Dear Mary

by Mary Annas

Dear Mary is a monthly feature in which readers can ask about any nursing care issue that concerns them. Answers will be supplied by Mary Annas or a consulting nurse, physician, lawyer, or ethicist where appropriate. Readers are also invited to comment on the answers. Letters to Dear Mary may be handwritten. All inquiries should be addressed to Mary Annas, Nursing Law & Ethics, P.O. Box 9026, JFK Station, Boston, MA 02114.

Dear Mary,

In the rehabilitation hospital where I work, the nursing staff and physicians are interested in developing a program to increase patients' responsibility in taking their medication independently. However, I have some concerns about the legality of some of the proposed variations from our medication protocol.

Patients would be evaluated for ability to participate in various levels of responsibility for self-medication. Can patients assume responsibility to pour their medication into a pill container for the entire day and then take the medication independently at scheduled times?

If patients have permission for a late pass, or if pain control is a problem, can they be given their routine medications or PRN pain medication to take while out? Likewise, can medication be sent with a patient when day-long appointments are scheduled outside the hospital?

In the above situations must the medication remain in a properly labeled pharmacy bottle, or can we pour the medication into cups or pill containers and label with dosage and time?

Rosemarie
Chicago, Illinois

Dear Rosemarie,

I have referred your question to a nurse/attorney with expertise in this area. Her response follows:

A basic concept in rehabilitation nursing is to increase the ability of the patient to care for himself. However, the proposed change in your medication protocol raises several legal issues.

Generally speaking, in the area of drug therapy the role of the nurse is to handle and "administer medications" (ILL. ANN. STAT. ch. 111, § 3405, Nurse Practice Act — Definition of Nursing Practice), that are dispensed by a hospital pharmacy "pursuant to prescriptions or orders . . . of a duly licensed physician, dentist, veterinarian or other medical practitioner." (ILL. ANN. STAT. ch. 111, § 4003, Pharmacy Act).

In the situation described, the patient would be responsible for pouring his own medication. Since the patient is in the hospital, the hospital pharmacy is responsible for dispensing the medications and the nurse is responsible for administering them. However, the patient may accept the responsibility for administering his own medication. This can be accomplished by treating the patient's medication the same as any outpatient's medication. It should be dispensed in a properly labelled bottle from the pharmacy and then be given directly to the patient. If this procedure is not followed you may be in violation of the drug labelling sections of the Illinois Food, Drug and Cosmetic Act, ILL. ANN. STAT. ch. 56½, § 501, as well as the Federal Food, Drug and Cosmetic Act.

Another issue raised is that of "dispensing." In the situation you describe, the nurse would be pouring the medication into cups or pill containers for the patient. This might be construed as dispensing and as such would not be a proper nursing function. The Illinois Pharmacy Act defines pharmacists as having the responsibility for dispensing. A nurse is also prohibited from dispensing medications under the Federal Controlled Substance Act, § 802.

The final issue your letter raises is the question of responsibility for the patient who is out on pass or on day-long appointments. To my knowledge a patient who is out on pass is still considered to be within the control of the hospital and therefore the responsibility of the hospital. The medications should be treated the same as for any outpatient. The hospital should have defined protocols and procedures which address the question of pain medication for patients out on pass. The issue of negligence on the part of the hospital and staff may be raised when a patient regularly taking a potent controlled substance for pain is allowed to go out on pass.

I suggest that you contact your state nursing board for an opinion. They might be able to offer some guidance in the development of your protocols and procedures.

Lori Costa, R.N., M.A., J.D.
San Francisco, California

Dear Mary,

I began nursing school this summer and I have a problem: I do not want to wear "whites" and I do not want to wear a cap. I feel that white nursing uniforms perpetuate the pristine handmaiden image of nurse as servant to (male) doctor. And the cap is just an outworn symbol of male domination coming from the biblical injunction for women to cover their heads. (After all, I've yet to see a male nursing student forced to wear a cap!)

I've heard the argument that patients identify us by our clothing. But the unspoken notion is that uniforms help keep nurses in their place — that their clothing limits their potential scope of activity. Of course, that's nonsense. If patients have to rely on clothing to constrain nurses from inappropriate behavior, the whole health care system is in deep trouble.

I don't mean to take away the option of wearing caps and whites. I just feel that there should be a choice in the matter. What do you think I should do in order to resist the tyranny of being forced into clothing I neither want nor need to do my job?

Betty
New York City

Dear Betty,

Let's look at the two issues separately.

I honestly never thought of the connection between caps and the biblical instruction for women to cover their heads. I guess I just thought of caps as a pain to be endured as a student and then forgotten forever. It's an interesting point, though, and deserves consideration.

On the surface it does seem to be sex discrimination since male nursing students don't have to wear caps. (Though there's nothing to be gained by forcing men to wear them too. As women we need to liberate ourselves, not just impose on men the restrictions we've traditionally borne.) But delving deeper, caps were initially required for asepsis. When virtually all nurses were women, women wore their hair long and a cloth wrap was insurance against hair falling into a wound or on a clean bandage. Today, men often have as much visible hair as women, so it makes no sense for only female nurses to have to wear caps. Anyway, most caps cover so little hair they'd hardly prevent contamination.

