The Rights, Liabilities and Duties of a Professional Nurse

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By
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"When I was sick, you gave me bitter pills."
SHAKESPEARE, The Two Gentlemen of Verona, Act II, Scene 4, 1. 149.

Nursing as a vocation, is said to have its origin in the earlier centuries of Christianity when the care of the sick was taken up as a charitable duty, but we are here concerned only with the rights, liabilities and duties of a professional nurse.

A professional nurse is one who has met all legal requirements for registration in her state and practices nursing by virtue of her professional preparation and legal status.

While any person has the right to nurse gratuitously or for hire, it is not an absolute, unqualified or vested right. Many legislatures in the exercise of their police power have imposed certain conditions on the right to hold oneself out as either a Registered Nurse or as a Licensed Attendant. In Pennsylvania, for example, every applicant for a certificate of registration must be twenty-one years of age or over, be a citizen of the United States and of good moral character, and must also complete work equal to a standard high school course, graduate from a school of nursing having at least a two year course of instruction, and pass the examination of the State Board of Examiners. These statutory requirements are not enacted to protect a nurse or attendant against competition, but to protect the public against incompetent and unskilled practitioners.

Registered nurses are professional persons like physicians and are employed to exercise their calling to the best of their ability according to their own discretion, subject only to the general directions of the physician in charge of the case. A nurse is regarded as especially equipped to render professional services to patients when called on to do so, and accordingly, nurses are grouped with doctors and lawyers rather than with cooks and chambermaids.

The fact that the law requires an examination and a certain standard of skill does not prevent the relationship of master and servant from arising; it may, how-

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1 THE ENCYCLOPEDIA BRITANNICA.
2 THE ENCYCLOPEDIA AMERICANA.
ever, indicate, as in any other case in which skill is involved, that such a relationship is not contemplated, as in the case of attorneys and surgeons, although in other cases, as in the case of chauffeurs, the fact that some skill is required has little bearing upon the inference to be drawn. Even in the case of attorneys and physicians there may be the master and servant relationship, as where a firm of attorneys employs an attorney as a member of the office staff. So likewise, while the physician employed by a hospital to conduct operations is not, in the normal case, a servant of the hospital, yet it may be found that the house physician and the interne, if subject to directions as to the manner in which their work is performed, are servants of the hospital while in performance of their ordinary duties.  

**Liability under Workmen’s Compensation Acts**

In conducting its business, a hospital must have employees and to such persons it is, of course, liable on its contract of employment, and it may incur liability for workmen’s compensation to one admittedly employed and engaged at the time in duties which are part of the administrative routine of the hospital.  

**Internes and Physicians**

An instance of the latter situation is found in a New York case where an interne performed an autopsy under the direction of the superintendent of the Beth Israel Hospital. While sewing up the corpse the needle slipped puncturing his finger and blood poisoning followed. In holding that the interne was entitled to compensation, Judge Cardozo said:

"This claimant was under a duty to spend his days and nights at the hospital, and to render any service, administrative or medical, exacted by the hospital through its administrative agents, within the range prescribed by propriety and custom. He was a servant or employee by every test of permanence of duty, of intimacy of contact, and of fullness of subjection."

Similarly, an interne has been held to be entitled to compensation for the loss of his eye caused by a gonococcal infection contracted while attending a patient in the hospital.  

And under the Pennsylvania Workmen’s Compensation Act which defines the term “employe” as synonymous with servant and includes all natural persons who perform services for another for a valuable consideration, an award of compensation was made for the death of the surgeon-in-chief of the Locust Mountain State Hospital who died of pneumonia contracted from an accidental exposure to unusual weather conditions while on his way to the hospital to perform an emergency operation.  

