

"Should be mandatory for all nurses to attend."

Linda Nusdorfer, RN
University Health Network (2008)

Osgoode's 3rd Annual Legal Risk Management for Nurses

Get practical advice on the key legal risks and dilemmas facing nurses on the frontline in 2009, including:

- The most recent medical malpractice cases involving nurses
- Disclosing an adverse event - what are the legal consequences?
- Professional misconduct update
- The latest on informed consent and substitute decision makers
- What are the consequences for breaching patient confidentiality?
- Dealing effectively with patients with mental health problems
- Tackling the rising incidence of bullying and harassment in the workplace
- Police at the bedside - what are your obligations?
- Coroner's inquests and investigations - what are your rights and obligations as a witness?

Plus! Don't miss the Optional Post-Conference Workshops:

Workshop A - Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability

Workshop B - Mental Health Law 101: The Fundamentals That All Nurses Should Know

Chair

Mary Jane Dykeman, Dykeman Dewhirst LLP



DATE

June 22, 2009

8:30 a.m. - 4:30 p.m. EDT/EST

OPTIONAL POST-CONFERENCE WORKSHOPS

June 23, 2009

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

Webcast
available



Osgoode's 3rd Annual Legal Risk Management for Nurses

"Excellent, informative, current, empowering and interesting - every nurse needs to know and hear again and again."

**Liliana Canadic, Nurse Manager
Palliative Care/Oncology
Joseph Brant Memorial Hospital
(2008)**

"Extremely applicable to the nursing profession. Very useful and informative conference."

**Stacey Johnson, RN
ER Education Coordinator
St. Joseph's Health Centre
Toronto (2008)**

As under-pressure health care systems continue to ask nurses to do more with less, those involved in frontline care must be acutely aware of their potential legal liabilities.

This intensive one day *Osgoode Professional Development* course builds on and updates the successful programs offered in 2007 and 2008. It will explain what the law is and how it applies from the special perspective of the professional nurse. Equipped with this information you will be in a better position to make sound, professional judgments, and avoid the potential liability traps that exist in your everyday work.

Key subjects are again included: medical malpractice, professional misconduct, consent to treatment, privacy and tackling bullying and harassment in the workplace. In addition, the program examines two highly topical subjects: the legal rights and responsibilities of a nurse during a corner's investigation and inquest, and tackling the special problems posed by patients with mental health problems.

Don't miss this opportunity to be better informed and have your questions answered by some of Ontario's leading health law experts.

Plus! Take advantage of our two Post-Conference Workshops:

Workshop A: Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability

Workshop B: Mental Health Law 101: The Fundamentals That All Nurses Should Know

These two interactive sessions will allow plenty of time for questions and will provide you with in-depth instruction and practical approaches you can put to work right away.

Register now by visiting www.osgoodepd.ca, calling 416.597.9725 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chair

Mary Jane Dykeman, Dykeman Dewhirst LLP

Faculty

**Janice E. Blackburn, Bersenas Jacobsen
Chouest Thomson Blackburn LLP**

Kate Dewhirst, Dykeman Dewhirst LLP

**Janina Fogels, Cavalluzzo Hayes Shilton
McIntyre & Cornish LLP**

Michael B. Fraleigh, Fogler, Rubinoff LLP

Pat Fryer, Patricia Fryer & Associates

**Kate A. Hughes, Cavalluzzo Hayes Shilton
McIntyre & Cornish LLP**

**Phuong T.V. Ngo, Gowling Lafleur Henderson
LLP, Ottawa**

Lonny J. Rosen, C.S., Gardiner Roberts LLP

Elyse Sunshine, Gardiner Roberts LLP

**Kristin L. Taylor, Legal Counsel, Centre for
Addiction and Mental Health (CAMH)**

Anita Szigeti, Hiltz Szigeti LLP

**Brian G. Whitehead, Counsel, Legal Services
Branch, Ministry of Community Safety and
Correctional Services**

Agenda [Monday, June 22, 2009]

