

## Mismanagement of Medication and Samuel's Law

### Avoiding Liability Bulletin - September 1, 2015

Some of you may have read about the tragic death of a 7-year-old boy, Samuel Cutliff, who died in September of 2012, four weeks after a home health care nurse administered 4 millileters of Morphine in error rather than 0.4 millileters ordered for his Mitochondira disease.

According to news reports, Samuel's respiratory rate was higher than usual and the Morphine was indicated.<sup>1</sup> Samuel's mother reminded the nurse that "to get the .4 millileters you have to dilute it in the small syringe".<sup>1</sup> The nurse responded "OK. I got it".<sup>1</sup>

Shortly after the narcotic was administered, Samuel's mother observed her son, felt something was not right, and it was then that the nurse then told her that she had given 4 millileters instead of the correct dose. Samuel was taken to the local ER for a Morphine overdose, then transferred to a pediatric ICU where he died a month later.<sup>1</sup>

The nurse who admitted responsibility for the overdose was placed on probation for one year by the South Carolina Board of Nursing in February of 2014. She was also required to pay a \$2,000.00 civil penalty and complete four [educational] courses.<sup>1</sup>

It was reported that the nurse had prior instances of not giving medication properly in 2003. For the earlier instances, she received a reprimand by the Board of Nursing, was required to take classes and paid a small fee.<sup>1</sup>

The tragedy resulted in a proposed bill called "Samuel's Law" in South Carolina (Senate Bill 371) that would require the South Carolina Board of Nursing to revoke the license of any nurse who misreads a physician's order and either over medicates or under medicates a patient.<sup>2</sup>

The initial version of the Bill was read in the Senate on January 28, 2015 and was then sent to the Committee on Medical Affairs on the same day. However, in April of this year, the Committee sent the proposed bill to a sub-committee, and the proposed bill resided there until the end of the 2015-2016 Session of the legislature in June, thus preventing passage of the proposed Bill to date.<sup>3</sup>

The current version of the Bill in a Senate sub-committee reads as follows:

"Upon a finding by the board that a person licensed under this chapter acted in a willful, wanton, or grossly negligent manner by misreading a physician's order causing a patient to be over-medicated or under-medicated and resulting in the patient's death, the board shall revoke the person's license to practice nursing in

this State. As used in this subsection, ‘willful, wanton, or grossly negligent’ means an act or course of action, or inaction, which denotes a lack of reasonable care and a conscious disregard or indifference to the rights, safety, or welfare of others and which does or could result in death.”<sup>3</sup>

Although this nurse’s error resulted in the devastating death of this young boy, the proposed Bill has been met with much criticism and controversy. An initial disapproval was voiced by the Institute for Safe Medication Practices. In one of its *Safety Alert’s*, the Institute commented that although the intent of the proposed Bill is to prevent fatal medication errors, as it now reads it misses its mark. The circumstances that lead to Samuel’s death was not willful, not wanton, and not grossly negligent. Rather, the circumstances support a *misreading* of the medication dose. Misreading an order is unintended and therefore “there can be no conscious disregard without intent toward the action (intentionally misreading the order), or pre-existing knowledge of the mistake”.<sup>4</sup>

A second criticism voiced by The American Association of Nurse Attorneys (TAANA) and other organizations is that the proposed Bill negates the whole concept of a “just culture” philosophy inherent in health care today. In the Just Culture Model, each person is held equally accountable for their behavior choices.<sup>2</sup> The Model supports a non-punitive and transparent approach when an unintended medical injury occurs and is composed of “evaluating whether the error was reckless (which requires discipline), unknowing risk-taking (which requires coaching and remediation), and blameless normal human error”.<sup>2</sup>

Third, punishment of an unintended human error does nothing to remedy the situation, and a revocation of a license can result in a further worsening of the situation through lost opportunities for learning (by the nurse who made the error), decisions not to take accountability for an error and also not reporting them (especially if the error does not result in patient harm, is not serious, or is not clearly linked to the error), and undermines the very essence of the Just Culture Model.<sup>2, 4</sup>

Last, and by no means least, a bill of the type proposed in South Carolina undermines the authority and power of a state board of nursing to regulate the practice of nursing. The mission of a board of nursing is to protect the public from unsafe and incompetent nursing practice. A board does so by setting standards of nursing practice and conduct required of nurse licensees.

When those set standards, or a nurse’s conduct, is the subject of a complaint against the nurse, the board investigates the allegations, evaluates the allegations, and provides the nurse an opportunity to speak to the complaint against him or her. This is an essential concept—called due process-- in any professional disciplinary proceeding. Once all of the required information, testimony, and evidence is in, it is the board of nursing that decides what, if any, discipline will be imposed.

To allow the legislature to dictate to a board of nursing what disciplinary action it *must* impose,

without a case-by-case, deliberate and thoughtful decision-making process, is to undercut a board of nursing's power, authority, and, perhaps at some point in the future, its very existence as it now is.

This type of legislation also potentially eliminates your essential and constitutional right of due process when a complaint against you is filed with the state board of nursing. Revoking your license under these circumstances, without an opportunity to defend yourself, is a despotic principle.

As a nurse licensee, it is essential that you keep abreast of any changes in your state nurse practice act and rules. When a bill is proposed that, if passed, radically changes your rights under the act and seizes the power and authority of the regulatory board of your profession, you must be decisive and contact your legislators and voice your opposition to the legislation.

You must also be ever-vigilant when providing nursing care to patients, and especially so when administering medications. No one is perfect, but a careful and thoughtful presence when administering medications is essential. Moreover, if you make an error, fairness dictates that regardless of the outcome of that error, you take accountability for it and learn from it.

## FOOTNOTES

1. Jennifer Phillips (April 30, 2015), "Bill dubbed 'Samuel Law' Could Revoke Nurses' Licenses For Medication Errors". Available at: <http://www.foxcarolina.com/story/28708412/bill-dubbed-samuels-law-could-revoke-nurses-licenses-for-medication-errors>. Accessed 8/15/2015.
2. The American Association of Nurse Attorneys (2015). "The American Association of Nurse Attorneys (TAANA) Opposes "Samuel's Law": A South Carolina Bill Mandating Revocation of a Nurse's License for Medication Errors".
3. [www.scstatehouse.gov/cgi-bin/Multi-Search.exe](http://www.scstatehouse.gov/cgi-bin/Multi-Search.exe). Accessed 8/15/2015 .
4. Institute for Safe Medication Practices (April 9, 2015), "South Carolina Medication Error Bill Is Dangerously Off Target." Available at: <http://www.ismpa.org/newsletters/acutecare/showarticle.aspx?id=106>. Accessed 8/15/2015.

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