Don’t Become a Case Study! Protect Your Nursing License

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SVP
Trivia Question

Which day of the week are you most likely to have an ‘incident’ that results in a malpractice lawsuit?
Most frequent date of loss

Professional Liability Closed Claims

- **Sunday**: 10%
- **Monday**: 15%
- **Tuesday**: 16%
- **Wednesday**: 18%
- **Thursday**: 16%
- **Friday**: 15%
- **Saturday**: 11%

Data 01.2011 thru 07.2013 as of November 2013
In order to demonstrate malpractice, a plaintiff must prove that ALL four elements of malpractice are present.

- **Duty**: Nurse-patient relationship must exist
- **Breach**: Standard of care was not met
- **Cause**: Injury was caused by the nurse's error
- **Harm**: Injury resulted in significant damages

In order to demonstrate malpractice, a plaintiff must prove that ALL four elements of malpractice are present.
Case Study

Allegation: Failure to Properly Assess & Monitor
Case - Details

- The patient (plaintiff) was brought to the emergency room intoxicated, agitated and aggressive.
- These behaviors limited the nurse (defendant) from completing a comprehensive initial assessment.
- For the safety of the patient, four point physical restraints were ordered and applied by security staff, who upon protocol checked the patient for contraband.
Case - Details

• The nurse assigned the patient to a single room to sleep/calm down so a more thorough admission assessment could be done
• The defendant nurse performed patient monitoring and assessment checks every 15 minutes as ordered, only missing one patient check to care for a critically ill patient
• All assessment checks, including the missed check were fully documented
Case - Details

- Shortly after one of the checks the patient attempted to burn off his restraints with a cigarette lighter, igniting his bed linens and clothing
- In only a few minutes the patient suffered severe burns over 25% of his body – including both hands, causing him to lose his fingers on one hand
- The patient’s injuries required multiple surgeries and he became permanently disabled
Was the Nurse Negligent?

- Do you think the nurse (defendant) was negligent?
- Do you think any other practitioners or parties were negligent?
- Do you think an indemnity payment was made on behalf of the nurse?
- If yes, how much?

- Duty
- Breach
- Causation
- Harm
Case – Expert Opinion

• Experts determined the defendant nurse had acted within her scope of practice and in compliance with both the standard of care and hospital policy.

• Documentation supported the defendant nurse’s frequent checks and the reason for 1 missed check (which did not occur at the time of the fire).
Case – The Outcome

- The case against the nurse was defended successfully at trial
- The jury determined the patient was responsible for his own injuries
- **Indemnity Payment: $0**
Case – There’s More

• There was a second trial

• and second successful defense

• Indemnity Payment: $0

• Defense Expense: Greater than $500,000
Claim Metrics
From 2015 Nurse Claim Report
### Closed Claims by Nurse Licensure Type

<table>
<thead>
<tr>
<th>Licensure type</th>
<th>Percentage of closed claims</th>
<th>Total paid indemnity</th>
<th>Average paid indemnity</th>
<th>Average paid expense</th>
<th>Average total incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered nurse</td>
<td>88.5%</td>
<td>$80,428,847</td>
<td>$165,491</td>
<td>$36,424</td>
<td>$201,916</td>
</tr>
<tr>
<td>Licensed practical nurse/vocational nurse</td>
<td>11.5%</td>
<td>$9,928,686</td>
<td>$157,598</td>
<td>$42,173</td>
<td>$199,771</td>
</tr>
<tr>
<td>Overall</td>
<td>100.0%</td>
<td>$90,357,533</td>
<td>$164,586</td>
<td>$37,084</td>
<td>$201,670</td>
</tr>
</tbody>
</table>