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6 Restatement, Agency § 223, comment a.  
8 Bernstein v. Beth Israel Hospital, 236 N. Y. 268 (1923).  
9 Turitto v. St. Mary’s Hospital, 14 N. Y. S.2d 647 (1939).  
10 Roth v. Locust Mountain State Hospital, 130 Pa. Super. 1 (1938).
Student and Hospital Nurses

As to nurses, a student nurse has been held to be an employee within the meaning of the Wisconsin Workmen's Compensation Act and entitled to compensation for injuries she sustained when she fell on the porch of the hospital dormitory while on her way to attend mass prior to reporting for roll call.\(^\text{11}\)

So also a hospital nurse has been held to be an employee and entitled to compensation when she contracted syphilis while caring for an infant which suffered from congenital syphilis,\(^\text{12}\) or where a hospital registered nurse slipped and fell on his way to dinner while ascending the steps leading into New York's Bellevue Hospital.\(^\text{13}\) The fact that it is customary for the hospital to make a special charge to patients for nurses and only to pay the nurse when the patient pays the bill does not negative the master and servant relationship.\(^\text{14}\)

Special Nurses

On the other hand, it has been held that special nurses called in to care for patients from a nurse's registry are not servants or employees of the hospital even though their wages are delivered to them by an official of the hospital.\(^\text{15}\) In California, where a special nurse contracted an infection in her thumb while nursing her patient, the Supreme Court of that State held that she was not an employee of the hospital but was an independent contractor and not entitled to compensation. Chief Justice Waste said:\(^\text{16}\)

"The mere fact that the employee is one who carries on a separate and independent employment does not make him an independent contractor, although it is a circumstance to be taken into consideration as tending to show that he is an independent contractor. When, in addition to this circumstance, there is lacking, as in the present instance, the essential element that the master or employer shall have control and direction, not only of the employment to which the contract relates, but of all its details, the relation of master and servant, of employer and employee, cannot exist, and the person performing the service must be deemed to be an independent contractor."

Under similar circumstances, compensation was denied to a male nurse who filed a claim against St. Vincent's Hospital in New York City. In holding that a special nurse was not an employee of the hospital, the Court said:\(^\text{17}\)

"Both the physician and nurse may be selected by the patient or his sponsor. . . . The physician, possessing technical skill superior to that of the hospital authorities, acts on his own independent judgment. It is his orders relative to the treatment of the case that the nurse must obey.

\(^{11}\) Deluhery v. St. Mary's Hospital, 235 Wis. 270 (1940).
\(^{12}\) Waterman v. Jamaica Hospital, 14 N. Y. S.2d 636 (1939).
\(^{13}\) McKee v. City of New York, 30 N. Y. S.2d 71 (1941).
\(^{14}\) Williamson v. St. Catherine's Hospital, 2 Ind. Acc. Com. Cal. 430 (1915).
\(^{15}\) Brown v. St. Vincent's Hospital, 226 N. Y. S. 317 (1928).
\(^{16}\) Moody v. Industrial Accident Commission, 204 Cal. 668 (1928).
\(^{17}\) Brown v. St. Vincent's Hospital, 226 N. Y. S. 317 (1928).
The hospital corporation may not interfere with this contract by discharging the one employed, nor interfere with the method of treatment, except that it may require the patient, physician, and nurse to conform with the rules laid down for the orderly governance of the hospital."

The same reasoning which leads to a finding that a special nurse is not an employee of the hospital also leads to a finding that a nurse is not an employee of the patient or of the individual who contracted for the professional services.

This is illustrated by a case which arose in England where the proprietrix of the estate of Glenmore, Kilmeford, requested a physician to make arrangements for a trained nurse to attend a young girl whose mother had been her housemaid prior to her marriage, and agreed to become responsible for payment of the expense.

The child frequently refused to take food, was forcibly fed and was in the habit of spitting out food given to her. While the nurse was attempting to feed the child, she spat in her face, a part of the expectoration entering the left eye resulting in the permanent reduction of the visual power of the eye. It was there held in denying compensation, that the nurse was employed under a contract for professional services and not under a contract of service, and, accordingly, she was not a "workman" within the meaning of the English Workmen's Compensation Acts.\(^\text{18}\)

**Liability at Common Law**

Whether a nurse is regarded as an employee or as an independent contractor, there has been an increasing tendency in recent years for the patient in his suit to recover damages for alleged malpractice, not only to sue the physician or surgeon who treated him, but also to sue the nurse who attended him during his illness or disability.

