
Competences of qualified nurses in assisting the physician specialist in anesthesia : actual state of affairs from a legal point of view

R. HEYLEN and F. DEWALLENS

1. Introduction

Nursing staff active in an operating suite in Belgium is legally qualified for a number of well defined medical and nursing acts. In this article, these acts will be listed and completed with juridical comments from the point of view of the anesthesiologist . The results of the national survey will be situated in their precise legal framework.

2. Belgian legal framework concerning the assistance by nursing staff in anesthesia

Since the law of 20 December 1974 on the practice of nursing, nursing staff can claim legal protection. This law defines the practice of nursing and draws distinctive lines with the practice of medicine.

The orders in pursuance of the law enumerate and detail clearly the so-called "technical nursing acts" and present a list of the acts a physician may entrust to nursing staff.

For a number of acts they also precise the mode of execution and the quality requirements the nurse practitioners must possess.

The list of the technical acts nursing staff may practice and the list of the acts a physician may delegate to them have been laid down in the Royal Decrees of 18 June 1990. These lists have been completed with the Royal Decrees of 15 November 1991, 27 December 1994, 6 June 1997 and 7 October 2002.

Only qualified nursing staff are allowed to carry out these tasks with the exception of course of physicians.

Should the anesthesiologists, as a profession, need any assistance, the most obvious professional group to ask would of course be nursing. Should the anesthesiologists wish to involve another professional group or create a new profession with a proper training, then the law must be changed.

The courts entertaining jurisdictions in civil matters can hold the anesthesiologist responsible for errors made by collaborators, even if was in no position to prevent them, or had no formal obligation to prevent them. Indeed the nurse would generally be considered the executor of the anesthesiology contract or the agent of the anesthesiologist . This is usually the case since the anesthesiologist has the right to control the acts of nurs-

es assisting him ; as a consequence the court can always consider a subordinate connection.

In addition, in certain acts and in many situations, the anesthesiologist has an obligation to supervise the acts of the nurse : a typical example being the verification of the content label on the ampoule to be administered intrathecally. In case of mishap the anesthesiologist can be held liable for his own error or negligence in not supervising the nurses ; this may even be considered a criminal offence.

3. List of the clinical nursing acts in the field of anesthesia

- **B1-acts** : a prescription by an anesthetist is **not necessary**
 - aspiration in the airways and drainage
 - nursing care and surveillance of patients with an artificial airway
 - handling and monitoring an artificial ventilation system
 - monitoring vital signs of the different biological functional systems
 - management of anesthesia equipment
 - preparing a patient for anesthesia
- **B2-acts** : a **prescription** by the anesthetist is needed
 - administration of oxygen
 - handling and surveillance of thoracic drainage systems
 - cardiorespiratory resuscitation with technical devices
 - insertion of catheters in peripheral veins
 - preparation, application and surveillance of intravenous fluid administration and possible technical appliances
 - use and surveillance of devices for extracorporeal circulations and for counter pulsations
 - collecting and preparing blood and blood derivatives for transfusion
 - removing an epidural catheter
 - taking care of the fluid balance
 - preparation and administration of drugs via the following access modalities : intravenous, ...
 - preparation and administration of a maintenance dose of a drug via an access catheter inserted by a physician : epidural, intrathecal, intraventricu-

lar, in a plexus with the purpose of a prolonged analgesia

- **participation in the assistance and in the surveillance of the patient during anesthesia**

The Royal Decree of 2 July 1998 explains the previous definitions as follows : “The term “assistance” as mentioned in enclosure I, under 6 and 7, supposes that, both physician and nurse perform acts on a particular patient, by which direct visual and verbal contact between the two exists”. A literal strict juridical interpretation, hence juridically contestable, of this text means that the obligation for direct visual and verbal contact only applies to the assistance and not to the surveillance during the anesthesia.

4. The forms of the medical prescription

In a Ministry of Health circular of 1 July 1990 (1) B1-(no prescription needed) and B2-(prescription dependent) are explained. For type B1 acts a standard scheme of nursing care and/or procedure is required. B2-acts, on the contrary must each be are commissioned by either a written, a verbal medical prescription or a standing order.

A verbal order may constitute a medical prescription but has to be confirmed subsequently in writing. The nurse, performing B2-acts without prescription, risks criminal prosecution (2).

5. Soft-law : interpretations by the Minister

In a Ministry of Health circular dated 17 June 1997, a number of technical nursing acts in the field of Anesthesia are explained.

The acts of “intubation” and “defibrillation” are part of the act “cardiorespiratory resuscitation with technical devices”. Given the justifying emergency situations, these acts may be executed based on a standing order. In certain departments, such as Emergency Departments and Intensive Therapy Departments, such standing orders usually exist. Physicians define the circumstances and the techniques to be used. Nurses judge for every case if the conditions of application are met. In the extramural cases of medical emergency also, nurses may apply these techniques on condition however that the standing order was formulated by a physician belonging to the same organized structure to which the nurse belongs, and on condition also that the therapy initiated can be continued by the Medical Emergency Team called on the scene of disaster (3).

