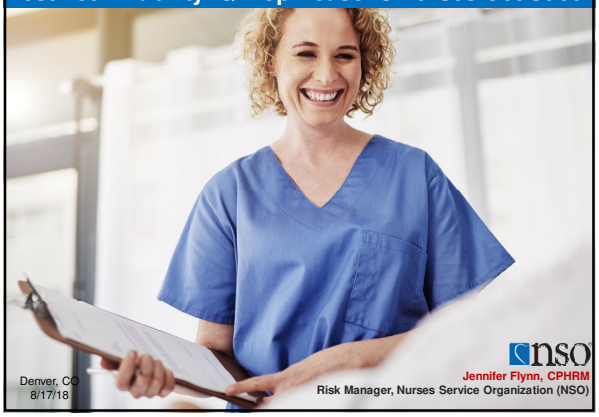
Test Your Liability IQ: Top Reasons Nurses Get Sued



Denver, CO
8/17/18

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Presentation Objectives

- Identify the leading allegations made against nurses in malpractice lawsuits.
- Identify the top allegations and Board outcomes made against nurses.
- Identify key risk management tools that nurses can incorporate into their practice to help improve patient safety, enhance quality of care, and reduce risk and error.

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Defining Malpractice

Malpractice: is a type of negligence; it is often called "professional negligence". It occurs when a licensed professional (like a Nurse) fails to provide services as per the standards set by the governing body ("standard of care"), subsequently causing harm to the plaintiff.

There are 4 elements of malpractice:

- Duty
- Breach
- Cause
- Harm

How Does a Patient Define Malpractice?

- *Perception* of wrongdoing

Litigation and Communication: Hand in hand

Patient satisfaction post-adverse event can directly influence whether a patient seeks a lawyer…Patient dissatisfaction caused by poor **communication** between physicians and their patients is the root cause of the majority of malpractice claims" (Saxton and Finkelstein, 2008).

Case Study #1

Case Study

- The patient was a 38-year-old female admitted for a Cesarean delivery of twins. The babies were delivered without incident, but the patient experienced excessive post-operative vaginal bleeding attributed to placental accreta.
- An emergency total abdominal hysterectomy was performed in an attempt to gain control of the bleeding.
- After surgery, the patient, who appeared stable, was transferred to the ICU with a blood pressure of 110/60 mmHG. The receiving ICU nurse had orders to transfuse the patient with two units of fresh frozen plasma and monitor vital signs every 30 minutes.
- After the first unit of plasma was given, the patient's blood pressure was 108/59 mmHg. She was assessed by the attending ICU practitioner, who ordered a complete blood count be conducted after the second unit of fresh frozen plasma.

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Case Study

- The ICU practitioner noted the patient post-surgical hemoglobin and hematocrit levels were 7.4 gm/dL and 22% respectively. However, one hour after the second unit of plasma was given, the patient's hemoglobin was 5.9 gm/dL, and hematocrit was 17.7%.
- The nurse noted the results in the health record, but did not notify the ICU practitioner because he assumed the practitioner was returning to the unit to reassess the patient.
- Two hours after the second unit of plasma, the patient's blood pressure was reported as 63/21 mmHG.
- The nurse notified the on-call resident of the blood pressure and the nurse received an order for a stat transfusion of two units of packed red blood cells, but the resident did not come to the unit to assess the patient despite the nurse's requests.

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Case Study

- The blood bank records indicated that the blood was available 20 minutes after the stat order was received.
- One hour later, the ICU nurse had not received the blood and noticed the oncoming shift had arrived.
- He gave the oncoming nurse report regarding the patient and even though both nurses were concerned that the blood had not arrived to ICU neither nurse called to ascertain the blood's location.
- Fifteen minutes into the on-coming nurse's shift, the administration of one unit of packed red blood cells was started. While the blood was transfusing, the patient went into respiratory distress and the admitting ICU practitioner was notified.
- Later that evening, the patient underwent a second abdominal surgery, but due to her extensive hypovolemia, she slipped into a coma post-operatively and currently is in a vegetative state.