In a case arising in California,\(^\text{19}\) a patient was injured when she fell out of bed during a delirium. She entered suit against the hospital, the director of the hospital and the two nurses who attended her. The hospital and director were judicially relieved of liability because the hospital was a county hospital engaged in a governmental activity, and the doctor was absolved because he had nothing to do with the selection of the nurses or the care of the patient. As to the nurses, the Court said:

"The situation of defendant nurses is somewhat different from that of the director. The care and attention of plaintiff was personally entrusted to them, and the complaint alleges they failed to render such service. When one has undertaken to render assistance or care, even if a volunteer, the law imposes a duty of care toward the person assisted."

In an accident occurring in Idaho, a man's leg was so severely mangled in a sawmill where he was employed that it was necessary to amputate his leg above


\(^{19}\) Griffin v. County of Colusa, 44 Cal. App.2d 915, 916 (1941).
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the knee. Five days following the operation he was moved from the hospital to an insane asylum where he died a short time later.

Suit was entered against a nurse and two physicians to recover $50,000 damages for his alleged wrongful death based on the allegation that on the day following the operation one of the doctors stated that they would have to send the deceased to the insane asylum because he made too much noise; that the nurse swore to an insanity complaint at a time when the deceased was sane; that the deceased was not surgically healed, was in need of further medical and surgical assistance, and that the defendants knew or should have known that moving him to the asylum where there were no facilities for the care of a man in his condition would hasten his death.

At the trial, the nurse was exonerated because there had been an adjudication that the deceased was insane prior to his commitment. As to the physicians, the plaintiff failed to establish that they did not exercise proper skill and care in the treatment of the deceased or that his death was caused as a result of having been moved from the hospital to the asylum and the case was dismissed.20

Duty To Obey Orders of Physician

Whatever may be the rule as to the master and servant relationship between the nurse, the hospital and the patient, the great weight of authority establishes the principle that nurses, in the discharge of their duties, must obey and diligently execute the orders of the physician or surgeon in charge of the patient, unless, of course, such order is so obviously negligent as to lead any reasonable person to anticipate that substantial injury would result to the patient from the execution of such order or performance of such direction. Certainly, if a physician or surgeon should order a nurse to perform an obviously negligent act, no nurse would be protected from liability for damages for undertaking to carry out the orders of the physician.21

Thus, in a case arising in the State of Oregon, it appeared that a patient was suffering from a painful swelling in the muscles of the right side of her neck. She consulted her physician who directed his office nurse to give her a diathermy treatment. One electrode was placed under the patient's shoulders and the other on her abdomen.

During the course of treatment, the patient complained to the nurse that she was being burned. The nurse pretended to turn down the current, but instead of reducing the current turned the switch down and then immediately turned it back to its former position and left the room. The pain then became so intense that the patient cried out for the nurse and on her return, demanded that the treatment be discontinued. When the electrodes were removed it was discovered that the treat-

21 Byrd v. Marion General Hospital, 202 N. C. 337, 341 (1932).
ment had caused a superficial burning and blistering of the skin over a considerable portion of plaintiff's abdomen and a deep third degree burn three inches in diameter around the umbilicus.

Suit was entered against both the doctor and the nurse. A verdict was rendered against the doctor, but the lower court held that the nurse was not liable for the result of her negligence. On appeal, the Supreme Court reversed and held that the nurse was not relieved of liability because she was acting under the direction of the physician and that the case as to the nurse should have been submitted to the jury.\(^22\)

On the other hand, if the order of the physician or surgeon is not obviously improper, a nurse will not be held liable for any injuries the patient may have sustained as a result of the treatment.