8:00 Registration and Continental Breakfast

8:30 Introduction from the Chair
Mary Jane Dykeman, Dykeman Dewhirst LLP

8:40 Medical Negligence Claims Against Nurses

Michael B. Fraleigh, Fogler, Rubinoff LLP
Kristin L. Taylor, Legal Counsel, Centre for Addiction and Mental Health (CAMH)
Pat Fryer, Patricia Fryer & Associates

- The standard of care - what is the current legal standard of care in a malpractice suit?
- Does an error in judgment mean that the standard of care has been broken?
- What is the standard of care in emergency situations?
- Breach of the standard of care
- Causation - was the harm suffered caused by the breach of the standard of care?
- Vicarious liability - the hospital, doctor and nurse - who's on the hook and for what?
- Case studies - the most recent medical malpractice cases involving nurses
- Defences to a malpractice claim: denial of the facts; expiration of the limitation period for the claim; a missing element and contributory negligence
- The importance of good documentation: record keeping as standard nursing practice
- What are the typical problem areas in charting?
- Making corrections to charts - dos and don'ts
- What are the legal consequences of disclosing an adverse event?
- Effective risk management in reducing malpractice claims - what can you do to bolster a risk management culture in the workplace?

9:50 Ensuring Patient Privacy: How to Deal Appropriately with Confidential Information

Kate Dewhirst, Dykeman Dewhirst LLP

- What is confidential information?
- *Personal Health Information Protection Act (PHIPA)*
- Nurses as "agents" of health information custodians
- Is the obligation to maintain confidentiality indefinite?
- When can you refuse to give a patient access to his or her information?
- What are the situations where consent to disclose information is not required?
- Disclosure to investigators - College, Public Guardian, Coroner
- Disclosure where the patient is the victim of a crime - e.g. spousal abuse
- Disclosure of confidential information where the patient is an accused offender
- Police at the bedside? Is there a duty to disclose information to the police?

10:35 Refreshment Break

10:50 Consent to Treatment and Informing the Patient: The Nurse's Perspective

Lonny J. Rosen, C.S., Gardiner Roberts LLP
Phuong T.V. Ngo, Gowling Lafleur Henderson LLP, Ottawa

- What is "informed consent"? What information needs to be disclosed?
- Responding to the patient's questions
- The recent cases on consent to treatment
- The role of causation in informed consent
- The patient's rights to refuse treatment and the assessment of capacity to do so
- Prior expressed wishes of the patient whether written or oral - what weight do they carry?
- Substitute decision makers - what's the ranking order?
- What factors are taken into consideration to determine a patient's "best interests"?
- Powers of Attorney for personal care
- Consent and children - when is a minor capable of giving consent?
- The role of parents in health care decisions. When can a parent provide consent? What if the child is adopted or the parents are separated or divorced?
- Applications to the Consent and Capacity Board
- Research studies and consent - what are the issues?

11:40 Keeping Staff and Patients Safe: Tackling Bullying and Harassment at the Workplace

Janina Fogels, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Bullying and harassment occur in all organizations, but the incidences of such behaviour appear to be higher in healthcare institutions. This not only causes obvious injury and distress to hospital staff, it also leads to increased sickness, absence and poor morale. It also stops patients getting the expert care they need.

- How are bullying and harassment defined by law?
- How and to what extent are employers liable? What responsibilities do employers have?
- *Occupational Health and Safety Act* - do hospital workers have a right to refuse unsafe work?
- Potential avenues of liability for the hospital and its staff - civil and criminal liability
- Drafting and implementing effective violence prevention policies
- Effective strategies to deal with abuse by patients and their families

12:15 Networking Luncheon

1:15 Professional Misconduct Update: What Every Nurse Should Know

Elyse Sunshine, Gardiner Roberts LLP

- What's the tie-in between negligence liability and professional misconduct?
- Can you be found negligent if you have complied with standard medical practice?
- What are the sources of professional standards?
- What is professional misconduct, and what are the most

Agenda

common types of professional misconduct occurring today?

