

CHAPTER 21

SPECIFIC AREAS OF NURSING NEGLIGENCE

I. INTRODUCTION

The nursing profession is a specialized field in which the number of suits in which nurses are being named for negligence is growing. There are four elements to nursing negligence, these elements were discussed in greater detail in the chapter of this Manual on Nursing Liability and Nursing Malpractice. The four elements of nursing malpractice are: the nurse must have a duty to the plaintiff, the nurse must have breached the duty that was owed, the plaintiff must have suffered an injury and the nurse's breach of the duty owed must be the cause of the plaintiff's injury.

Within the field of nursing, a nurse does a variety of acts in which she can become liable of nursing negligence and a failure to perform certain acts can leave a nurse vulnerable to claims of nursing negligence. This chapter lists many of the common areas in which suits are being brought against nurses for nursing negligence.

II. SPECIFIC ACTS OF NURSING NEGLIGENCE

There are many errors in patient care that nurses make. Some of these, inevitably lead to legal liability for the nurse and the nurse's employer. The following acts present potential areas which, if negligently performed, can lead to nursing negligence on the part of a nurse.

A. **INFECTION CONTROL**

A failure to follow proper infection control procedures (e.g., proper hand-washing techniques) can result in cross-contamination between patients. Staff members who administer care to patients, moving from one patient to another without washing their hands after changing dressings, giving back rubs, and carrying out routine procedures, can expose themselves and a health care facility to lawsuits.

B. **DECUBITUS ULCERS**

The staff of health care facilities must be properly trained in the prevention and treatment of ulcers. An organized protocol and consistent plan of care should be implemented in order to help prevent ulcer formation and to aid in the healing process.

The number of pressure ulcers can be reduced by:

1. Observing the general condition of the patient's skin for:
 - a. redness;
 - b. blanching;
 - c. rashes/irritation;

- d. bruises;
 - e. scabs; and
 - f. freedom from above.
2. Taking measures to prevent skin breakdown;
 3. Using RX for pressure ulcers;
 4. Using padding for pressure points and bony prominences, including padding on bed and chair;
 5. Doing a proper, gentle massage to bony areas several times a day;
 6. Giving regular assistance for patient to turn or shift weight (e.g., bed rails, footboards, trapeze);
 7. Keeping bed linens, clothing, and underpads smooth and free from wrinkles;
 8. Keeping elastic bandages or hose smooth and wrinkle free with appropriate overlap; and
 9. Including dietary/nutritional support for skin integrity.

C. BURNS

A nurse has a duty to ensure that a patient does not suffer burns from any equipment which she uses in caring for the patient. Burns by hot-water bottles, sitz baths, and heating pads often result in lawsuits. Allowing a patient to suffer a burn from any of these objects can lead to nursing negligence on the part of the nurse.

D. ADMINISTERING MEDICATION

A nurse has a duty to administer the proper medication to a patient. This includes administering the medication which is prescribed to the patient by the appropriate health care professional, in the correct dosage, through the correct route, at the right time and to the correct patient. A failure to perform any of these duties can lead to nursing negligence on the part of the nurse.

E. UNSTERILE USE OF INSTRUMENTS

The blood donor in Brown v. Shannon West Texas Memorial Hospital, 222 S.W.2d 248 (Tex. 1949), sought to recover from a serious injury allegedly caused by the use of an unsterile needle. The court held that the burden of proof was on the plaintiff to show, by competent evidence, that the needle was contaminated when used and that it was the proximate cause of the alleged injury. The mere proof, said the court, that infection followed the use of the needle or that the infection possible could be attributed to

the use of an unsterile needle was insufficient. Had the plaintiff in this case proven that the nurse used a needle that was unsterile the nurse would have been liable of nursing negligence.

F. ALLERGIC REACTIONS

Any adverse reaction to a medication should be charted on the patient's medical record. Then the attending physician and the facility's pharmacy should be advised as to the patient's allergic reaction. A failure by a nurse to do any of these things can lead to nursing negligence on the part of the nurse.

G. NEGLIGENCE OF INFANTS

The inadvertent or negligent switching of babies born at the same time by a nurse can lead to liability of nursing negligence. In De Leon Lopez v. Corporation Insular de Seguros, 931 F.2d 116 (1st Cir. 1991), a nurse was found liable for nursing negligence for the inadvertent switching of two babies born at the same time.

H. INCORRECT COUNTS IN THE OPERATING ROOM

There are many cases involving foreign objects left in patients during surgery. The borrowed servant doctrine does not insulate the hospital from the negligence of its nurses because the doctrine only applies to acts involving professional skill and judgment. Foreign objects negligently left in a patient's body constitute an administrative act. A standard nursing checkoff procedure should be used to account for all sponges and/or instruments used in the operating room. Preventive measures of this nature will reduce both a nurse's and a hospital's risk of liability.

I. FAILURE TO FOLLOW SUPERVISOR'S INSTRUCTIONS

A nurse has a duty to follow the instructions of supervisors. A nurse who fails to follow the instructions of a supervising nurse can be held liable for nursing negligence.

J. FAILURE TO MONITOR PATIENT'S VITAL SIGNS

A nurse has a duty to monitor her patient's vital signs. A failure to monitor a patient's vital signs can lead to a nurse being held liable for nursing negligence.

K. FAILURE TO QUESTION PATIENT'S PREMATURE DISCHARGE

A nurse has a duty to question the discharge of a patient if she has reason to believe that such discharge should be injurious to the health of the patient. A failure by a nurse to question a discharge that she feels is questionable can lead to her being liable of nursing negligence.