For example, consider a North Carolina case in which a jury rendered a verdict against a nurse for $29,975.00. In that case the patient was suffering from convulsions following childbirth. Her physician phoned the hospital: "I have a patient that I am sending in that I want sweated in the sweat cabinet immediately, and I will be right along, and you go down and get it ready." After the doctor arrived, the nurse asked: "How long do you want this patient to stay in here?", and he said: "How long has she been in?" "About thirty minutes," she replied. Thereupon the doctor directed: "Let her stay in about ten minutes longer."

In a few hours after plaintiff was removed from the sweat cabinet, it developed that she had suffered serious and painful burns.

Since the nurse was merely following the directions of the physician in administering a treatment which was not obviously dangerous or likely to produce harm, the verdict rendered against the nurse was set aside.\(^23\)

Regardless of who employs a nurse, the surgeon is the master in the operating room and cannot tolerate any other voice in the control of his assistants, but even here the nurse may incur legal liability.\(^24\)

Witness the situation where a laparotomy sponge was left in the plaintiff's abdomen following a Caesarian section. In that case a jury rendered a verdict for $10,000 against the hospital, the operating surgeon, the student nurse and the operating nurse taking part in the operation.

The evidence disclosed that the laparotomy sponges came in packages of five each, fastened together by a string; as these packages were broken the student nurse counted the number of sponges and found five in each package; the strings were hung on a rack to indicate the number of packages broken; each laparotomy

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\(^{22}\) Wood v. Miller, 158 Ore. 444 (1938).
\(^{23}\) Byrd v. Marion General Hospital, 202 N. C. 337 (1932).
\(^{24}\) Saint Paul Mercury Indemnity Co. v. St. Josephs Hospital, 212 Minn. 558 (1942).
sponge used at the operation was handed by her to the surgeon; the surgeon was the only person who inserted the sponges in the incision and removed them during the course of the operation; the used sponges were dropped into a basin; the supervising nurse then hung each used sponge on a rack on the wall having bars with hooks for ten sponges on each; on completion of the operation the supervising nurse, who was charged with the counting of the sponges, counted the unused sponges, the strings—indicating the number of packages that had been broken, and the used sponges on the rack, and then informed the operating surgeon that the sponge count was correct; the incision was closed, leaving in the abdomen of the patient a laparotomy sponge with a string and metal ring attached to it. The student nurse had nothing to do with the used sponges hung on the rack and did not count them. She had only to do with the unused sponges left on the table. She was not asked by the operating surgeon about the sponge count and made no statement as to the count. The error in the count was made by the supervising nurse. Under these circumstances, it was held that the trial court should have directed a verdict in favor of the student nurse, but that there was ample evidence to support the verdict against the supervising nurse.

Another case involved a patient who dislocated his thumb and entered Harbour View Hospital for treatment. The attending physician decided to set the thumb under a local anesthetic and directed an experienced graduate nurse to secure novocaine for this purpose. She thereupon went to the operating room and asked another nurse for the novocaine. The latter gave her a labelled bottle, but she did not examine the label. She took the bottle back to the doctor, who filled the syringe of his hypodermic needle with the solution and injected the thumb. After a few minutes as the thumb was not sufficiently anaesthetized, he injected another quantity. The thumb was then set and the doctor left to attend to other duties. The nurse also left but was called a few minutes later by one of the other patients in the ward and found the patient looking very badly. She called the doctor who applied some treatment which was unsuccessful, and the patient died less than thirty minutes later.

It then appeared that a mistake had been made in the medication and that the bottle from which the doctor had drawn the solution for the local anaesthesia did not contain a solution of novocaine but a solution of adrenalin.