- How does the College deal with professional misconduct – an overview of the College's complaints process and disciplinary proceedings
- What are the sanctions for professional misconduct?
- The appeals process
- The nurse as a witness
- Reporting obligations with regard to findings of professional misconduct under the *Nursing Act*
- Incapacity and incompetence
- Practical tips for preventing professional misconduct claims

2:00 Dealing with Patients with Mental Health Problems

Janice E. Blackburn, Bersenas Jacobsen Chouest
Thomson Blackburn LLP

- Identifying and meeting the needs of patients with mental health issues
- Preparing for a Consent and Capacity Board hearing: what you need to know

3:00 Criminal Liability and Police Investigations

Kate A. Hughes, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Thankfully, a criminal charge against a nurse is rare. However, it can and does happen. Kate Hughes will discuss how it happens and what you should do if it happens to you.

- What are the most common offences that nurses may be charged with in connection with their professional duties?
- Police investigations – search and seizure, surveillance and interviewing witnesses
- What should you do if you are charged? – the dos and don'ts
- An overview of the criminal trial process
- Appeals against conviction and/or sentence
- Criminal convictions and reporting obligations under the *Nursing Act*

3:45 Coroners Investigations and Inquests: Understanding Your Legal Rights and Obligations

Anita Szigeti, Hiltz Szigeti LLP

Brian G. Whitehead, Counsel, Legal Services Branch
Ministry of Community Safety and Correctional Services

- An overview of the role of the nurse during a coroner's investigation or inquest
- You have just been told the coroner is investigating, what should you do?
- What documents are available to the coroner?
- Being interviewed by an investigator from the coroner's service: preparing for the interview
- What is a Judgement of Inquiry?
- Receiving a summons to a coroner's inquest: dos and don'ts
- How is an inquest conducted?
- What are your rights and responsibilities as a witness?

- Is evidence given at an inquest admissible in any future criminal or civil proceedings against the witness?

4:30 Program Concludes

Post-Conference Workshop A
Medical Negligence and Charting: Best Practices for Getting it Right and Reducing Liability
Tuesday, June 23, 2009, 9:00 a.m. – 12:00 p.m.

Anna L. Marrison, Borden Ladner Gervais LLP
Michele Warner, Borden Ladner Gervais LLP
Wendy Whelan, Borden Ladner Gervais LLP

Creating and dealing with documentation is an integral part of nursing procedure. Accurate charting is a key to facilitating patient care.

However, the quality of recorded information can be used to defend or prosecute a nurse in disciplinary hearings or it may be used as evidence in civil or criminal proceedings. Good documentation is often a key factor in responding effectively to allegations of negligence and/or professional misconduct.

- Why is documentation so important?
- The plaintiff's use of documentation in any legal action
- The defendant's use of documentation in any legal action
- The hospital's duty to ensure proper charting is completed – the need to develop policies and clear standards of acceptable practice
- The need to provide training in documentation and developing effective documentation tools
- The types of documents that are relevant: full charts; medication records; schedules; appointment papers; employment files/reviews; hospital policies and procedures, notes and other memoranda regarding a particular event
- How to record information accurately and effectively
- Practical tips and guidance for drafting clear and accurate notes
- What are the typical problem areas in charting?
- The importance of recording at the time of the event
- Recording only what you saw or did
- Avoiding subjective conclusions and assumptions
- Why should you avoid recording the actions of other health care providers?
- The benefits of recording chronologically
- Blanks in the chart – what should you do?
- Late entries – dos and don'ts
- Making corrections to the chart – what to avoid
- "Severing" incorrect information from the chart
- Preparing hospital incident reports – what should you bear in mind?
- Staff's personal notes – legal status, and perils and pitfalls to avoid
- Charting by exception
- Electronic charting – what are the general requirements?
- The latest cases on documentation – case studies

Agenda

Anna L. Marrison is an associate in the Health Law Group at Borden Ladner Gervais LLP. She was admitted to the Bar in 2003. She acts on behalf of hospitals and their employees in medical malpractice and other civil lawsuits as counsel to the Healthcare Insurance Reciprocal of Canada (HIROC). Ms Marrison also acts for nurses in response to complaints made to the College of Nurses. She is the co-author of "Disclosure of Adverse Events: The Legal Responsibilities" (Health Law Group, Borden Ladner Gervais LLP, 2003).

