

Long-Term Care Survey Alert

LEGAL TRENDS: Risk Manage Nursing Board Licensure Investigations and Actions

Prevent and handle this career-threatening event.

Picture this: A nursing board investigator gives you a call about a medication error that occurred six months ago in the nursing facility. If that sounds like a far-fetched scenario, it isn't. Survey agencies in various states appear to be reporting nurses to the state board for errors, quality-of-care concerns, and state practice act violations.

"In some states -- Virginia is an example -- the referral is automatic for a substandard survey," says attorney **Joseph Bianculli**, in private practice in Arlington, Va.

Standards of practice are a "huge focus" for surveyors these days, observes **Evonne Fillinger, RN, BSN, WCC, RAC-CT**, a consultant with Boyer & Associates in Brookfield, Wisc. As a result, she foresees even more "instances of surveyors referring cases to the state board where nurses exceeded their scope of practice or didn't follow the standard of practice."

Practice Within the Lines

Consultant **Robin Bleier, RN, LHRM-FACDONA**, is hearing about nursing licensure actions in New York, Florida and Tennessee where surveyors think an LPN has exceeded the scope of practice in the state. This seems to usually involve assessment and "specifically change in condition," says Bleier, principal of RB Health Partners Inc. in Tarpon Springs, Fla. For example, the LPN fails to involve an RN, physician or physician extender when a resident appears to have a change in condition.

Proactive strategies: Nurses should "compare their job description to the practice act to see if they need to clarify any responsibilities with their employer," advises Bleier. And nursing facilities should do the same to ensure they aren't asking licensed nurses to take on duties that exceed the state practice act's scope of practice, she adds. "At the end of the day, the facility ends up with the citation for instances where surveyors determine the nurse is acting outside the scope of practice."

Facilities should also make sure nurses have the necessary experience, an effort that "dovetails with skills testing," which Bleier finds facilities in which she consults don't always require staff to undergo.

Also teach LPNs to contact the RN, physician extender or physician when they are in doubt about a patient's condition. "LPNs always have a choice in that regard," says Bleier. If the resident seems to have taken a downward turn, and the LPN can't reach the RN or physician on call in the middle of the night, the LPN can always send the resident to the emergency department. "That's not the ideal approach but sometimes it may be the only one," says Bleier.

Nurses should also refuse to act outside their scope of practice or perform a skill they haven't been taught to do.

Cautionary tale: In one case, an LPN notified the RN that a resident's G-tube had come out, relays MDS nurse and consultant **Nemcy Cavite Duran, RN, RNAC**, in Flushing, N.Y. The RN allegedly told the LPN to put the tube back in, which the LPN did and documented the procedure when she finished. But the patient developed bleeding and, ultimately, peritonitis due to the tube reinsertion. And when the case went to court, the RN denied telling the LPN to reinsert the tube, says Duran. However, even if the RN did admit to advising the LPN to perform the procedure, the LPN would still have been in trouble.

What to Do if Trouble Escalates

If contacted by a board investigator, nurses should obtain counsel early in the process to avoid being blindsided down the road, advises nurse attorney **Barbara Miltenberger**, in Jefferson City, Mo., who reports that the state survey agency is referring more nurses to the state board.

Miltenberger often sees nurses who proceed with an interview with a low level investigator and "think everything's fine." Then later they get charged by the board and find some of their interview statements used against them in the charges.

If a nursing error results in an investigation or charges by the board, the nurse should also know potential remediation and disciplinary options, advises **Paula Sanders**, partner, Post & Schell in Harrisburg, Pa. "State nursing licensing boards take various approaches [in dealing with nurses who commit errors]," says Sanders. For example, "a few states -- such as Ohio, South Carolina and Idaho -- are moving toward remediation programs for nurses who make errors," Sanders adds. "A remediation program is designed to help nurses with knowledge or practice deficits without imposing a disciplinary action."