In entering a judgment for $10,000 against each of the nurses, Judge Doull of the Nova Scotia Supreme Court said:

"Persons who are in charge of dangerous things, under which category I think drugs are included, are under a duty to handle them with such care that harm will not arise to those who depend upon their skill. At the least they must exercise reasonable care to avoid such harm. The liability in any particular case arises from the foreseeability of damage,

and the duty to take care. As to the foreseeability of damage, it seems to me that to any lay person and even more to a trained nurse, a person who is asked for a bottle of novocaine would know that it was required for use with a hypodermic syringe. In fact in the bottle which was supplied, there was a needle through the rubber stopper of the bottle. It was impossible for a nurse to be unaware that if adrenalin were used instead of novocaine, the danger of death would be great. Consequently there was a duty to take great care to avoid exactly what happened.

"In the case of drugs where the consequences of a mistake may be so grave, I think that anyone who is procuring a drug should use whatever means are within his power to prevent a mistake. It is true that as these matters become routine, there must be a tendency to expect that everything will be right but the nurse whose duty it was to provide the material for the work which the doctor was about to do, must, I think, have a duty to use the reasonable means at her disposal to make sure that she had the right drug. It was only a matter of looking at the label in this case and I must hold that she was negligent in not doing so."

**Duty To Exercise Care in Attending Patient**

A nurse, of course, is under a duty to exercise care in attending and nursing her patient.

In Wisconsin, parents entered suit against the surgeon, the internes and two graduate nurses to recover damages for the death of their son, who bled to death following a tonsillectomy. The plaintiffs alleged that the defendants were negligent in refusing to call a licensed physician to care for the child after the operation, in failing to apply usual and customary methods of stopping bleeding, in refusing to comply with the demands of the parents that the condition of the child be reported to the operating surgeon, etc.

The internes and nurses contended that the complaint did not state a cause of action against them because the negligence charged in the complaint related to duties, which, under the law, could only be performed by a licensed physician.

In dismissing this contention and in holding that the nurses and internes must stand trial, the court said:27

"And so with nurses. Most of them acquire their education through hospital service. In fact many hospitals are licensed as nurses' schools by the State Board of Health. The law does not prohibit any one from practicing as a nurse. It prohibits any person from practicing or attempting to practice as a registered, trained, certified, or graduate nurse without a certificate of registration. Any one who assumes to act as nurse assumes duties, the failure to perform which may constitute negligence."

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27 Nickley v. Skemp, 206 Wis. 265 (1931).
Thus, nurses have been sued for hot water bottle burns, and even for the loss of false teeth.

In a California case, the woman plaintiff suffered a stroke of apoplexy and was admitted to the Alta Bates Hospital for treatment. As a result of the attack she was paralyzed on the left side. Her condition gradually improved and her physician undertook to teach her to walk and nurses were assigned to carry out the instructions of the patient's doctor. She had so far recovered that with the assistance of one person and her cane she could walk short distances.

On the morning of the accident the nurses were taking their patient to the sun room. As they entered the room the plaintiff was carrying a cane in her right hand. One nurse was walking at her right side firmly holding her right arm. The other nurse carried a blanket and was walking on the patient's left side holding the patient's left arm which was resting in the nurse's right hand. Having entered the sun room, the latter released her hand and stepped forward to prepare the chair in which the patient was to be seated. There was testimony that on other occasions, before releasing her hold on the patient, the nurse told the patient that she was about to release her, but on this particular occasion she made no statement regarding her intention of releasing her hold on the patient. As soon as she released her hand, the plaintiff tottered and fell as a result of which she sustained a fractured left femur. An action filed against the hospital and the nurse who had released her arm resulted in a verdict against both defendants in the sum of $8,000 which was later reduced to $3,000 and as so reduced, affirmed.

The duty of an attendant was considered in a case arising in the State of Indiana. The patient, in that case, was a mental patient with suicidal tendencies who was admitted to the Norways Sanatorium for treatment. X-ray pictures were desired and an attendant took the patient downtown to the office of a doctor on the seventh floor of the Hume-Masur Building in the city of Indianapolis, where there were open and unprotected windows. While waiting for the x-ray picture to be made, the patient eluded his attendant, leaped through an open window and plunged to the street below causing his death. Under these circumstances it was held that the minds of reasonable persons could differ as to whether the attendant took proper precautions for guarding the patient while he was in the x-ray offices and that the trial court erred in taking the case from the jury.81

Administration of Drugs and Anesthetics

There are many things that a nurse may lawfully do in the field of medicine and surgery, when acting under the direction and supervision of a physician or surgeon, which she could not do of her own initiative or independent of a physician's orders or instructions.