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Case Study

- Do you believe this Nurse was negligent?
- Do you believe any other practitioners were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the Nurse?
- If yes, how much?

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Allegations

- Failure to report changes in the patient's medical condition to practitioner
- Failure to properly monitor a critical care patient
- Failure to give appropriate blood products
- Delay in implementing practitioner orders

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What the experts said…

- During the deposition of the admitting ICU practitioner, he testified that he was not informed of the second laboratory results or the patient's vital signs until the patient went into respiratory distress.
- It is the defense expert's opinion that by the time the patient was seen by our nurse she had already suffered significant bleeding which caused her impending death. The patient was not properly diagnosed and treated after she was observed bleeding in the labor and delivery unit and our nurse attempted to treat the patient as best he could despite the significant delay in the delivery of packed red blood cells.
- The defense medical expert was critical with our nurse for not calling the head nurse when he could not get cooperation of the resident to come assess the patient.

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What the experts said…

- At the onset of the claim, the estimate on the chance to prevail was 60 percent, however, throughout the investigation of the claim and while working with the other defendants there was significant finger pointing causing our nurse to suffer a greater apportionment and less of a chance to prevail at trail.
- Our estimate of the insured apportionment was 20 percent with a 40 percent change to prevail at trial.
- Several other healthcare practitioners were also included in the lawsuit, but their settlement amounts were not available.

Resolution

- Indemnity payment: in excess of $600,000
- Expense payment: in excess of $225,000

Figures represent only the payments made on behalf of our registered nurse and do not include any payments that may have been made by the registered nurse's employer on her behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Control Recommendations

- **Maintain competencies (including experience, training, and skills)** consistent with the needs of assigned patients and/or patient care units.
- **Maintain thorough, accurate and timely patient assessment and monitoring,** which are core nursing functions.
- **Timely implement practitioner orders.**
- **Communicate in a timely and accurate manner** both initial and ongoing findings regarding the patient's status and response to treatment.

Risk Control Recommendations

- **Follow-up on delays and issues in obtaining** needed medical treatment.
- **Provide and document the practitioner notification of delays** and issues encountered in carrying out orders.
- **Provide and document the practitioner notification of a change** in condition/symptoms/patient concerns and document the practitioner's response and/or orders.
- **Invoke the nursing chain of command** if there is a delay in the response from practitioner or significant concern with practitioner action taken.
- **Report any patient incident, injury or adverse outcome** and subsequent treatment/response to risk management or the legal department.

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NURSE CLAIM METRICS

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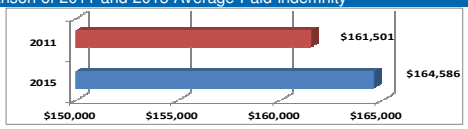
Closed Claims by Nurse Licensure Type

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

Comparison of 2011 and 2015 Average Paid Indemnity



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Severity by Nurse Specialty

Nurse specialty	Percentage of closed claims	Total paid indemnity	Average Paid indemnity
Neurology/neurosurgery	0.4%	$1,077,000	$538,500
Occupational/employee health	0.4%	$827,980	$413,990
Obstetrics	9.8%	$21,441,467	$397,064
Neonatal/nursery-well baby	1.1%	$1,325,000	$220,833
Plastic/reconstructive surgery	1.6%	$1,752,332	$194,704
Emergency/urgent care	10.7%	$10,750,689	$182,215
Home health/hospice	12.4%	$11,794,067	$173,442
Pediatric/adolescent	2.0%	$1,710,250	$155,477
Behavioral health	2.4%	$1,850,249	$142,327
Adult medical/surgical	36.1%	$27,392,453	$138,346
Wound care in an office setting	0.7%	$435,250	$108,813
Gerontology-in aging service facility	16.4%	$7,736,782	$85,964
Correctional health	3.6%	$1,501,639	$75,082
Aesthetic/cosmetic	2.4%	$762,375	$58,644
Overall	100.0%	$90,357,533	$164,586