L. FAILURE TO NOTE CHANGES IN A PATIENT'S CONDITION

A nurse has a duty to note changes in a patient's condition. A failure to note changes in a patient's condition can lead to liability on the part of the nurse and the organization.

M. FAILURE TO REPORT CHANGES IN A PATIENT'S CONDITION

A nurse has a duty to report changes in a patient's condition. A failure to report changes in a patient's condition can lead to liability on the part of the nurse and the organization.

N. FAILURE TO REPORT PHYSICIAN'S FAILURE TO RESPOND TO A SUPERVISOR

If a physician should fail to respond to a call for assistance and such failure is likely to jeopardize a patient's health, the matter must be brought to the attention of the nursing supervisor, chief of the appropriate service, or administration. Failure to exercise this duty can lead to liability for the nurse, as well as the organization, under the doctrine of respondent superior.

O. FAILURE TO REPORT DEFECTIVE EQUIPMENT

A failure to report defective equipment can cause a nurse to be held liable for negligence if the failure to report is the proximate cause of a patient's injuries. However, the defect must be known by the nurse and not hidden from sight.

P. FAILURE TO TAKE CORRECT TELEPHONE ORDERS

Telephone orders are necessary because of the nature of a physician's practice. Nurses must be alert in transcribing orders because there are periodic contradictions between what physicians claim they ordered and what nurses allege they ordered. Orders should be repeated, once transcribed, for verification purposes. Verification of an order by another nurse on a second telephone is helpful, especially if an order is questionable. Any questionable orders must be verified with the physician initiating the order. Physicians must countersign all orders. This should be a firm rule of the organization. Nurses who disagree with a physician's order should not carry out an obviously erroneous order. In addition, they should confirm the order with the prescribing physician and report to the supervisor any difficulty in resolving a

difference of opinion with the physician. A failure to perform the acts above can lead to nursing negligence on the part of the nurse.

Q. FAILURE TO RESTRAIN

Patients are highly susceptible to falling and the consequences of falling are generally more serious with older age groups. Among senior citizens, falls represent the fifth leading cause of death, and the mortality rate from falls increases significantly with age. For those aged 75 years and older, the mortality rate from falls is five times higher than for those in the 65- to 74-year age group, and the rate increases so that persons older than 80 years have eight times the chance of experiencing a fatal fall. A nurse's failure to perform the acts above can lead to nursing negligence on the part of the nurse.

R. FAILURE TO PREVENT PATIENT SUICIDE

Organizations have a duty to exercise reasonable care to protect suicidal patients against foreseeable harm to themselves. This duty exists whether the patient is voluntarily admitted or involuntarily committed. A nurse's failure to properly restrain a patient can lead to a nurse being held liable for nursing negligence.

S. FAILURE TO ADMINISTER MEDICATION

A failure by a nurse to administer medication which she is instructed to administer can lead to nursing negligence on the part of the nurse. In Kallenberg v. Beth Israel Hospital, 35 N.Y.2d 719 (N.Y. Ct. of App. 1974), a patient died after her third cerebral hemorrhage because of the failure of the physicians and staff to administer necessary medications. When the patient was admitted to the hospital, her physician determined that she should be given a specific drug to reduce her blood pressure and make her condition operable. For an unexplained reason, the drug was not administered. The patient's blood pressure rose, and after her third hemorrhage, she died. The jury found the hospital staff and physicians negligent in failing to administer the drug and ruled that the negligence had caused the patient's death.

T. FAILURE TO DISCONTINUE MEDICATION

A nurse can be held liable if she continues to inject a solution into a patient after noticing its ill effects. In the Florida case of Parrish v. Clark, 145 So. 848 (Fla. 1933), the court held that a nurse's continued injection of saline solution into an unconscious patient's breast after the nurse noticed ill effects constituted negligence. Thus, once something was observed to be wrong with the administration of the solution, a nurse has a duty to discontinue its use or else she can be held liable for nursing negligence.

U. FAILURE TO MONITOR AND ENSURE A PATIENT IS TAKING MEDICATIONS

A nurse normally has a duty to monitor and ensure that a patient is taking their medications. A failure to perform this act can lead to nursing negligence on the part of the nurse. The nurse in Hitch v. Ohio Department of Mental Health, 683 N.E.2d 38 (Ohio App. 1996), did not breach her duty to her patient when she failed to check to see whether the patient was taking his medication. The deceased suffered from a seizure disorder, an organic personality disorder and borderline intellectual functioning. He had a history of noncompliance with his medication regimen, particularly when he was in a nonstructured setting or when his regimen was undergoing some sort of change. The nurse devoted a significant part of each of her visits with the patient counseling him about his medication regimen; however, the patient ceased taking all medication and eventually died. The nurse testified that her patient trusted her, had come to understand the need to take his medication and had been 100 percent compliant in taking his medication. This evidence was able to persuade the jury to find that the nurse had not known that the patient had stopped taking his medications; if the jury were to find that the nurse had known that her patient had stopped taking his medications she would have been liable of nursing negligence.

III. CONCLUSION

This chapter details many of the areas in which nurses are more commonly sued for nursing negligence. Any task a nurse performs can leave her liable for committing nursing negligence if the specific elements of nursing negligence are met. When interacting with patients, a nurse must remember to always exercise the standard of care that other reasonably prudent nurses in the community would exercise.