. This system created an opportunity for a nurse to easily divert pharmaceuticals without proper accounting methods. After the completion of a thorough investigation, corrective actions must be enacted to prevent future diversion episodes.

Moreover, if the NE fails to disclose this information or resolve the problem, further legal quandaries could result the NE being accused of maleficence for failing to protect patients from a potentially unsafe nurse.[5] ''Negligent supervision'' could be charged against the NE for failing to report an impaired nurse who has admitted to narcotic diversion.[6] The NE has an obligation to ensure nurses provide safe and prudent patient care, and failure to report or resolve the situation would be negligent and potentially subject the nurse and patients to further harm.

Regulatory

Nursing leaders have an obligation not only to protect patients' safety, but also to ensure the actions of employees comply with hospital directives.[7] The NE must follow the hospital's drug diversion policy and procedure to ensure the appropriate course of action is taken. However, if a written policy and procedure on drug diversion is unavailable, a collaborative discussion between nurses, physicians, pharmacists, risk management, administrators, and the legal team can be convened to develop a methodical process of controlling medications and narcotics to prevent future diversion incidents.[8]

In California, nursing leaders are mandated by the BON to report any nurse who has engaged in illegal

activities related to his/her professional responsibilities.[9] In Washington, significant losses or unaccounted discrepancies of controlled medications require mandatory reporting to the board of pharmacy, federal drug enforcement agencies, and appropriate authorities.[10] In New York, practicing nursing while impaired by alcohol or drugs is considered professional misconduct and will be subject to penalties.[11] Reporting of unprofessional conduct, such as drug diversion, is usually at the discretion of a hospital's chief nurse officer. However, nurse peer assistance programs are available and operated by the New York State Nurses Association or statewide professional association of nurses to assist nurses who have drug-related problems. As an NE, it is important to become aware of regulatory agencies' guidelines on controlled substance diversion so that appropriate actions can be taken concerning the involved professional.

Ethical

Nurses have an ethical duty to protect patients, colleagues, the profession, and community.[11] This ethical responsibility extends to nursing leaders and executives to report an impaired professional and ensure he/she receives the appropriate treatment through BON diversion programs or other professional drug and rehabilitation treatment. Impaired nurses, including nurses who have admitted to unlawful behaviors, should not be allowed to practice and subject patients to potential harm. The NE must safeguard patient safety and provide corrective action in a nonpunitive manner.

The NE must also be aware that drug diversion is a symptom of the disease of addiction and that addiction is a treatable disease.[12] Several states have developed alternative diversion programs to promote treatment and rehabilitation of impaired or addicted nurses.[13] Nurse diversion programs are critical for the profession, and healthcare organizations must ensure nurses are treated, and a safe return to the workplace is facilitated. As an impaired nurse, Ms Ingalls has now become a patient with a treatable condition, and the NE must ethically provide appropriate referral to a diversion program to assist her in obtaining treatment.

Research has shown that recidivism rates by nurses from diversion and rehabilitation programs are lower when compared with the general population.[14] The ANA supports alternative-to-discipline programs, such as diversion treatment programs, and encourages state BON to adopt these nonpunitive strategies in treating chemically dependent nursing professionals.[15] The ANA's *Code of Ethics* additionally advocates for the promotion of nurses' well-being and rehabilitation to preserve the nursing workforce and the profession.[16]

Drug diversion in a nursing department affects not only the involved employee and organization, but also the employees within the department because it creates disorganization, demoralization, and promotion of feelings of betrayal among other nurses. The NE has an ethical responsibility to assist the employees in recovering from grief and/or anger. The utilization of servant-leadership strategies can help alleviate the distress or disorganization.[17] The NE can facilitate the grief process brought on by the diversion through commitment, awareness, and offering counseling services to peers of the impaired employee who could be suffering from betrayal, anger, guilt, and loneliness. Servant leadership qualities can improve the morale of the devastated department by listening and through physical presence.[17]

Humanistic and Practical Considerations

As a caring professional, the NE should not admonish Ms Ingalls; rather, she should explore treatment assistance and rehabilitation programs that would closely monitor her progress and allow her to gradually return to work with supervision. Ms Ingalls's ability to practice nursing in the future should be taken into account to keep her career and livelihood intact. As a nursing professional, Ms Ingalls should be extended the same consideration nurses afford to patients with other diseases. Chemical dependency is a medical illness, and the NE must recognize this to remove the stigma associated with Ms Ingalls's admission of drug diversion.[6] Once this is recognized, the NE can provide empathy and encouragement.

A practical consideration would be to maintain Ms Ingalls's request for confidentiality and not divulge the information to her peers and colleagues. It is likely her peers' suspicions have been aroused prior to her divulgence, but it is imperative for the NE to keep this situation private. Contrastingly, the NE must remain available to the staff and assure them that maintenance of quality patient care will remain a priority. Certainly, the loss of productivity and potential negative patient outcomes are a practical consideration because the financial burden of replacing an experienced nurse and responding to a potential costly litigation will fiscally affect the organization.[18] The NE must consider all these effects because the future career of Ms Ingalls within the organization and profession will be impacted.

Symptoms of Impairment

The NE must be cognizant of nurses who may potentially be impaired while caring for patients. These signs may often be subtle, but if left unrecognized, patient safety may be compromised, and the organization placed at further risk. Nurses who are chemically dependent may be successful at disguising dependency issues because they are often stellar employees, popular, respected, and bright.[3] Coworkers are likely the first people to notice nuances in impaired nurses' behaviors.[19] Increased absenteeism, tardiness, frequent or unexplained disappearance from the unit, deteriorating personal appearance, reduced productivity, and diminished alertness are some of the

behavioral signs of impairment or chemical dependency.[3] Frequent reports of ineffective pain management by patients and inaccurate narcotic counts are also suggestive signs that the NE must pursue when nurses are suspected of drug diversion.[20] The NE also must be observant of nursing staff who are frequently volunteering to count or administer narcotics and are eager to relieve colleagues for lunch relief who have patients who are likely to receive pain medications. These nurses may likely be diverting medications, and if observed early, patients can be protected, and problems can be averted.

Discussion

The prevalence of substance abuse in the nurse population parallels the general population. The ANA estimates approximately 6% to 8% of nurses are practicing while impaired.[6,20] Despite these statistics, nursing leaders and executives have an ethical, legal, and moral obligation to preserve patient safety while maintaining the integrity of the profession to assist nursing colleagues to seek treatment for this affliction. Nursing leaders must promote a nonpunitive environment that encourages participation in a rehabilitation program for chemical dependency. Confidentiality must be exercised with disclosure only to appropriate authorities. An obligation to maintain department operations and promote confidence after a diversion must also occur because provision of optimal and safe patient care is imperative. Nursing leaders must be trained at recognizing symptoms of impairment and intervene immediately to prevent patients from being compromised. Education and regulatory knowledge are critical in drug diversion prevention and treatment strategies.

Hospital executives and nursing leaders must also consider the installation of automated narcotic dispensing machines to accurately track medications. These electronic dispensing machines have built-in statistical analysis to accurately track medications and disclose personnel who had access to each dispensed medication. These electronic systems can further safeguard narcotics and alert the NE of nurses who are dispensing narcotics at an alarming rate. However, the most important preventive aspect in recognizing nurses who are diverting medications is to maintain a collegial relationship with employees. The NE must be accessible and approachable to employees so that suspected nurses can be assisted and patients are protected. Nurses who divert medications are a liability to the organization as a result of theft and patient safety issues. The NE must ensure specific policies are in place to manage such instances and prevent the organization from being liable.

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