The insertion of a central venous catheter is prohibited for nursing staff. The insertion of an intra-arterial catheter is prohibited for nursing staff and so is its replacement by means of a Seldinger technique (4).

An arterial puncture for obtaining blood samples is prohibited for nursing staff (5).

The Technical Committee for Nursing has formulated a great deal of advices and interpretations ; e.g. the “intubation” and “defibrillation” are part of the act “cardiorespiratory resuscitation with technical means”. These acts may be performed based on a standing order.

Debates in Parliament led to additional clarifications : epidural analgesia for labour apparently does not come under the notion “prolonged analgesia”. As a consequence, according to the Minister, a midwife may not prepare and connect a syringe with drugs for continuous epidural analgesia in a woman in labour. Neither may a midwife administer a bolus dose or change the administration rate.

It seems that the recently acquired competences of nursing staff with regard to epidural continuous analgesia are mainly applied in the postoperative setting and in services for palliative care but not in the obstetric clinic.

6. Entries on the anesthesia record

As participation in the assistance and the surveillance during anesthesia is an authorized nursing act, the nurse may make entries on the anesthesia record with regard to his assistance and participation in the surveillance during anesthesia.

The anesthesia record, of course, remains entirely the responsibility of the anesthesiologist. He has to sign the record personally.

This may be problematic with automated computerized anesthesia records should a genuine electronic signature not be available. The record file is then to be printed and signed by the anesthesiologist before filing.

7. Juridical considerations about the inquiry

The legal fact that a nurse is qualified to perform certain medical acts, needs differentiation and explanation to non-lawyers.

The fact that the nurse is competent means that he/she may perform these acts, but it does not mean that he/she is obliged to perform this act under all circumstances.

Medical acts, which may be delegated and performed by nursing staff, may be prohibited in certain circumstances. These specific circumstances which may make the act prohibited for nursing staff are e.g. the nature of the drug that needs injecting or some specific

- (1) Official Publication of Laws and Statutes of Belgium, 30 Oktober 1990.
- (2) Art. 38ter, 6^oDepartmental Decree, nr. 78.
- (3) Departmental Circular of 17 June 1997, Minister of Public Health and Pensioning, Marcel Colla.
- (4) Departmental Circular of 17 June 1997, Minister of Public Health and Pensioning, Marcel Colla.
- (5) Departmental Circular of 17 June 1997, Minister of Public Health and Pensioning, Marcel Colla.

circumstances characteristic of the medical case. A Ministry of Health circular gives an example of an act prohibited because of specific medical circumstances : drugs for desensitization may not be injected by nurses as there is a substantial risk for anaphylactic shock (6).

Additionally, medical acts that may be delegated and technical nursing acts which are part of a medical treatment may be performed by the physician in charge who may also forbid nurses to execute them under any circumstances

The fact that a nurse may perform a certain act does not mean that he/she has to.

Some anesthesiologists responding to the inquiry take the view that some legally authorized technical nursing acts should not be authorized in the field on anesthesia. They have every right to judge so and they have no obligation to involve nursing staff for anesthesia even when it concerns technically simple nursing acts. Their view is not in contradiction with the legal regulations.

The legal demarcation of the nursing profession with regard to qualified personnel is of major importance should it be the wish to create a new profession of anesthesia collaborators. The expression "illegal practice of nursing art" has recently entered the judicial language : the limited nursing acts may only be performed by qualified nurses (and, indeed, physicians).

Should the anesthesia community consider the introduction of a new profession of anesthesia collaborators, regulating actions should be taken at a legal level so that these anesthesia collaborators could acquire legal competences analogous to the midwives' and nurses'.

8. Conclusions

Nurses assisting the anesthesiologist already have quite extensive legal competences implicitly allowing them to perform a number of technical acts.

This article presents an overview of the technical nursing acts and the medical acts which can be delegated according to Belgian law and subsequently may be committed to practitioners of nursing.

Should a new profession be created or should another profession (e.g. professional with a licence kinesiotherapy) be involved in anesthesiology practice, a completely new legal framework would have to be created.

The present legal competences of nurses as anesthesia collaborators, must be commented and put into perspective.

- Some technical acts may not be appropriate in specific situations and could be considered beyond their competence by the judge. Our country medical ways and customs in that particular medical field and the principle of prudent administrator (*pater familias*) are to be used as guidelines.
- Anesthetists have every right to refuse assistance by nursing staff or to refuse delegation of certain acts e.g. preparatory activities before an anesthesia.
- The rules, regulations and standing orders adopted in a hospital, may be phrased in a limiting or an extensive way with the consequences that certain acts will be accepted in a particular hospital but prohibited in another.

(6) Departmental Circular 17 June 1997, Minister of Health and Pensioning, Marcel Colla.