Michele Warner is a graduate of the University of Toronto Faculty of Law, and was admitted to the Ontario Bar in 2005. Prior to her law degree, Ms. Warner studied social work at Wilfrid Laurier University, obtaining a Master of Social Work Degree in 1996. She is currently an associate in the Health Law Group at Borden Ladner Gervais LLP and is involved in representing hospitals and health care providers in proceedings before the courts and a variety of administrative tribunals. Her practice also involves providing legal advice to hospitals, children's mental health centres and health care providers concerning policies, risk management and statutory compliance issues.

Wendy Whelan is an associate in Borden Ladner Gervais LLP's Toronto office, and is a member of the firm's Health Law Group. She is a graduate of Osgoode Hall Law School, and was admitted to the Ontario Bar in 2006.

Post-Conference Workshop B **Mental Health Law 101: The Fundamentals That All Nurses Should Know** **Tuesday, June 23, 2009, 1:00 p.m. - 4:00 p.m.**

Janice E. Blackburn, Bersenas Jacobsen Chouest Thomson Blackburn LLP

Mary Jane Dykeman, Dykeman Dewhirst LLP

Whatever your speciality/area of expertise, you may encounter patients suffering from a mental disorder. As such, it is vital that you have a sound understanding and appreciation of the applicable legal principles involved in this area. This interactive workshop will provide an introduction to, and an explanation of, the applicable law.

- Overview of the mental health law system in Ontario
- Sources of mental health law
 - *Mental Health Act*
 - *Public Hospitals Act*
 - *Health Care Consent Act*
 - *Criminal Code*
 - Common Law
- What is the interplay between the various statutes?
- What are the legal responsibilities of institutions and health care professionals to patients who suffer from a mental illness?

- Risk management strategies for keeping staff and patients safe – tips and tools
- Becoming a psychiatric patient
 - voluntary patients
 - involuntary patients
 - informal patients
- Notice and rights advice
- Principles of consent to treatment
 - what is the test for capacity?
 - substitute decision making and powers of attorney
- Emergency treatment exception
- How do matters get before the Consent and Capacity Board?
- Safeguarding the privacy of mental health patients

Janice E. Blackburn is a founding partner of the Toronto law firm, Bersenas Jacobsen Chouest Thomson Blackburn LLP. Ms. Blackburn has practised in the mental health and forensic psychiatric fields since 1986. Acting as counsel to hospitals and health professionals, Ms. Blackburn appears before administrative tribunals in the health field including Coroner's Inquests, the Consent and Capacity Board and the Ontario Review Board; at all levels of appellate courts including the Court of Appeal for Ontario and the Supreme Court of Canada. Ms. Blackburn teaches post-graduate trainees in forensic psychiatry at McMaster University; lectures for the University of Toronto Medical School and trains Assistant Crown Attorneys to act at Ontario Review Board hearings. Ms. Blackburn also provides advice to and in-house seminars to healthcare institutions on a variety of legal and practical issues.

Mary Jane Dykeman is a partner at Dykeman Dewhirst LLP, a Toronto health law boutique that advises health sector clients on matters relating to privacy, mental health, health research, consent and capacity, systemic risk management, corporate governance, physician privileges and regulation of the health professions. She currently acts as external counsel to a number of teaching and community hospitals and community mental health agencies on a broad range of health law, risk management and corporate matters. She is a frequent writer and speaker on health law and policy issues, including as co-editor (along with her law partner, Kate Dewhirst) of *Risk Management in Canadian Health Care*. She developed and edited the *Canadian Health Law Practice Manual* for almost a decade (joined in later years by Kate Dewhirst) and is also the co-author of *Canadian Nurses and the Law*. Ms. Dykeman teaches mental health law on Osgoode Hall's LLM program and has taught on the Queen's LLB program. She is the Program Director for Osgoode's new certificate program in mental health law. In June 2008, she was honoured by Osgoode for Excellence in Continuing Legal Education.

Registration

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Dates & Times

Conference: June 22, 2009 - 8:30 a.m. - 4:30 p.m.
Workshop A: June 23, 2009 - 9:00 a.m. - 12:00 p.m.
Workshop B: June 23, 2009 - 1:00 p.m. - 4:00 p.m.
Please arrive a half hour early for sign-in and material pick-up.
Dress is business casual.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Location

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