

NURSING CARE MALPRACTICE

(Part II)

by Lorie A. Brown, RN, MN, JD



Nursing Care Malpractice Part One discussed what is medical malpractice and the Indiana laws regarding medical malpractice. This article will discuss what hap-

pens if I get named in a lawsuit and should I have my own malpractice insurance. We all make mistakes just because we are human beings.

What Happens If I Get Named In A Lawsuit?

There are two parties in a lawsuit, the plaintiff who is the patient who initiates the suit and the second party is the defendant, who is the doctor or healthcare provider who is defending himself in the case. The plaintiff has the burden of proof to prove that there is medical malpractice. The burden of proof is that it is more likely than not that the defendant breached the standard of care. The easiest example is by looking at the scales of justice. One side is for the plaintiff and the other is for the defendant. Plaintiff has met their burden of proof when the scale tips slightly to their side.

It is unlikely for a nurse to get named individually in a lawsuit. It is more likely that the employer will be named. As an employee of a healthcare entity such as a physician's office, hospital, nursing home or home healthcare service, the employer is responsible for the acts of negligence of its employees. The only exception where an employer will not be responsible for the acts of a nurse



is if the nurse is acting outside the scope of his/her responsibility. For example, if the nurse is ordering medication without a physician's order, the nurse is practicing medicine without a license and acting outside the scope of her responsibility. Although it is unlikely that a nurse will get named as a defendant in a lawsuit, it is possible that the defendant's attorney will ask to take the nurse's deposition. Even if a nurse is not directly named, this only affects payment and not the nurse's own accountability. The nurse should still be proactive to avoid any implication of malpractice.

What is A Deposition?

A deposition is simply a process where a witness is asked questions under oath. The court reporter takes everything down that the witness says. In a lawsuit, there should be no surprises. Both sides are entitled to get as much information as they can from anybody who has knowledge regarding the case. If a nurse is asked to have his/her deposition taken, the attorney for the employer will properly prepare the nurse for the deposition.

Should I Have My Own Malpractice Insurance?

Whether or not to have your own malpractice insurance is a personal choice. The benefit of having your own malpractice insurance is that it gives you a right to have your own attorney present at a deposition. If you choose to have malpractice

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insurance, it is imperative that you become a qualified health-care provider under the Indiana Patients Compensation Fund. In Nursing Care Malpractice Part One, to have a healthcare provider's liability limited to \$1,250,000.00, one must voluntarily participate and be qualified under the Indiana Patients Compensation Fund pursuant to the Indiana Medical Malpractice Act ("Act"). This requires that your insurance company pay an additional premium so as to qualify you under the Act. Nursing malpractice insurance is relatively inexpensive. However, it is more expensive to be covered by the act. You must remember that the Act gives you certain benefits of limiting your liability so that there is no personal exposure. The Act also requires that your case must be presented to a medical review panel before it can proceed in court.

It is also advisable to have your own attorney if the hospi-

tal's interests are different than yours. If your position was terminated over this incident or you feel like the hospital will not support you in the care that you provided, it is advisable to have your own attorney. In any event, it is advisable to seek the advice of an attorney should you get named in a suit or be asked to have your deposition taken because your testimony will be under oath and it can be given to the Indiana State Board of Nursing for further action if the Board deems necessary.

The best defense is a strong offense. By practicing defensive nursing care and charting thoroughly and being proactive with your care, it will save you a lot of time and trouble in the future. After a long day it is difficult to have the energy to sit down and chart, but imagine picking up a chart two to three years after the malpractice occurred and trying to remember what happened. I would challenge each one of you to pick up a chart that you wrote on six months ago and see how good your recollection is and see how well your notes protected you.

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