29 Fisher v. Sydenham Hospital, 26 N. Y. S.2d 389 (1941).
For example, she may administer drugs of all types, narcotics and stimulants, give hypodermic injections of morphia, hypodermoclysis and enemas; take the temperature and pulse of the patient and give prescribed remedies in case of collapse or undue excitement; give baths and massages; place dressings and bandages, and apply salves; prepare saline solutions to be injected into the blood vessels under certain conditions and many other duties peculiarly within the ministrations of the nurse in the sick room.82

The prescribing of these various things is the duty of the physician; but under his orders and direction, the nurse may lawfully administer them, otherwise her usefulness would be very largely curtailed, if not wholly destroyed. The nurse may not assume the place of the physician and practice medicine and surgery, but she assists him in his practice, and in some respects serves as eyes, hands and feet for the physician—she is a human instrument used and employed by the physicians in the treatment and cure of disease.83

There is nothing in the law which places the administration of anesthetics on a different or higher plane than any other drug. The physician must prescribe it, and direct its administration, but the trained nurse, acting under his orders and directions may administer it without assuming any of the functions of the physician.84

Thus a jury was directed to return a verdict in an action for damages against two nurses in Ventura County, California, where the injuries were sustained due to the excessive amount of ether administered in connection with the removal of the plaintiff’s adenoids.85

Nor is a nurse required to see that an attendant is in constant bedside attendance following the administration of an anesthetic. In an operation performed at the Baltimore Eye, Ear and Throat Hospital, the deceased entered the hospital at 9:45 a.m., in the morning, was operated on at 2:00 o’clock and died at 9:00 p.m. on the same day.

Suit was entered against the surgeon, the resident, the anesthetist and the instrument nurse, it being alleged that the nose was so tightly packed with compressed cotton that air could not pass in or out therefrom and that the defendants were negligent in that an ether tube was left untied in the mouth of the patient when he was returned to his room in the hospital where he was left unattended, unconscious and in a helpless condition with the result that blood, serum and mucous ran down into the windpipe, stopped the air from passing into the lungs and caused his death.

83 Ibid.
84 Ibid.
85 Stonaker v. Big Sisters Hospital, 116 Cal. App. 375 (1931).
The lower court directed a verdict in favor of all of the defendants which action was approved by the Maryland Supreme Court in an opinion by Judge Mitchell.

"There is no evidence in the record that, in the absence of the employment by him of a special nurse or attendant, it was incumbent upon any of the defendants to see that an attendant was at his bedside at all times.... In our opinion, there must be something more than a showing that the evidence might be consistent with the plaintiff's theory of the cause of death. It must be such as to make that theory reasonably probable not merely possible, and more probable than any other hypothesis based on such evidence."

**Suspension or Revocation of License**

Even though a nurse is not joined as a co-defendant with a doctor or a hospital in an action for alleged malpractice, her license is always subject to suspension or revocation for sufficient cause justifying such action. In Pennsylvania, the certificate of registration may be suspended or revoked if the State Board of Examiners finds the registrant:

(a) guilty of a crime or of gross immorality;
(b) unfit or incompetent by reason of negligence, habits or other causes;
(c) has wilfully or repeatedly violated any of the provisions of the act, or of the by-laws and regulations of the Board;
(d) committed fraud or deceit in the practice of nursing, or in securing his or her admission to practice;
(e) has been convicted of a crime or dishonorably discharged from the military forces;
(f) is an habitual drunkard, or is addicted to the use of narcotics or has become mentally incompetent;
(g) is continuing to practice with knowledge that she or he has an infectious, communicable, or contagious disease;
(h) has been guilty of unprofessional conduct, or such conduct as to require suspension or cancellation in the public interest.