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Severity by Nurse Location

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Occupational health center	0.4%	$827,980	$413,990
Obstetrics-inpatient perinatal services	8.2%	$17,993,967	$399,866
Nurse residence	0.5%	$1,040,000	$346,667
Hospital-obstetrics (Cesarean suite or post-acute care unit)	1.1%	$1,772,500	$295,417
*Other	0.4%	$550,000	$275,000
Telemetry unit-hospital based	0.2%	$218,750	$218,750
Hospital-PACU	1.3%	$1,372,500	$196,071
Hospital-nursery	0.9%	$925,000	$185,000
Emergency department-hospital-related	10.6%	$10,725,689	$184,926
Radiology	0.4%	$330,000	$165,000
Transport services	0.2%	$162,500	$162,500

Closed Claims above the $164,586 overall report average

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Test Your Liability IQ: Top Reasons Nurses Get Sued

Severity by Nurse Location (Continued)

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Patient's home	12.6%	$10,970,067	$158,986
Hospital - inpatient medical	17.7%	$15,336,650	$158,110
Hospital - inpatient surgical service	11.3%	$9,508,085	$153,356
Behavioral/psychiatric health	2.4%	$1,850,249	$142,327
Spa	0.7%	$460,000	$115,000
Aging services	16.9%	$9,735,782	$104,686
Practitioner office practice	4.6%	$2,579,677	$103,187
Correctional health-inpatient or outpatient	3.8%	$1,812,639	$86,316
Ambulatory surgery	2.9%	$1,169,498	$73,094
School (pre-school through university)	1.1%	$407,000	$67,833
Hospital-operating room/operating suite	1.5%	$490,000	$61,250
Dialysis-freestanding	0.2%	$50,000	$50,000
Clinic-hospital outpatient	0.2%	$45,000	$45,000
Freestanding specialty care facility (non-ambulatory)	0.2%	$24,000	$24,000
Overall	100.0%	$90,357,533	$164,586

Closed Claims below the $164,586 overall report average

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Severity by Allegation

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

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Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study #2

Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study

- This case study involves a licensed practical nurse working in an aging service facility.
- Following a recent hospitalization for complications of metastatic ovarian cancer, an elderly female with a long history of bipolar disorder was discharged to an aging service facility due to her family's inability to care for her at home.
- Throughout her stay, her family made several complaints to administration regarding the care the patient was receiving and requested the patient be transferred to another facility on numerous occasions.

Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study

- The LPN on duty the evening of the incident was an agency nurse who had worked at the facility on several occasions and was aware of the facility's policies and procedures on medication administration.
- During the scheduled evening medication administration round, the nurse was in the patient's room when she became distracted by a patient from another room requesting assistance.
- When the nurse returned to the patient's room, she gave the patient her nightly medications. The patient questioned the amount of pills the nurse was giving her and stated that she had never taken "purple pills" before. The nurse assured the patient the medication was correct and continued with the administration.

Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study

- An hour later, a certified nursing assistant notified the nurse that one of her patients was unresponsive. The LPN responded to the patient's room and found the patient with a thready pulse and shallow respirations.
- The facility called 911, and when the paramedics arrived they administered Narcan® intravenously, which instantly revived the patient.
- On the way to the hospital, the patient told the paramedics that the nurse gave her four "purple pills" earlier that evening; and after she took them, she immediately fell asleep.

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Case Study

- On admission into the hospital, the patient became responsive when receiving Narcan®, but as soon as the medication wore off, the patient would suffer from shallow respirations and would be unresponsive.
- By day two of the hospitalization, the patient appeared to be less responsive, but was able to respond to the voices of her family members.
- On day three, she was unresponsive to painful stimuli, was found without a pulse or heart rate, and pronounced dead.
- An autopsy was performed and indicated that the primary cause of death was an overdose of morphine.

