Intravenous therapy: Legal and professional issues

The aim of this article is to discuss the legal and professional implications of role expansion in relation to intravenous therapy and neonatal and paediatric nurses. The different domains of law that inform nursing practice and the professional framework provided by the Nursing Midwifery Council (NMC) are explored. Issues such as accountability are addressed and both legal and professional elements are related to practice to enhance understanding.

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Keywords

IV therapy; IV medication; legal issues; professional issues; expanded role; enhanced role

Key points

Dixon, A., Evans, C. (2006) Intravenous therapy: Legal and professional issues *Infant* 2(2): 68-72.

1. Neonatal and paediatric nurses provide enhanced support to the healthcare team by undertaking expanded roles.
2. The nursing and midwifery profession, whilst governed by a professional directives framework under the NMC, is still subject to the boundaries of criminal and civil law.
3. Neonatal and paediatric nurses who expand their role also increase their degree of accountability
4. The administration of intravenous therapy requires that nurses are not only competent in the skills to be undertaken, but also confident enough to challenge practice where necessary.

This is the first in a series of three articles addressing different aspects concerning the administration of intravenous (IV) therapy for infants and children. The main legal components relating to IV administration will be identified and considered with regard to practice. In addition, pertinent professional issues will be explored. The legal and professional principles discussed will be applied to practice throughout to facilitate understanding of the issues raised.

Background

The role of the nurse has changed almost beyond recognition since Florence Nightingale first defined nursing[1]. Recent years have heralded significant changes to nursing and medical practice[2-4]. Historically nurses and doctors had distinct roles, yet progressive changes have led to roles becoming more integrated. Registered nurses and midwives complete a basic nurse training programme but, to ensure competence and confidence when carrying out additional tasks in a holistic manner, further training and education must be completed in order to undertake enhanced practice. One of these tasks is the administration of IV therapy/medication. Previously seen as part of the medical role, over the last 40 years, it has become integral to the nurse's role. Thus it is necessary for neonatal and paediatric nurses to be fully aware and conversant with the legal and professional issues that impact upon enhanced practice.

Hospitals provide in-house IV therapy training for staff to attend, however these programmes are rarely specifically for neonatal or paediatric drug administration. Whilst some principles are generic regardless of client group, it is crucial that, with the advent of clinical governance[5,6], the Clinical Negligence Scheme for Trusts[7,8] and the Key Skills Framework[9], neonatal and paediatric nurses are aware of the need for caution. As an example, drug calculations and displacement values are much more important as the margin for potential drug error is much greater than with other client groups.

Nurses and legislation

There are six major legal factors that affect the nursing profession. These are criminal law, civil law, case law, statute law, employment legislation and nursing legislation. European Union legislation, which is binding in nature, also impacts on UK law[10]. All of these factors affect how a nurse should practice and what will occur when practice challenges accepted boundaries.

Criminal law

Neonatal and paediatric nurses are accountable to the public through criminal law. This law establishes guilt and indicates appropriate punishment. It comes into effect if a nurse commits a crime against the State. An example is the two doctors who were tried for manslaughter when vincristine was given intrathecally instead of intravenously causing death[11]. This was a systems failure rather than a premeditated act, as in the Allitt case[12], hence the manslaughter charges rather than murder.

Civil law

The neonatal/paediatric nurse is accountable to individual patients by way of civil law, otherwise known as the 'Law of Tort'[13]. This is where individuals can initiate cases in common law, usually for negligence, against nurses for damages. There are three distinct elements that must be established for negligence to be proven[14]. Firstly it has to be established that there was a duty of care. This can be assumed of any nurse who has a patient group delegated to her care. Secondly, it has to be proven that the duty of care has been breached. This breach of duty could be due to an omission or commission. For example, an omission would be a prescribed treatment not being administered due to communication failures within the multidisciplinary team. Conversely, an example of commission would be an erroneous medication overdose being given.

Both these examples could be seen as negligent and yet, in law, for a case to succeed a further element must be demonstrated and this is the most difficult to establish. The claimant has to prove that foreseeable harm has been caused. In other words, the claimant has to prove the nurse knew that what was, or was not, done would induce the resultant problem for the claimant. However, if any other reason could be suggested as a cause for the harm, other than the nurse's act or omission, then the suit is likely to fail in awarding damages to the person.

