

POSITION STATEMENT ON DELEGATION

As developmental disabilities nurses we must work to ensure that adequate and sensitive services and flexible resources are, to the greatest extent possible,

- cost-effective
- least intrusive
- most normative
- provided by qualified, trained personnel
- meet individual needs and preferences.

The professional developmental disabilities nurse who provides care for the consumer determines if, when, what, and to whom to delegate tasks.

It is the purpose of unlicensed assistive personnel (UAPs) to enable the professional developmental disabilities nurse to provide nursing care for the consumer, and it is the nursing profession that defines and supervises the education, training, and utilization for any unlicensed assistant roles involved in providing delegated nursing tasks.

The professional developmental disabilities nurse must consider the following factors for any delegation decision:

State Nurse Practice Act and Other Applicable State/Agency Regulations

Since delegation is not defined by law or regulation in all states and is often defined differently in different states, professional nurses in each state must know the legal scope of nursing practice according to their own state's nurse practice act and any other regulations that are applicable. The differences among state nurse practice acts may be broken down according to the following questions:

- **Program Limitations** – Is nurse delegation limited to only certain programs providing home and community-based services or only institutional settings?
- **Personnel Limitations** – Who, by title, may be the delegate to whom authority to perform designated nursing tasks has been transferred?
- **Task Limitations** – Does the law identify: (a) specific tasks that can be delegated, (b) tasks that are permitted without delegation (i.e., assignment), and/or tasks that cannot be delegated at all?
- **Required Procedures for Delegation** – Are specific procedures or process standards included in the law or regulation?
- **Consumer Limitations** – Must consumers have the capacity to self-direct their care or are surrogates for consumers of impaired mental capacity permitted to oversee services?
- **Consumer Role** – What substantive or procedural rights of consumers are granted or specifically recognized? These rights could touch upon consent, or control over decisions, access to service, or rights to notice and information.
- **State Board's Position** – Has the state board responsible for nursing practice standards in your state issued a ruling or other similar recommendations regarding standards for delegation of nursing tasks to UAPs?

Standards of Nursing Practice

As nurses with a specialized area of practice, we are professionally and ethically obligated to promote and support standards of practice in our specialty. These standards define our professional accountability to the public and the individual outcomes for which we are responsible. They also provide a direction and framework for the evaluation of our practice.

Capacity of the Consumer

Capacity does not equal competency. Most consumers are capable of at least some informed decisions; some consumers may be capable of directing their own care. This capacity may vary over time and may vary across different decisions. Therefore, except for those who are most profoundly impaired, the evaluation for capacity needs to be decision-specific.

Condition/Stability of the Consumer

The professional nurse should assess the consumer's condition/stability to determine what nursing procedures could safely be performed by UAPs. Tasks should not be delegated to a UAP when the consumer's condition can no longer be classified as chronic or stable and for whom the performance of the assigned task could not be termed routine. A UAP should be assigned only minimal health-related tasks for consumers with unstable health conditions.

Complexity of the Procedure

The professional nurse may delegate to unlicensed personnel selected nursing tasks that help implement the registered nurse's directed plan of care. These nursing tasks should not require the nursing process components of assessment, planning, and evaluation during implementation. Nursing procedures that require an understanding of nursing process or nursing assessment and judgment during implementation are licensed activities. Nursing activities of health counseling, teaching, case finding and referral may not be delegated. The nurse retains the responsibility for the total process and for its outcomes in all situations in which delegation has occurred.

Abilities of the Unlicensed Personnel

The UAPs should possess skill in core areas such as:

- basic reading, writing and communications skills;
- a basic understanding of consumers' rights, including confidentiality, the right to privacy, the right to refuse care and the right to be treated with dignity;
- culturally sensitive interpersonal communications;
- role clarification;
- principles of consumer safety, including infection control and standard precautions; and feel competent that they can perform the activities.

Amount and Type of Training Required

Teaching is an essential part of delegation. To effectively train UAPs, professional nurses should possess the knowledge and specialized skills needed to perform and teach specific nursing tasks; and, based on the education and experience of the UAPs, nurses should determine the amount and type of training required for each UAP to perform delegated nursing tasks. Nurses need to be qualified to assess care plans, perform procedures, teach individuals from a variety of backgrounds and educational levels in a variety of environments, and consider the overall context of care. The education and training of UAPs to perform delegated nursing tasks may only be performed by a professional nurse.

Amount and Type of Supervision Required

Supervision is the provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity. It is the responsibility of the professional involved to exercise his/her judgment as to the amount and type of supervision required depending on:

- the services to be performed;
- the skill and experience of the persons involved; and
- the individual consumer nursing diagnosis(es).

Documentation

For each task delegated, the professional nurse should document the following:

- the specific task that was delegated;
- the circumstances under which the task may be performed;
- the person(s) to whom and for whom the task was delegated;
- the appropriate direction and communication needed;
- the amount and type of supervision required; and
- the outcome of the delegated task.

Liability Issues

A violation of the scope of duty under a nurse practice act is not enough in itself to create liability. If no one is hurt, there is no liability. Or if someone is hurt, but it was a result of something other than the nurse's violation of duty, there is no liability.

To be liable for any injuries to consumers caused by the acts of a nurse-delegate, negligence would have to be proven. Negligence requires four elements generally:

1. the party allegedly at fault must have had a duty – an ascertainable standard of care;
2. the party must have breached that duty;
3. there must be an injury to another; and
4. the violation of duty must be the proximate cause of that injury.

If any one of these elements is missing, there is no liability. There may still be a lawsuit, because almost anyone can assert negligence in a personal injury suit, but it will not be successful unless all four elements are proven by a preponderance of evidence.

The nurse remains ultimately responsible for the care provided, but the scope of this responsibility should be made clear. because being responsible for the task of delegation is not the same as being responsible for the actual performance of the delegated task.