A Question of Delegation
Unlicensed Assistive Personnel and the Professional Nurse

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ABSTRACT
As the American population of older adults increases and the nursing shortage widens, professional nurses caring for older adults are often confronted with managing an increased number of patients. To care for more patients safely and cost effectively, many health care facilities and organizations are creating positions for and utilizing a large number of unlicensed assistive personnel (UAP). Although unlicensed, these health care workers have become a fixture in health care facilities, especially those that care for older adults. To provide competent care for a larger population of patients, the professional nurse has had to become proficient in delegation. While delegating tasks to UAP may seem like a quick and easy determination, a great deal of accountability, responsibility, and liability is placed on the health care facility and the individual nurses.

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The authors disclose that they have no significant financial interests in any product or class of products discussed directly or indirectly in this activity, including research support.

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Posted: July 22, 2010
doi:10.3928/00989134-20100712-01

It’s a scenario familiar to all health care providers: You feel like there is never enough time to complete the tasks and documentation required during your workday. No matter what you do, you cannot catch up. You are being pulled in all directions and aren’t sure where to even start. Luckily, most health care facilities or organizations have policies and procedures in place to assist you in completing your work. Often, this help arrives in the form of unlicensed assistive personnel (UAP). As today’s health care field shifts to an increasingly customer service-oriented approach where advice and suggestions are meted out on request, the use of UAP is vital to maintaining patient satisfaction and providing competent patient care.

In the current health care system, especially in the care of older adults, human resources are at a premium. According to the U.S. Administration on Aging (2009), the population of adults older than 65 is the fastest growing cohort in the country. With an increase in age comes the need for increased health care and more health care providers. The American Association of Colleges of Nursing (AACN; 2010) and others have documented the nursing shortage in the United States, which is estimated to grow to 260,000 RNs by 2025 (AACN, 2010). This impending shortage
is expected to be twice as large as any experienced in the United States since the mid-1960s (AACN, 2010). This estimate, however, may be conservative. In 2004, the Health Resources and Services Administration estimated that when the growth and aging of the population is taken into account—along with our country’s continued demand for high-quality health care—the current nursing shortage could balloon to more than 1 million nurses in the next 2 decades.

In response to this critical nursing shortage, the use of UAP has grown. UAP aid in completing time-consuming tasks that do not require the assessment or skill set of a professional nurse (Habgood, 2000). As the need for health care continues to grow, so does the type and number of UAP (Habgood, 2000). For example, a health care facility may use the services of a certified nursing assistant, qualified medication assistant, nursing rehabilitation technician, or nursing student intern/externs. Further, the creation of positions for and utilization of UAP lead to the need for proper assessment and delegation by the nurse. The purpose of this article is to examine the use of UAP and their delegation in today’s health care settings for older adults.

**SCOPE OF PRACTICE AND DELEGATION**

The scope and history of nursing practice informs our current understanding of UAP. For more than 50 years, the scope of nursing practice has been determined by the nursing profession itself (American Nurses Association [ANA], 2005) and is used to describe the procedures and actions permitted by law for a specific profession (Anderson, 2009b). State boards of nursing regulate nursing practice (National Council of State Boards of Nursing [NCSBN], 2005), and each state determines the scope of practice in what is often titled the “Nurse Practice Act” (ANA, 2005). This act is considered to be the legal authority for the practice of nursing in each state (ANA, 2005). The purpose of these acts is to protect the health, safety, and welfare of the public (Habgood, 2000). Interested readers are encouraged to examine their respective state’s Nurse Practice Act for specificity and application rather than relying on the general information contained within this article.

By determining its own scope, the nursing profession is able to define and oversee the use for any assistant roles created to provide patient care (ANA, 2005). As such, the Nurse Practice Acts determine the level of skill or care that may be delegated by a licensed nurse (NCSBN, 2005). In its oversight, the nursing profession monitors any and all training, education, and/or use of this new health care provider or assistive personnel (ANA, 2005). The ability to oversee and manage the use of assistive personnel also includes a great deal of responsibility for the nurses and organizations involved (NCSBN, 2005).

**Organizations’ Responsibility**

The organization is held accountable for delegation through resource allocation and by ensuring sufficient staffing to protect patient welfare (ANA, 2005; NCSBN, 2005). Further, the organization must document competencies of all staff members providing direct patient care and make this information available to individuals who delegate certain tasks (ANA, 2005; NCSBN, 2005). Chief Nursing Officers and Directors of Nursing are accountable for establishing systems to monitor, assess, communicate, and verify delegation competency requirement for all parties involved in delegation (ANA, 2005). These systems should be constructed or developed with
the active participation and input of all nurses (ANA, 2005). Finally, the organization should make known to the nurses that delegation is a professional right and responsibility (ANA, 2005; NCSBN, 2005).