Case law

Case law arises from common law. When a judge makes a statement after considering all the facts of a case the ruling may then be used in subsequent cases where the facts or point of law are similar. This does not mean however, that the current case will automatically depend on previous case law.

The Bolam Test would be applied in the case of inappropriate action or inaction by neonatal or paediatric nurses undertaking expanded roles. They would be judged against the standard of an ordinary skilled practitioner professing to have that skill, to ascertain whether there had been a failure to achieve the required standard of care[15]. The required standard of care 'is that which is acceptable given current evidence, guidelines and policies'. So any neonatal or paediatric nurse taking on a role previously undertaken by a doctor needs to be aware that until the task is normally carried out by nurses, they will be judged against the skills of the ordinary skilled doctor.

FIGURE 1 A baby receiving intravenous therapy through a peripheral line.

In addition, any idiosyncratic practices must have a basis in current accepted evidence so that if called upon, a practitioner can justify the care given. Thus, cases cannot be brought retrospectively if there has been a significant change in accepted best practice. The harm caused by neonatal oxygen therapy in past years cannot be tried against current practice as this has changed dramatically over the last 25 years. However, if a treatment such as dexamethasone therapy, in relation to chronic lung disease, continues to be used long after there is evidence that it may cause adverse effects, then there may well be a case for negligence[16–19] unless there is strong justification for such a course of action.

Anecdotally, and as evidenced from television drama, the courts have appeared to rely on 'expert' opinion when judging approved standards of care. However, national and local clinical guidelines are as important as expert opinion[20]. In essence, nurses must comply with and evaluate their Trust's clinical guidelines to maintain an evidence-based approach to practice. Staff should be aware of the predominant role that the National Institute for Clinical Excellence (NICE) has in promoting best practice standards, and as such, these standards must be integrated into the Trust guidelines to effectively direct clinical practice. Local Trust intravenous therapy and medication guidelines must be modified for use within neonatal and paediatric units (**FIGURE 1**). Thus, neonatal and paediatric nurses should verify that such guidelines are appropriate and if not, seek guidance from the IV Therapy Specialist and Link nurses. Regional and national benchmark standards can be accessed to inform practice. These measures will endeavour to promote evidence-based best practice standards.

When nurses carry out additional tasks over and above the accepted role of similar colleagues they have an increased legal accountability[21]. Inexperience is no defence. Factors determining the legal standard of care in the expanded role include issues such as the nature of the task and the perception of the patient[22]. Parents must not be left to assume that a nurse undertaking an enhanced role is a doctor. In practice, most parents welcome the enhanced skills of nursing staff as they see the benefits for their baby.

Just as inexperience is no defence, neither is ignorance[23, 24]. Each and every neonatal/paediatric nurse has a legal duty to maintain clinical credibility and should review mainstream literature to ensure that practice remains firmly embedded in a thoroughly evaluated evidence base. This forms part of the NMC PREP requirements[25] and it would be expected that the nurse would remain updated by accessing relevant, contemporary literature sources which are not only credible, but applicable to the nature and culture of neonatal/paediatric practice.

Statute

For a governmental bill to become law it has to pass through several stages[26]. Initially it has to pass through both Houses of Parliament before the Queen can give her approval. Following this the bill becomes an Act of Parliament. Normally, the Act will only come into force on the day it is given Royal Assent. An example of a bill working through the system would be the NHS Redress Bill[27] which is currently before the House of Lords. The most recent statute that has an effect on health professionals is the Disability Discrimination Act[28]. In addition, other Governmental directives affect nurses, for example, Agenda for Change[29], Every Child Matters: Change for Children in Health Services[30, 31] and the Children's National Service Framework[32].

Nursing legislation

Neonatal and paediatric nurses are accountable to their profession through the

FIGURE 2 Preparation of an intravenous drug.

Nursing and Midwifery Council (NMC). The NMC have a duty to protect the public. Thus the NMC are obliged to facilitate compliance with statute by putting measures in place to regulate the nursing profession. Once a nurse has registered with the NMC they are legally allowed to practice as a registered nurse and as such they have to abide by the Code of Professional Conduct[33]. It is this code that ensures the public will receive a set standard of care and that nurses in breach of these standards can be brought to account. Regardless of criminal or civil law a nurse can be struck off the register if a complaint of sufficient magnitude is made and upheld following thorough investigation.