### Comparison of 2011 and 2015 Average Paid Indemnity

- **2011**: $161,501
- **2015**: $164,586
<table>
<thead>
<tr>
<th>Nurse specialty</th>
<th>Percentage of closed claims</th>
<th>Total paid indemnity</th>
<th>Average Paid indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neurology/neurosurgery</td>
<td>0.4%</td>
<td>$1,077,000</td>
<td>$538,500</td>
</tr>
<tr>
<td>Occupational/employee health</td>
<td>0.4%</td>
<td>$827,980</td>
<td>$413,990</td>
</tr>
<tr>
<td>Obstetrics</td>
<td>9.8%</td>
<td>$21,441,467</td>
<td>$397,064</td>
</tr>
<tr>
<td>Neonatal/nursery-well baby</td>
<td>1.1%</td>
<td>$1,325,000</td>
<td>$220,833</td>
</tr>
<tr>
<td>Plastic/reconstructive surgery</td>
<td>1.6%</td>
<td>$1,752,332</td>
<td>$194,704</td>
</tr>
<tr>
<td>Emergency/urgent care</td>
<td>10.7%</td>
<td>$10,750,689</td>
<td>$182,215</td>
</tr>
<tr>
<td>Home health/hospice</td>
<td>12.4%</td>
<td>$11,794,067</td>
<td>$173,442</td>
</tr>
<tr>
<td>Pediatric/adolescent</td>
<td>2.0%</td>
<td>$1,710,250</td>
<td>$155,477</td>
</tr>
<tr>
<td>Behavioral health</td>
<td>2.4%</td>
<td>$1,850,249</td>
<td>$142,327</td>
</tr>
<tr>
<td>Adult medical/surgical</td>
<td>36.1%</td>
<td>$27,392,453</td>
<td>$138,346</td>
</tr>
<tr>
<td>Wound care in an office setting</td>
<td>6.7%</td>
<td>$483,239</td>
<td>$108,813</td>
</tr>
<tr>
<td>Gerontology-in aging service facility</td>
<td>16.4%</td>
<td>$7,736,782</td>
<td>$85,964</td>
</tr>
<tr>
<td>Correctional health</td>
<td>3.6%</td>
<td>$1,501,639</td>
<td>$75,082</td>
</tr>
<tr>
<td>Aesthetic/cosmetic</td>
<td>2.4%</td>
<td>$762,375</td>
<td>$58,644</td>
</tr>
<tr>
<td>Overall</td>
<td>100.0%</td>
<td>$90,357,533</td>
<td>$164,586</td>
</tr>
</tbody>
</table>
Trivia Question

You left your employer. Are you still covered for:

Complaints against License to the BON?

...no

Malpractice suit brought after you left?

...maybe
What Types of Coverage Are Available?

• “Occurrence” Policy
  – Covers claims that occurred during the policy term.

• “Claims-Made” Policy
  – Covers claims that occur and are filed during the term of the policy.
Claims-Made Policy
Employer Coverage Example

• Coverage thru your employer ends the day you leave unless you or the practice purchases “Tail” coverage.
• Tail coverage extends coverage after the policy has ended.

If employed, has your facility agreed/stated they will purchase tail coverage to cover you should you ever leave?
## Severity by Allegation

<table>
<thead>
<tr>
<th>Allegation category related to</th>
<th>Percentage of closed claims</th>
<th>Total paid indemnity</th>
<th>Average paid indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medication administration</td>
<td>8.0%</td>
<td>$9,372,227</td>
<td>$213,005</td>
</tr>
<tr>
<td>Monitoring</td>
<td>13.8%</td>
<td>$13,977,772</td>
<td>$183,918</td>
</tr>
<tr>
<td>Treatment/care</td>
<td>45.9%</td>
<td>$45,053,823</td>
<td>$178,785</td>
</tr>
<tr>
<td>Scope of practice</td>
<td>2.9%</td>
<td>$2,458,777</td>
<td>$153,674</td>
</tr>
<tr>
<td>Assessment</td>
<td>15.7%</td>
<td>$11,099,510</td>
<td>$129,064</td>
</tr>
<tr>
<td>Documentation</td>
<td>0.5%</td>
<td>$368,334</td>
<td>$122,778</td>
</tr>
<tr>
<td>Patients’ rights/patient abuse/professional conduct</td>
<td>13.1%</td>
<td>$8,027,090</td>
<td>$111,487</td>
</tr>
<tr>
<td>Overall</td>
<td>100.0%</td>
<td>$90,357,533</td>
<td>$164,586</td>
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</table>
Licensing Board Complaints
Who Can File A Complaint?