There are a couple of things I can think of that you might want to try. You could either confront the issue directly

(Continued on page 7)

Nursing Law & Ethics Reference Shelf

This section of Nursing Law & Ethics consists of selected court decisions which affect nursing practice and selected periodical articles and books which address the legal and ethical aspects of nursing practice.

Photocopy Service: *Most of the periodical articles cited and some of the legal decisions noted conclude with a bracketed number, e.g.,* [7-652]. *Readers may request a copy of the specific article by identifying the desired number, enclosing their check, and writing to the American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, MA 02215.*

Collective Bargaining

Capuzzi C, *Power and Interest Groups: A Study of ANA and AMA,* NURSING OUTLOOK 28(8):478-82 (August 1980) [N1-88, $1.75].

Drugs and Drug Therapy

Pharmaceutical Manufacturers Association v. Food and Drug Administration, 484 F. Supp. 1179 (D. Del. 1980).

Various medical associations brought suit challenging the validity of a regulation promulgated by the Food and Drug Administration. The regulation required package inserts to be dispensed with drugs containing estrogen, to convey to the drugs' ultimate consumers information concerning risks of the drugs. The plaintiffs claimed, among other things, that the regulation unconstitutionally interfered with the practice of medicine, since a patient's physician should decide what information the patient should receive.

The United States District Court for Delaware granted summary judgment to the FDA, rejecting plaintiffs' argument. The court reasoned that physicians could still provide information to patients, and that there is no constitutional right for physicians to control patient access to information.

Health Care Delivery

Ackerman TF, *The Limits of Beneficence: Jehovah's Witnesses and Childhood Cancer,* HASTINGS CENTER REPORT 10(4):13-18 (August 1980) [N1-95, $2.25].

Hallas GG, *Why Nurses Are Giving it Up,* RN 43(7):17-21 (July 1980) [N1-89, $1.75].

Little M, *Nurse-Practitioner-Physician Relationships,* AMERICAN JOURNAL OF NURSING 80(9):1642-45 (September 1980) [N1-90, $1.50].

Rooks JB and Fischman SH, *American Nurse-Midwifery Practice in 1976-1977: Reflections of 50 Years of Growth and Development,* AMERICAN JOURNAL OF PUBLIC HEALTH 70(9):990-96 (September 1980) [N1-92, $2.25].

Steckel SB, *Contracting with Patient-Selected Reinforcers,* AMERICAN JOURNAL OF NURSING 80(9):1596-99 (September 1980) [N1-93, $1.50].

Thomas JN, *Yes, You* Can *Help a Sexually Abused Child,* RN 43(8):23-29 (August 1980) [N1-94, $2.25].

Informed Consent

Truman v. Thomas, 27 Cal. 3d 285 (1980).

The California Supreme Court has held that a physician has a legal obligation, under the doctrine of informed consent, to explain the risks of refusing a diagnostic test to a patient. Rena Truman was under the care of Dr. Claude R. Thomas, a family physician, from age 23 to age 29. During this period she refused to have a Pap smear, apparently because it was too expensive. While the physician offered to defer payment, he did not explain the risks of refusing the test. At the age of 30, Mrs. Truman died of cervical cancer which could have been treated successfully if a pap smear had been done during the six years she was under Dr. Truman's care. In a 4-3 opinion, the majority held that the "fiduciary" nature of the doctor-patient relationship required that the risks involved in refusing the test should have been disclosed, and the jury should have been so instructed. The case was sent back for a new trial.

Nursing Education

Podratz RO, *A Student Sues,* AMERICAN JOURNAL OF NURSING 80(9):1604-5 (September 1980) [N1-91, $1.00].

Malpractice

South Miami Hospital v. Sanchez, 386 So.2d 39 (Fla. App. 1980).

Plaintiff sustained a cerebral stroke and was hospitalized. During a physical therapy session, the physiotherapist left the plaintiff unattended in a standing position for a brief moment, despite the physician's order that she be attended at all times. During this time, the plaintiff fell and fractured her hip. Plaintiff sued the hospital, and in a non-jury trial was awarded damages of $135,000. The hospital appealed, claiming that plaintiff had failed to prove the standard of care.

The District Court of Appeal of Florida affirmed the lower court's decision. The court stated that the facts were so straightforward that expert testimony was not necessary to prove that the standard of care had not been met, where it was undisputed that the physiotherapist had, even if only for a brief moment, left the plaintiff unattended contrary to the doctor's orders.

Dear Mary *Continued*

or try to circumvent it. The direct approach would be to poll your class and see how many students feel caps are superfluous. Then raise the issue at your student government meeting. The indirect approach would be to experiment by not wearing your cap every time you are supposed to and see what happens. Maybe your instructors won't care; they may not like caps either. Or you might be reprimanded.

As to the question of white clothing, I really don't see a discrimination issue here. Doctors wear whites too. And I suppose whites were originally chosen because they could be bleached and therefore cleaned more thoroughly. If your objection is to perma-press polyester cuteness, try wearing white cotton pants and a blouse, or a white scrub gown, which is more practical anyway.

I don't really think there's any one right solution since not everyone would even agree that this is a problem. How these issues are resolved will depend upon how rigid your school's rules are. I agree that people should have the option to choose. But while caps and whites don't constrain people from inappropriate behavior they do serve as a badge that signals "health care professional" to the patient.

What do other readers think about the need for uniforms?