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Nurses' liability

Meeting the necessary standard of care

By Aleks Mladenovic

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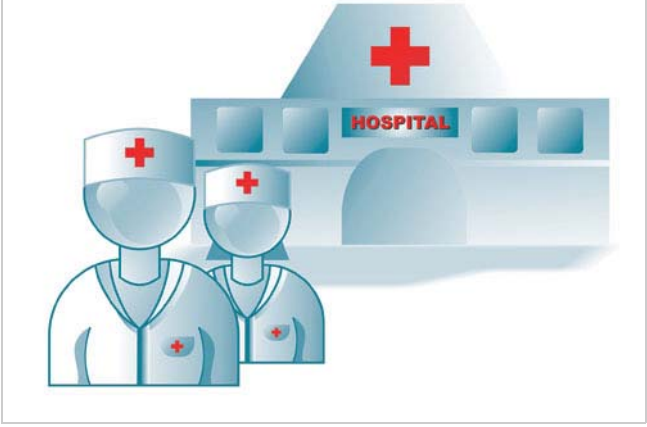
Nurses have a duty to ensure prompt attendance by the most responsible physician in the face of a medical emergency.



[Soca Waskitha / Dreamstime.com]

This duty exists even when that patient has already been seen by a resident physician who is expected to call the senior doctor. While a nurse may initially assume that the resident will call for help, doing so may put the patient at risk and expose the nurse to liability. If the most responsible physician does not arrive reasonably soon, the nurse must take steps to get that doctor to attend.

In *Milne v. St. Joseph's Health Centre*, [2009] O.J. No. 4004, Justice J.N. Morissette found that an experienced obstetrical nurse and a junior obstetrical resident both failed to meet the standard of care of a nurse and physician, respectively, in their care of the plaintiff Anne Louise Milne and her fetus. The trial judge further found that delivery of Milne's baby son, Jessy Gibson, was inexcusably delayed, causing Jessy to suffer catastrophic brain damage. Liability was apportioned one-third to the nurse and her employing hospital and two-thirds to the junior resident, who had settled her case with the plaintiffs in advance of trial.

Milne offers valuable advice for cases involving nursing care, most particularly for obstetrical cases where doctors and nurses follow the "team approach" to patient care. It reinforces the principles that team members must communicate clearly with one another and that each team member has independent obligations to the patient. Thus, a nurse is not excused for failing to act simply because a resident physician is involved in the case. A nurse must use his or her knowledge, training and experience to ensure safe, effective and timely care at all times.

Milne involved a patient with a placental abruption, a premature separation of the placenta from the uterus, resulting in internal bleeding. Abruptions are potential emergencies as they can lead to oxygen impairment of the fetus and pose an obvious risk to the health of the mother as well.

At 1:20 p.m. on Aug. 18, 1997, Milne was admitted to the labour and delivery unit of the St. Joseph Health Centre with complaints of sudden onset, severe abdominal pain and vomiting. She was assessed by an experienced obstetrical nurse, who took her vital signs and applied a fetal heart rate monitor (EFM). The initial EFM tracing was non-reassuring. At trial, the nurse admitted she strongly suspected an abruption, which she understood to be a potential emergency that might require a caesarean section delivery.

At 2 p.m., Milne was seen by a junior obstetrical resident with less than one month's experience in the labour and delivery unit. The resident was working under a senior attending obstetrician, who was available to attend within 10 minutes if needed. The resident performed an ultrasound test, also known as a biophysical profile, which showed the fetus was not breathing or moving and had poor tone.

The resident, like the nurse, suspected an abruption, yet neither shared their impressions with the other. Nor did they discuss the appropriate course of action. The resident then left to observe another patient's elective caesarean section. The nurse testified that she expected the resident to immediately contact the attending obstetrician to have him assess the patient. The resident testified that she gave the nurse no reason to believe she would be calling the obstetrician, and in fact did not do so.

After the resident left, the nurse did not organize a caesarean section in anticipation of the obstetrician's arrival. The nurse believed the obstetrician was five minutes away, yet when he did not arrive, she took no immediate steps to call him. About 35 minutes after the resident left, the nurse corralled another doctor who immediately diagnosed a massive abruption and ordered an emergency caesarean section. Jessy was delivered 13 minutes later with profound brain injuries. Justice Morissette found that delivering Jessy even 10 minutes earlier would have prevented the brain injury.

Justice Morissette held that although the nurse was entitled to assume the resident would call the attending obstetrician, she could not continue to assume this had been done five to 10 minutes after the resident left. At that point, realizing the obstetrician had not arrived, the nurse had an obligation to call the obstetrician herself.

Milne illustrates the independent standard expected of nurses in critical situations. The standard of care depends not only on the experience level of the nurse, but also the foreseeable risk. The trial judge held that "as the degree of risk of the situation increases, so too must the vigilance and the standard of care of the nurse rise."

The lesson from *Milne* is that medical team members must clearly communicate their impressions and their plans of action. Failure to do so undermines the "team" approach essential to patient care. In the setting of a medical emergency, assumptions can have tragic consequences for patients and will offer little defence at trial to nurses and doctors who make them.

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