Interestingly the United Kingdom Central Council (predecessor to NMC) produced a document called Scope of Professional Practice[34] in response to nurses requesting guidance on what constituted an expanded role and what could be expected of them if they agreed to undertake this. The NMC have dispensed with the Scope document but have integrated some of its principles into the Code of Professional Conduct[33].

This has several implications. Firstly, it would seem that there is no longer an expanded role, but instead it may be better to refer to enhanced roles as this more correctly conveys the impression that it is the nurse who enhances the holistic care they can provide for an individual by furthering their education and clinical skills. Secondly, the fact that these enhancements to nursing practice no longer warrant their own document would suggest that it is individual nurses who will, in future, limit their practice, obviously within the constraints of the Trust in which they are employed. Thirdly, the integration of the Scope document makes it abundantly clear that if nurses undertake an enhanced role then the full weight of their accountability will be brought to bear should they be found to be negligent.

Employment law

Nurses are accountable to their employer by means of their contract of employment which will be set down within the boundaries of current employment law[35]. Trusts will cover nurses in their employ under 'vicarious liability'. This is where, in certain situations, the responsibility for an act or omission rests not only with the person undertaking it but also with the individual/s responsible for that person, for example, a parent for a child or an employer for an employee. This means that if a nurse is working within the boundaries set by the contract of employment, and Trust guidelines and policies are complied with at the time of the alleged negligence, then the Trust will accept responsibility for any award of damages made to the claimant. However, if the nurse is found to have violated the guidelines then the Trust may not have a responsibility to support the nurse. Indeed the Trust does have the option of mounting a law suit against the nurse to recover any losses they have incurred due to proven negligence. It is unlikely, however, that a Trust's insurers would seek redress unless the nurse had not exercised reasonable care and skill in carrying out duties commensurate with the role. Thus for any nurse undertaking an enhanced role it is essential to ensure that personal indemnity insurance is in place such as that offered through membership of a trade union eg the Royal College of Nurses[36].

It is usually a combination of factors that leads to negligence occurring and if a blame culture is not to be perpetuated it is important that steps are taken to improve the situation for subsequent staff and patients rather than punishing the person who made the initial error. Often it is organisational systems failure that propagates erroneous acts or omissions as much as individuals. Hence the importance of clinical governance and risk management strategies to highlight and investigate potential system errors to minimise the risk and consequences of repeated incidents.

Professional Issues

The weight of the issues described above would suggest that neonatal and paediatric nurses need to address the implications of undertaking an enhanced role. Given that all nurses are personally accountable for their practice it is vital that they are safe and competent practitioners in every aspect of their role. This extends to those nurses who have a senior role. A shift leader or manager has overall responsibility for staff on duty, thus it is important that sisters/charge nurses and/or managers are fully aware of the training, abilities and competence of the staff working within the team. It is each individual nurse's responsibility to decide if they are competent in a particular skill (**FIGURE 2**). If a nurse has any doubts about personal competence then that individual has the right to refuse to carry out a procedure without further training and supervised practice. There is no shame in admitting lack of experience or knowledge in a particular situation, rather much more shame in acting confidently and causing suffering to a vulnerable infant or child.

Once trained and competent to administer IV therapy, the neonatal/

paediatric nurse may be placed in situations where there is a degree of discomfort in what is being requested of them, for example, the neonatal nurse who is asked to go to a postnatal ward to administer an IV antibiotic to a newborn infant with a suspected infection. This situation raises several issues. Firstly, the nurse has to ensure that infants on the neonatal unit are not compromised if this task is undertaken. Secondly, the nurse must comply with local Trust guidelines and consider the implications of administering IV medication in another clinical area. Thirdly, the nurse should establish that all the principles for the administration of medicines can be met[37] (**FIGURE 3**). It may be difficult to achieve the above three objectives as meeting all the principles mentioned will take time which tends to be one of the commodities lacking for nurses in practice today.

Accurate record keeping is also essential for nurses undertaking an enhanced role. It is not enough to say that the prescription sheet is a record of the drug being given. Good record keeping will include several components (**FIGURE 4**). By providing a full and accurate record the nurse will not only be promoting best practice but also the safety of the patient, as written records are available to provide continuity of care[38].