Somewhat similar provisions have been sustained as being necessary to preserve the safety, health and morals of the people in connection with the suspension and revocation of operating privileges under the Motor Vehicle Code.

**The Nurse as a Witness**

The practice of nursing occasionally involves the duty of testifying in court as a witness. Is a nurse competent to testify? Can a nurse testify as to medical con-

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36 Kalives v. Baltimore Eye, Ear & Throat Hospital, 177 Md. 517 (1940).
ditions or is she restricted to factual statements? Is there a confidential relationship between her and the patient which makes her testimony inadmissible? These are some of the questions that naturally arise.

Statements as to bodily condition are competent when made in the hearing of any person and may be proved by any competent witness. Accordingly, a nurse may testify to statements made by a patient in her hearing unless they are otherwise inadmissible.39

A nurse may or may not be qualified to state an opinion as to a medical or surgical matter according to the extent of his or her training and experience and the subject matter of the opinion.

Thus in the trial of an indictment for procuring an abortion, a nurse was permitted to express an opinion as to what produced the condition of certain soiled linen;40 in a malpractice case involving a tonsillectomy, that the uvula, pillars, and part of the soft palate had been removed;41 that an operation was performed in the usual manner and with the usual care;42 that a child was fully developed at the time of birth;43 and that a physician's treatment in setting a fractured arm was proper.44

On the other hand, it was held in a case involving the treatment of a fractured femur, that a nurse was not competent to testify to what she had observed other physicians do in like cases or as to what she considered good or customary treatment;45 or as to the depth of an incision from its external appearance;46 or in a cancer case, that no more flesh was removed than was necessary;47 or that a certain physician's standard of technique was not equal to the standard of other physicians in the locality.48

As to an interne, it has been held that he may be permitted to express an opinion as to the physical condition of the patient, although he is not a licensed physician.49

Confidential Communications

There seems to be a certain amount of confusion relative to the question as to whether communications between a patient and his nurse or physician are

39 31 Corpus Juris Secundum 994, § 246.
42 Swanson v. Hood, 99 Wash. 506 (1918).
46 Dashiell v. Griffith, 84 Md. 363 (1896).
47 Gates v. Nichols, 331 Mo. 754 (1932).
48 Mosslander v. Armstrong, 90 Neb. 774 (1912).
privileged. At common law neither a nurse nor a physician were disqualified from testifying as to information acquired while attending patients in a professional capacity. As to physicians, this common law rule was changed in Pennsylvania by the Act of 1907:60

"To prevent physicians and surgeons from testifying, in civil cases, to communications made to them by their patients, except in civil cases brought by their patients for damages on account of personal injuries."

"Section 1. Be it enacted, etc., That no person authorized to practice physics or surgery shall be allowed, in a civil case, to disclose any information which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity, which shall tend to blacken the character of the patient, without consent of said patient, except in civil cases brought by such patient for damages on account of personal injuries."

Because of the language of the title of the Act, the prohibition is limited to information received by the doctor, by way of communications made to him by the patient, and does not apply to information obtained from an examination of the patient by the doctor.61

Moreover, the Act is restricted to communications made by the patient to the physician which tend to blacken the patient's character,62 and the fact that a person has consulted a physician63 or that he has received treatment for a fractured skull,64 epilepsy or convulsions,65 has no such tendency.

The privilege does not apply to cases involving the commission of a crime,66 and by the express language of the Act does not apply to civil cases brought by a patient for damages on account of personal injuries.

This Act does not apply to nurses, and since there is no common law restriction, a nurse is fully competent to testify as to information acquired while attending patients in a professional capacity.67 A few cases deny this right when a nurse obtains the information while acting as the agent of a physician but these cases from other jurisdictions must be considered in the light of the Pennsylvania decisions heretofore referred to.68

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60 June 7, 1907, P. L. 462, 28 P. S. 328.