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Case Study

- Do you believe this Nurse was negligent?
- Do you believe any other practitioners were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the Nurse?
- If yes, how much?

Test Your Liability IQ: Top Reasons Nurses Get Sued

Allegations

- Failure to follow organization's policy and procedure on medication administration.
- Failure to immediately report/record improper administration of medication.

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What the experts said…

- When the patient was transferred to the hospital, an investigation at the aging service facility revealed that the nurse committed a medication administration error. The morphine given was prescribed for another patient. Because the nurse became distracted in the middle of the medication administration process, the morphine had been entered into the correct patient's medication record but given to the incorrect patient.
- There was no record of the patient receiving morphine, although the patient's reaction to Narcan®, as well as the results of the urine and blood analysis completed at the hospital where the patient was transferred, left little doubt to the administration error.

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The Resolution

- Indemnity payments: in excess of $390,000
- Expense payment: less than $40,000

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Risk Control Recommendations

- **Comply with organizational policies and procedure** related to clinical practices and medication administration.
- **Eliminate the source of distractions and interruptions** as much as possible when administering medication.

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Risk Control Recommendations

Measures to consider implementing while administrating medication include:

- **No interruption zones** - Areas in your organization where medication tasks are performed should be physically marked signifying interruptions, such as talking, are not permitted within the zones. These zones can be created around dispensing cabinets, drug preparation areas, computer order entry locations, and other areas where critical tasks are performed.
- **Do not disturb signage** - Wear a visual signal during medication, such as colored vest or apron, to signify that you should not be interrupted. All mobile devices (personal and/or organizational) should be silenced and/or temporarily transferred to another staff member to allow periods of undisturbed time.
- **Education staff -** Educate staff to avoid interrupting nurses administering medications that are preparing, mixing, labeling or checking medications. The nurse should only be disturbed if a significant patient situation must be communicated immediately.
- **Best times for necessary interruptions -** If interruptions or notifications are necessary when dispensing or administering medications, attempt to intervene during transitions between patients or doses being prepared. Avoid interruptions during the most complex parts of the task.
- **Checklists –** Create a checklist of important points during lengthy critical tasks can be affixed to work areas for reference when leaving one task and returning to complete it to aid in remembering where the person left off.
- **Preparation -** To minimize task disruption, ensure that all needed supplies and documents are available before preparing or administering medications. For example, all needed supplies should be gathered prior to preparing chemotherapy, or all needed supplies should be available on a medication cart prior to medication administration.

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Risk Control Recommendations

- **Listen to patient's concerns regarding medical treatment/care. If a patient questions the need for a medication or treatment, listen to their concerns and verify the order in the health record and/or with the ordering practitioner.**
- **Document findings contemporaneously in the health record. Try not to make late entries unless it is** appropriately labeled and is necessary for a safe continued patient care.
- **Report any adverse outcomes or incidents to the organizational' s risk manager** as soon as you become aware of the event.

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CLAIM METRICS
License Defense

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License Defense

An action taken against a nurse's license to practice differs from a professional liability claim in that it may extend ***beyond matters of professional negligence and involve allegations of a personal, nonclinical nature****, such as substance abuse. License protection claims represent only the cost of providing legal defense for the nurse, rather than indemnity or settlement payments to a plaintiff.*

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License Defense by License Type

License type	RN	LPN/LVN	Total
License defense paid claims	1,127	174	1,301
Percent of defense actions by license type	86.6%	13.4%	100.0%
Total payments	$4,554,539	$634,445	$5,188,984
Average payment	$4,041	$3,646	$3,988

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License Defense by Allegation