Recent high profile cases such as the organ retention issue at Alder Hey Hospital[39] have resulted in professionals working toward improving the issue of informed consent. The British Association of Perinatal Medicine has produced a leaflet setting out the main principles involved in gaining informed consent[40] and they have also produced a list of procedures, citing those which do not usually require explicit consent and those where gaining explicit consent is recommended[41]. Intravenous antibiotic administration is included in the listing where explicit consent is not usually required before carrying out the procedure. Whilst this may be acceptable for medical staff, the situation may not be so clear for nurses carrying out an enhanced role. The Guidelines for the Administration of Medicine clearly state that when administering medicine it should be

> "based, whenever possible, on the patients informed consent and awareness of the purpose of the treatment"[37] p4.

The ERONICS study[42] concluded that parents want more information regarding care management to inform their decision making with regard to giving informed consent. Ultimately therefore, neonatal and paediatric nurses need to be responsive to these issues and work collaboratively with parents and members of the multidisciplinary team to promote a culture where informed consent is standard rather than exceptional practice.

In relation to all the above it is also the duty of every registered nurse to protect patients and the public by bringing to light any risk management issues, untoward incidents, or practices that they are aware of. With an increasing skill and knowledge base the neonatal/paediatric nurse is increasing not only responsibility but accountability. This may lead to situations where the nurse should challenge current or accepted local practice, not only in terms of professionalism but also for the safety of patients and the promotion of best practice. This is not always an easy route to adopt, but it is far preferable to an NMC competence hearing, or even worse, a law suit.

In exercising your professional accountability in the best interests of your patients, you must:

- Know the therapeutic uses of the medicine to be administered, its normal dosage, side effects, precautions and contra-indications
- Be certain of the identity of the patient to whom the medicine is to be administered
- Be aware of the patient's care plan
- Check that the prescription, or the label on medicine dispensed by a pharmacist, is clearly written and unambiguous
- Have considered the dosage, method of administration, route and timing of the administration in the context of the condition of the patient and co-existing therapies
- Check the expiry date of the medicine to be administered
- Check that the patient is not allergic to the medicine before administering it
- Contact the prescriber or another authorised prescriber without delay where contra-indications to the prescribed medicine are discovered, where the patient develops a reaction to the medicine, or where assessment of the patient indicates that the medicine is no longer suitable
- Make a clear, accurate and immediate record of all medicine administered, intentionally withheld or refused by the patient, ensuring that any written entries and the signature are clear and legible; it is also your responsibility to ensure that a record is made when delegating the task of administering medicine
- Where supervising a student in the administration of medicines, clearly countersign the signature of the student.

FIGURE 3 Principles of medication administration. Reproduced with permission from Nursing and Midwifery Council. Guidelines for the Administration of Medicines. London: NMC. 2004; 6.

- Clear and legible writing
- Date
- Time
- Medication
- Dose
- Volume
- Route
- Length of time taken to administer medication
- Condition of patient pre, during and post administration of medication
- Condition of IV site pre, during and post administration (utilising assessment tool if available)
- Factual statements
- Contemporaneous record keeping
- Signature plus printed name

FIGURE 4 Elements of good record keeping when administering IV medication.

Conclusion

Neonatal and paediatric nurses can and will continue to expand their roles. In the main this is done in a timely and appropriate way. However, it is also their responsibility to ensure that the expanded role remains embedded in holistic care of infants and children rather than becoming task orientated.

In the current climate, role boundaries will continue to shift and change. This may lead to uncertainty and a lack of clarity with skill allocation and ultimate responsibility. Thus, it is imperative that neonatal and paediatric nurses promote collaborative working between health

professionals and parents to facilitate best practice and provide optimum care[43]. In addition, it is essential that nurses identify their limitations in practice within the legal and professional framework to preserve personal and professional integrity.

Ironically we may have come full circle as Nightingale's words resonate through the decades,

> "I use the word nursing for want of a better. It has been limited to signify little more than the administration of medicines and the application of poultices"[1].

Maybe the profession has not progressed as far as one would like to think at times.

Acknowledgement

With thanks to Dr. Nick Wild Consultant Paediatrician, Warrington Hospital, for his literary review of this article.

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