

Top 5 Malpractice Claims Made Against Nursing Professionals

Chances are at some point in your career, you'll either:

- Have a claim—whether frivolous or not--made against your professional services.
- You'll be named in a "group" lawsuit—whether as part of a larger group of health care professionals and/or included with your health care facility.
- Witness a negligent act by another health care professional during the course of a normal work day.
- Be deposed to testify on behalf of yourself, your employer or colleague.

No matter what the situation, being involved in any allegation of malpractice can be emotionally and financially devastating for all parties.

However, if you're specifically named in the malpractice suit, your assets, reputation and career could all be in jeopardy.

It's important to understand the most common allegations and how they happen in order to minimize your risk. Most malpractice claims involve at least one these 5 allegations:²

1. Failure to follow standards of care
2. Failure to use equipment responsibly
3. Failure to document
4. Failure to assess and monitor patient
5. Failure to communicate

It's a FACT!

A malpractice claim will be made against you at some point in your career.

Nurses and nursing-related practitioners had an average of 1.11 malpractice reports made against each of them in the last decade.¹

More details, examples and prevention tips for these top 5 common allegations follow.

1. Failure to Follow Standards of Care

The standards you follow when you care for your patients may be based on written procedures, protocols, hospital or employer policies, professional studies, and expert opinions from nursing supervisors or other higher health care professionals.

Claims involving failure to follow standards of care typically allege that you failed to follow certain procedures or protocols—or even doctors instructions. Most claims will state you were negligent if the patient suffered a loss due to your actions.

Sample situations where a nursing professional may have a claim made against her or him include:

- Failure to follow proper “fall” or other safety protocols established by the health care facility.
- Failure to give certain medications in a timely and reasonable way.
- Failure to insert tubing or other procedures required for the care of the patient.
- Failure to use their specific skills, such as applying antithrombotic stockings.

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Prevention Tips

- Perform only those skills that are within the scope of your professional services.
- Know your limitations. Don’t accept assignments if you’re not sure you have the time or competency to handle them.
- Stay compliant with your state’s nurse practice act, your facility’s policies and practices and applicable standards of care related to your practice area.

Could this happen to you?

Nursing Professional “Pat” was assigned to care for patient “Smith.” “Smith” was required to receive medication in a timely manner. You stopped by his room but found he was not in his bed and the bathroom door was closed and you heard moaning. You decided to give him his privacy. You continued to care for the rest of your shift patients and came back half an hour later to give him his medication. Patient was still not in bed and you find him in cardiac arrest on the bathroom floor.

You failed to properly follow your facility’s standard of care (and reasonable nurse’s judgment) by not making sure your patient was ok when you checked on him. You could be sued for failure to follow standards of care.

2. Failure to use equipment in a responsible manner

Throughout your “shift,” you may be asked to use certain equipment to help care for your patient.

Sometimes, with the increasing demands of the job, you may take on more responsibilities—including using equipment you’re not trained to work. If the equipment fails or harms the patient in any way, you could be named in a lawsuit alleging wrongdoing on your part to use the equipment responsibly.

Here are some sample situations that could cause a malpractice allegation be made against you:

- If you operate or hook up the equipment for use other than what the manufacturer detailed.
- If you failed to follow the manufacturer’s guidelines for the equipment’s use.
- If you move the equipment before it is fully charged.
- If you fail to preserve the equipment after a patient’s death.

Prevention Tips:

- Attend equipment in-service programs and make sure you know how to operate and detect equipment failures.
- If you’re asked to monitor or hook up equipment you’re not familiar with be sure to speak with your supervisor and document the order.

Could this happen to you?

Nursing Professional “Kim” was ordered by her patient’s physician to hook the patient up to specified equipment. “Kim” was not properly trained on the equipment but hooked it up anyway. Three hours later, patient was found unresponsive and the equipment was found to be programmed incorrectly.

Even though you were following doctor’s orders, you should have let the doctor know of your lack of training on the equipment and/or called your supervisor for support to hook it up. You could be sued for the harm to the patient due to this failure.

3. Failure to Document

In the age of electronic communication, it is still important to document all aspects of a patient's care. Whether your facility relies on electronic health records or still operates in a file and paper environment (or uses a combination of both), if documentation is not made in the "eyes" of the court, then it wasn't done or didn't happen.

Therefore, failure to document can lead to an allegation of negligence or wrong doing on your part.

Sample situations where a nursing professional may be sued include:

- Failure to document your status findings when your shift is over which leads to lack of continuous care by the next shift professional.
- Failure to document phone call or other communication with another health care provider and patient becomes more ill (without your documentation it becomes a "he said"/"she said" situation).
- Failure to document your medication dosage, which results in an overdose when another nursing professional administers the dosage.
- Failure to provide care you documented on patient's chart. You charted care but then became busy/distracted so the care was never carried through.

Prevention Tips

- Document all your nursing care and communications factually and thoroughly.
- Ensure your documentation reflects the nursing process (assessment, intervention, evaluation).
- Never chart ahead of time—only after you provide the care.