RN		LPN/LVN	
Professional conduct	24.2%	Medication administration errors	22.4%
Medication administration errors	18.6%	Improper treatment/care	22.4%
Improper treatment/care	18.5%	Abuse/patients' rights	21.3%
Abuse/patients' rights	11.0%	Professional conduct	12.6%
Scope of practice	9.4%	Assessment	6.3%
Documentation error or omission	9.1%	Scope of practice	6.3%
Assessment	5.0%	Documentation error or omission	4.6%
Monitoring	4.0%	Monitoring	4.0%
Breach of confidentiality	0.1%	Total	100.0%
Total	100.0%		

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License Defense by Sub Category: Professional Conduct

RN		LPN/LVN	
Drug Diversion and/or substance abuse	15.3%	Drug Diversion and/or substance abuse	8.6%
Professional misconduct as defined by the state	3.8%	Professional misconduct as defined by the state	2.3%
Other inappropriate behavior	3.2%	Criminal act or conduct	1.1%
Criminal act or conduct	1.9%	Other inappropriate behavior	0.6%
Suspended or revoked license	0.1%	Total	12.6%
Total	24.2%		

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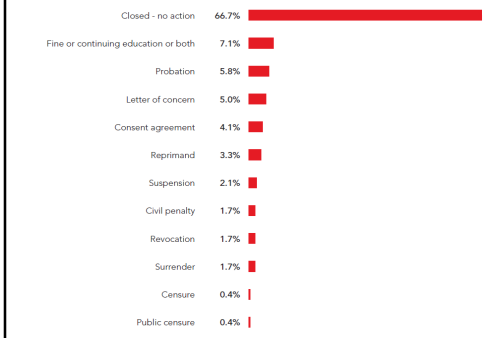
Frequency of Board Decisions



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License Defense

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Case Study

- This complaint involved a 76-year-old male patient who is a permanent resident of a senior living facility. He is diabetic.
- On April 18th he was NPO after midnight because he was having surgery on the 19th. He could only have his Claritin and Norvasc with a sip of water the morning of the 19th.
- While being prepared for surgery our nurse asked "What medications have you taken today?"
- The patient responded saying "Claritin and Norvasc with a sip of water."
- Approx. 20-30 minutes later the anesthesiologist came in and asked if he had been given any insulin that morning. The patient said "Yes, I think so."
- The patient's granddaughter who was present at this time asked the patient if he was sure because he was not to have any insulin before surgery, only the Claritin and Norvasc. The patient said "I think so" again.

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Case Study

- The patient's granddaughter immediately called the facility and asked for the patient's nurse (John). Nurse John said that according to the patient's chart, the patient was given insulin at 6:30am by nurse Sally.
- Nurse John said he didn't know why this happened because the chart was marked NPO the night before.
- Because the patient was given insulin and had not eaten (because of NPO) the patient's blood sugar dropped to 70and they had to wait an additional 4 hours before he could go into surgery (until his blood sugar could come back up).
- In the granddaughter's complaint she bolded the word "**inconvenience**" when describing the situation. Then mentioned that it also endangered her grandfather's life.
- The patient's granddaughter filed a complaint with the BON only after trying to get answers from the facility and was frustrated with the "run around" and lack of communication.
- The patient's granddaughter maintained that "after paying $6,000/month you would think someone would have the decency to follow-up with me."

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Case Study #3

Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study

- A registered nurse with 19 years experience as an emergency nurse (15 as a certified emergency nurse) was working in the triage area of the emergency department.
- A 34-year-old female patient was sent to the emergency department from the local dialysis clinic to have her hemodialysis catheter, which was bleeding around the insertion area, examined by the emergency department practitioner.
- The patient was accompanied by her mother and son, who appeared to be about 10 years old. The nurse noted in the triage portion of the medical record that the patient appeared ill and disheveled, and she allowed her mother to answer all the medical questions.