**RNs' Responsibility**

RNs are held accountable and responsible for the provision of nursing care (ANA, 2005). As such, RNs must direct the care and determine the appropriate use of the assistive personnel in providing direct patient care (ANA, 2005; NCSBN, 2005). Appropriate use of UAP cannot include delegation of the nursing process itself and must take into account the knowledge and skill set of the person to whom the nurse is delegating (ANA, 2005). According to Habgood (2000), delegated tasks are typically those that occur frequently, are considered standard and unchanging, are considered technical in nature, have minimal potential for risks, and have predictable results.

**Definition of Delegation**

Delegation has been described as an art and a skill, a management concept, a legal construct, and a decision-making process (Anderson, 2009a). According to the ANA (2005), delegation occurs when the responsibility for performing a task is transferred from one person to the next while the burden of accountability remains unchanged. By using independent professional judgment and critical thinking, the professional nurse is able to correctly follow the Five Rights of Delegation (ANA, 2005):
- Right task.
- Right circumstances.
- Right person.
- Right directions and communication.
- Right supervision and evaluation.

Not surprisingly, delegation in law is similar, but with a much more complicated definition. *Black's Law Dictionary*, third pocket edition, describes delegation as the empowerment or entrustment of another with the authority to act as one’s agent or representative (Garner, 2006). Following this simplistic definition, *Black's Law Dictionary* then lists 16 specific types of agents and six types of representatives (Garner, 2006). For purposes of this article, however, the general legal definition of delegation is sufficient.

**Factors of Delegation**

In nursing and law, delegation requires a level of trust between the nurse and the UAP (Anderson, 2009a). The nurse must trust that the UAP is able to provide the proper care to the patient (Anderson, 2009a). Several factors that must be weighed when making this determination include, but are not limited to (ANA, 2005):
- The applicable policies and procedures of the health care facility.
- The overall health or condition of the particular patient.
- The knowledge, training, experience, and skill of the UAP.
- The applicability of the skill set of the UAP related to that particular patient.
- The cultural competency of the UAP.
- The degree of supervision required for the performance of the delegated task.
- The realization that the nurse must answer for any personal actions relating to the nursing process.

Delegation is a multifaceted, complex task that begs the further question, “What happens when delegation fails?”

**Liability**

Prior to delegating any task or responsibility, the professional nurse must assess the situation, realize the potential for liability on his or her part, and plan how the delegation is to take place (NCSBN, 2005). Specifically, the professional nurse must question whether or not the task or responsibility to be delegated is one that can legally be transferred to a UAP (NCSBN, 2005). This determination is best made after reviewing the policies and procedures of the health care setting and the applicable state Nurse Practice Act (NCSBN, 2005). If this question is answered in the negative, the nurse cannot effectively delegate the responsibility (NCSBN, 2005). An accurate assessment of the task to be completed is vital to the determination of whether the transfer of responsibility and accountability is possible.

The discussion of liability often does not end prior to the act of delegation, but after an undesirable outcome has occurred or has been perceived to occur. Although the nurse may ask or direct the UAP to complete a seemingly innocuous task and the UAP may attempt to perform it to the best of his or her ability without malice or intent to cause harm, the nurse may still be found liable (Hall, Bobinski, & Orentlicher, 2005). Delegation of a task is ineffective if the nurse does not have the power to transfer the accountability and/or the UAP is unable to legally accept the responsibility (Hall et al., 2005; NCSBN, 2005). Improper delegation may lead to civil liability and professional discipline for the nurse involved.

Further, there is the potential for the health care setting to be held liable if delegation is misused. Specifically, the health care setting is at a heightened level of risk if job descriptions and duties for clinical staff are not clearly delineated and written in accordance with state laws (Hall et al., 2005; NCSBN, 2005). In addition, health care settings need specific policies and procedures discussing the use of delegation within their facility (NCSBN, 2005). Without these safeguards in place, the facility may face liability for failing to direct staff safely and appropriately.
As discussed above, delegation must not be used in a haphazard manner. While the use of UAP is vital to the care of older adults, the tasks delegated must be meted out appropriately and with the nurse cognizant of his or her legal and professional responsibilities.

A shorthand way to answer the delegation question is to imagine yourself in the place of another nurse reviewing your actions and ask, “Should I have known better?” If the answer is yes, nurses should select another course of action to best protect themselves professionally and, most important, to appropriately care for their older patients.

CONCLUSION
Delegation is a critical skill for today’s professional nurse. Caring for our country’s older population is as important a task as any in all of health care. Professional nurses are put in a very powerful and meaningful position of trust as families and friends allow nurses the opportunity to care for their loved ones. However, with such position comes a great deal of responsibility and accountability. Sadly, there are currently not enough nurses to care for our country’s older population, and the discrepancy will only deepen in the foreseeable future. In response to the situation, the use of UAP has increased dramatically. While their use has somewhat eased the effects of the nursing shortage, the intensity of the focus on the quality of health care provided to the older adult population will only increase. Although delegation remains a skill that is practiced countless times on a daily basis, the professional nurse must remain aware of its import. Nurses, now more than ever, are gatekeepers who must ensure the health care provided to older patients remains of the highest quality.

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