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MEDICAL MALPRACTICE NEWSLETTER

Fall 2013 Issue

SUPERVISION OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS: WRITTEN PROTOCOLS

Utilization of advanced practice nurses and physician assistants in clinics, assisted living facilities, and hospital settings is increasing. If you are practicing as a mid-level provider or serving as a supervising physician, then it is imperative that you know and comply with Tennessee's Rules and Regulations governing the supervision of nurse practitioners and physician assistants. One requirement common to nurse practitioners and physician assistants is written protocols. The Rules and Regulations governing the supervision of nurse practitioners and physician assistants provide:

- That written protocols shall be "jointly developed and approved" by the supervising physician and mid-level provider;
- That the written protocols shall "outline and cover the applicable standard of care";
- That the written protocols shall be "reviewed and updated biennially";
- That the written protocols shall be "maintained at the practice site";
- That the written protocols shall "account for all protocol drugs by appropriate formulary";
- That the written protocols shall "be specific to the population seen"; and
- That the written protocols shall be "dated and signed."

Tenn. Comp. R. & Regs. 0880-06-.02(5), 0880-02-.18(5).¹ The Regulations provide further that supervising physicians are "responsible for ensuring compliance with the applicable standard of care" under written protocols and are further directed to "develop clinical guidelines in collaboration with the [mid-level provider] to include a method for documenting consultation and referral." Tenn. Comp. R. & Regs. 0880-06-.02(6), 0880-02-.18(6).

Failure to comply with Rules and Regulations governing the supervision of mid-level providers can result in disciplinary action imposed by the Board of Medical Examiners. The Board has broad power and authority to suspend or revoke a provider's license, issue a reprimand or otherwise discipline medical practitioners. Failure to comply with the Rules and Regulations can also expose the mid-level provider and the supervising physician to potential liability under Tennessee's Medical Malpractice Act.

¹ For copies of these regulations, see <https://www.tn.gov/sos/rules/0880/0880.htm>.



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(Continued)

In the recent case of Watkins v. Affiliated Internists, P.C.,² the patient died of drug intoxication from Demerol prescribed by her primary doctor's physician assistant. The decedent's surviving spouse filed a medical malpractice action against the supervising physician and his group. During the litigation, the doctor was censured by the Department of Health for failing to comply with medical regulations requiring supervising physicians to review the physician assistants' prescriptions of controlled medicines within ten (10) days. Plaintiff thereafter disclosed an expert to testify that the physician was required to review prescriptions of controlled medicines within ten (10) days and that had the prescription of Demerol been timely reviewed, a reasonably prudent physician using a physician assistant and acting within the standard of care would have stopped the prescription because of the large dosage. Fortunately for the physician, the Court excluded this expert for reasons not pertinent to the subject at issue here and the case was ultimately dismissed on summary judgment.

The Watkins case ended favorably for the supervising physician; however, it is a good example of how failure to comply with the Rules and Regulations governing the supervision of mid-level providers can lead to disciplinary action and potential liability. The adverse expert in Watkins based his opinion on the regulation, opining in essence that the regulation represented the standard of care in Tennessee and that the failure to comply with the regulation was directly linked to the decedent's injury and death.

The Rules and Regulations mandate that "written protocols" be jointly developed, approved, biennially reviewed, dated and signed, and among other things, outline and cover the applicable standard of care. It is important that you know and comply with the requirement for "written protocols" if you practice as a mid-level provider or act as a supervising physician. Failure to do so could prove costly.

² 2012 WL 4086139 (Tenn. Ct. App. 2012).

MEDICAL MALPRACTICE NEWS AT RAINEY ■ KIZER ■ REVIERE & BELL PLC



Marty Phillips and Michelle Sellers recently obtained a directed verdict (dismissal) for a physician after 3 weeks of plaintiffs' proof at trial in a case in which plaintiffs had sued for \$35,000,000.



The Tennessee Defense Lawyers Association recently appointed Craig Sanders Co-Chair of its Professional Negligence and Healthcare Section.