Test Your Liability IQ: Top Reasons Nurses Get Sued

Case Study

- During the 15-minute triage process, the nurse noted that the patient's vital signs were normal, she had plus two pitting edema in her lower extremities and her catheter seemed intact with a small amount of dried blood, but no active bleeding at the insertion site.
- On a five-level emergency department triage scale, the nurse rated the patient as a "3-urgent," meaning that the patient should be seen by a practitioner within 15 to 60 minutes following triage, per facility policy.
- As there were no available beds in the treatment area of the emergency department, the nurse asked the patient and her family to take a seat near the triage area to facilitate monitoring.

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Case Study

- Shortly after our nurse performed the triage on the patient, she was relieved for her lunch break. She gave a report to the new nurse on all the patients in the waiting area, letting him know that the last patient she triaged should be the next patient to be taken to an available treatment bed.
- Thirty minutes later, our nurse arrived back to triage and noticed that the patient was still in the waiting area. The nurse re-evaluated the patient per hospital protocol, noting that the patient's status remained unchanged.

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Case Study

- Ninety minutes after the patient's initial triage, she was taken to the emergency department treatment area. Our nurse had no additional contact with the patient.
- The patient was examined by the emergency department practitioner and had sutures placed around the catheter site. When the physician examined the patient, he ordered a complete blood count and a basic metabolic profile, but for reasons unknown the tests were cancelled.
- The patient was discharged home moments after the sutures were completed and told to follow-up with the dialysis clinic the following day.

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Case Study

- The next morning, the patient was found unresponsive and pronounced dead. An autopsy determined the cause of death to be a hyperkalemia.
- The mother of the patient filed a lawsuit against our nurse and many healthcare providers associated with her daughter's care.
- Plaintiff experts claimed that (1) our nurse failed to triage the patient as emergent and (2) invoke the facility's medical chain of command when the patient was not examined by a physician within the facility set time frame.
- Their third claim against our nurse was that a more thorough history should have been taken and the nurse should have confirmed those laboratory tests were performed to determine the patient's metabolic state.

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Case Study

- Do you believe this Nurse was negligent?
- Do you believe any other practitioners were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the Nurse?
- If yes, how much?

Test Your Liability IQ: Top Reasons Nurses Get Sued

Allegations

- Failure to monitor and report changes in the patient's medical condition to practitioner

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What the experts said…

- Defense experts retained determined that our nurse had acted within her scope of practice and in compliance with both the standard of care and hospital policy.
- Documentation supported the nurse's frequent checks of the patient and the reasons for not triaging the patient at a higher acuity level.

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What the experts said…

- The claim took four years to resolve and over $165,000 in expenses.
- While it might have been less expensive to settle the claim, the nurse's proper care of the patient and complete documentation made an aggressive defense possible which was ultimately successful.
- The case against the nurse was successfully defended at trial, with the jury determining our nurse was not responsible for the patient's untimely death.

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The Resolution

- Indemnity payment: $0.00
- Expense payment: in excess of $165,000

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Risk Control Recommendations

- **Know the Nurse Practice Act and read it at least annually** to ensure you understand the legal scope of practice in your state.
- **Maintain competencies (including experience, training, and skills)** consistent with the needs of assigned patients and/or patient care units.
- **Maintain a thorough, accurate and timely patient assessment and monitoring,** which are core nursing functions.

Test Your Liability IQ: Top Reasons Nurses Get Sued

Risk Control Recommendations

- **Communicate in a timely and accurate manner** both initial and ongoing findings regarding the patient's status and response to treatment.
- **Document findings contemporaneously in the health record.** Try not to make late entries unless it is appropriately labeled and is necessary for a safe continued patient care.

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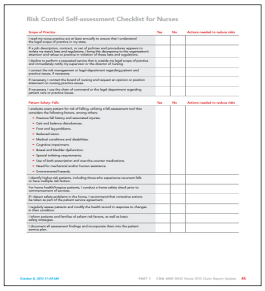
Nurse Self Assessment Checklist

Nurse Self-assessment Checklist and Claim Tips

www.nso.com


Risk Control Self-assessment Checklist for Nurses

www.nso.com/nurseclaimreport2015

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Questions?

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