Anyone -

- employer, co-worker, patient, parent, friend, etc.
What is a Disciplinary Action?

• A complaint filed with a state or federal administrative agency, licensing or regulatory authority responsible for regulating professional conduct

• Nurses, and other professionals, can have complaints filed against them
What can your state board do?

• The board can fine you
• Suspend your nursing license
• Even revoke your license

• In many states, any lawsuit or legal transgression (e.g. DUI) will automatically initiate a licensing board review
## License Defense Incident Location

<table>
<thead>
<tr>
<th></th>
<th>RN</th>
<th></th>
<th>LPN/LVN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital</td>
<td>60.0%</td>
<td>Aging service facility</td>
<td>57.5%</td>
</tr>
<tr>
<td>Aging service facility</td>
<td>18.2%</td>
<td>Hospital</td>
<td>19.0%</td>
</tr>
<tr>
<td>Practitioner office practice</td>
<td>6.9%</td>
<td>Home health</td>
<td>10.3%</td>
</tr>
<tr>
<td>Home health</td>
<td>5.9%</td>
<td>Practitioner Office practice</td>
<td>6.32%</td>
</tr>
<tr>
<td>All other settings</td>
<td>9.0%</td>
<td>All other settings</td>
<td>6.9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>Total</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>
Main Areas of Complaint for License Defense - Nurses

Paid Claims

- Professional Conduct
- Medication
- Improper Treatment/Care
- Patient's Rights
- Scope of Practice
- Documentation
- Assessment
- Monitoring
- Breach of Confidentiality

<table>
<thead>
<tr>
<th>Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid Claims</td>
<td>24.2%</td>
</tr>
<tr>
<td>Professional Conduct</td>
<td>18.6%</td>
</tr>
<tr>
<td>Medication</td>
<td>18.5%</td>
</tr>
<tr>
<td>Improper Treatment/Care</td>
<td>11.0%</td>
</tr>
<tr>
<td>Patient's Rights</td>
<td>9.4%</td>
</tr>
<tr>
<td>Scope of Practice</td>
<td>9.1%</td>
</tr>
<tr>
<td>Documentation</td>
<td>5.0%</td>
</tr>
<tr>
<td>Assessment</td>
<td>4.0%</td>
</tr>
<tr>
<td>Monitoring</td>
<td>0.1%</td>
</tr>
</tbody>
</table>
Social Media
Don’t Be A Social Media Sensation

- **Nurse reposts physicians posting – Nurse fired, no action against physician** [https://nypost.com/2014/07/08/new-york-med-nurse-katie-duke-fired-for-insensitive-instagram-shot/]

- **Nurse on administrative leave after posting on Facebook** [https://nurse.org/articles/nurse-fired-saying-stephon-clark-deserved-to-die/]

- **Children’s hospice nurse suspended after posting messages on Social Media** [https://www.nursingtimes.net/roles/nurse-managers/nurse-suspended-over-facebook-posts/5062854.article]

- **Nurse fired after posting on anti-vaccination website about patient with measles** [https://abcnews.go.com/US/texas-nurse-investigation-posting-patients-measles-anti-vaccination/story?id=57443736]

Employers are rejecting upwards of 25 percent of their applicants due to what they find in social media.

- **DO “Hygiene”** your social media
- **DON’T** post photos of patients, the workplace, equipment… “x-rays”
- **DO “Clean up”** what others say and share about you
- **DON’T ‘Friend’** patients – Manage your privacy
Best Practices to Prevent Malpractice Lawsuits

• Quality documentation
• Compliance with state Practice Act
• Compliance with policies and procedures
• Excellent communication
• Appropriate incident reporting
• Confidentiality
Questions?

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