Could this happen to you?

Several years ago you had a patient who died after his condition became worse during your shift. You remember contacting the physician when you noticed his condition changed and you told the next shift to continue to monitor his situation. But now that you're specifically named in a lawsuit, there is no written or electronic documentation of your conversations with the other health care professionals.

Because of your failure to document that night your communication with the patient's physician and next shift care provider, the court may find you more at fault.

4. Failure to Assess and Monitor

Your training, judgment and facility procedures usually dictate when and how often you should monitor and assess your patient's needs and care. But sometimes your instincts, the health and stability of the patient, or previous experience require you to monitor your patient more carefully and more frequently.

When it comes to this type of allegation, the courts rely on opinions by expert nurse professionals and what they consider reasonable. Therefore, simply following protocol or doctors' orders may not be enough.

As part of your care, you are responsible for monitoring any changes in health, reporting those changes to the physician and documenting your findings.

Sample situations where a nursing professional may be named in a malpractice suit include:

- Failure to check in on a patient more frequently after a patient complained of increased pain.
- Failure to report a change in patient's health to his/her attending physician.
- Failure to increase monitoring of patient after patient showed symptoms of nausea after taking medication.

Prevention Tips

- Assess your patient according to policy, facility protocol and physician orders, and more frequently as needed based on your nursing judgment. (It's better to be safe and monitor more frequently than the alternative.)
- Remember to document abnormal assessments and promptly report them to the physician.
- Always increase your monitoring if you're concerned about a potential problem.

Could this happen to you?

Nursing Professional "Cori" was assigned to care for patient "Chris" during her shift. "Chris" physician ordered routine vital checks every 4 hours. "Chris" complained of a headache shortly into "Cori's" shift. "Cori" gives "Chris" ibuprofen and continues with attending to other patients. Several hours later, "Cori" returned to check on "Chris" and found him unresponsive. "Chris" was determined to have suffered a stroke.

If "Cori" had monitored "Chris" more carefully after the headache complaint, she may have assessed the early stroke warning signs and possibly helped prevent it.

"Cori" could be sued by "Chris" and his family for failing to assess and monitor the care more frequently.

5. Failure to Communicate

This allegation is often made in malpractice suits. Lack of communication between you and your patient's doctor or between you and your supervisor or other health care providers can result in serious consequences when it comes to the care of your patients.

It could result in delayed care—with the worst consequence causing the death of your patient.

Sample situations where a nursing professional may be sued include:

- Failure to communicate all relevant patient health information to the doctor.
- Failure to provide appropriate discharge information to the patient.
- Failure to report changes to assessment findings to the next shift.

Prevention Tips

- Always document all conversations related to your patient's care and any changes discovered through monitoring and assessing your patient.
- Make sure you follow facility protocol when discharging patients.

Could this happen to you?

During your shift, one of your patients appeared agitated and was sweating. You took his temperature and it was elevated to 100. You documented these changes in his health on his chart. When your shift was over, you went home.

The next day, this patient had been moved to intensive care. Later you found out, the patient had suffered a severe setback. A year later, a lawsuit was filed against the hospital, physician and you. The lawsuit claimed the patient's condition could have been prevented had you communicated the change in his health immediately to his physician. The lack of communication delayed care that could have treated the early onset symptoms.

Additional Prevention Tips

To avoid malpractice claims made against you, be sure to understand these most common allegations and what you can do to prevent them.

In addition, here are 4 more ways to reduce your overall risk:³

1. Follow your gut instinct—Chances are if you think something isn't right, then they aren't. Check more frequently on your patient and assess care more often. Re-review lab and other reports.
2. Clearly document medical records. Make sure they're easy to read and understand—courts favor you when your medical records are well documented and legible.
3. Maintain a good bedside manner: If your patient likes you, he or she is less likely to sue you. Get to know your patient and his or her family.
4. Continuous education: keep up on the latest trends—they can change very quickly. The more up-to-date you are, the better care you can provide.

Regardless of how well you do your job and follow these prevention tips, you can still be named in a malpractice suite. And your best defense against a suit is carrying your own malpractice insurance.

This way you won't have to use your own assets to pay for your defense and you won't have to rely on attorneys hired by your facility. With your own malpractice insurance, you can have your own attorney working in your best interests—which are not necessarily the best interests of your employer.

For more information about obtaining your own individual malpractice insurance policy, visit www.proliability.com or call 1-800-503-9230.

Sources

¹ Nursing Malpractice Statistics, www.rightdiagnosis.com, last updated January 31, 2012.

² Top 5 claims, prevention tips and reference material provided through: Reising, Deanna L., PhD, RN, ANCS-BC, ANEF. "Make your nursing care malpractice-proof." American Nurse Today, Volume 7, Number 1, January 2012. In addition, "Protecting yourself from malpractice claims." American Nurse Today, Volume 2, Number 2, February 2007.

³ "Four Ways to Reduce Malpractice Risk." The Clinical Advisor, August 2010.