

MALPRACTICE INSURANCE LECTURE

Malpractice Insurance provides three benefits:

1. In the event of an award of damages against a person, it pays any sum within the specified limits of the policy.
2. It pays the costs of the lawyer furnished to defend the person who is sued in a civil court for an alleged injury resulting from work performed or not performed.
3. It will pay for bond for the person in the event it is required during an appeal.

Not all lawsuits result in an award against the person, but “it can be expensive to prove one’s innocence.”

Students:

In cases arising from the negligent acts of students in a facility situation, the student has generally been considered an employee and the hospital, agency or, in this case, CTE training center, an employer liable under the master-servant rules. It is important for the student, as is true of other persons, to remember that s/he is personally liable for their own wrongs and negligent acts. The fact s/he is a student and may be a minor in regard to age does not exempt them from liability or responsibility for their actions. In cases which go to trial, the facts relating to a student admission, their experience record and their efficiency ratings may be presented in detail for consideration as to whether they acted like an ordinary, responsible, prudent student under the circumstances. Consequently, if a student knows that they are inadequately prepared for a particular assignment or duty, or needs additional supervision, they should inform that person responsible for their assignment and supervision of the matter.

Example: A patient who suffered injuries as a result of negligence by a student recovered damages from the school and the court said that a student in a clinical situation must be given reasonable guidance and supervision.

When students in the course of their clinical experience in facilities perform duties that are within the scope of nursing aides, these acts must be performed with the same degree of competence as if done by a Certified Nursing Assistant. In other words, the patient must not be subjected to a lower standard of nursing care because students are providing the care. If a student is negligent in the performance of their duties, the patient may bring a lawsuit for damages.

One reason the student needs their own liability policy (or is specifically named as an endorsement to an umbrella policy) is that they may be sued individually along with the instructor, agency or affiliating facility. Also, an individual named under a liability policy is protected if the party has to pay damages. The insurance company may seek subrogation (restitution) from the student.

Certification:

Unlicensed nursing personnel have been designated by State Statute to be certified enabling the State of Maine to vouch for those with certificates and prevent others who are not entitled to it from falsely claiming such sponsorship.

Instructor:

Instructors, whether in the classroom of a training center or in clinical areas of a health facility, are practicing nursing because they are getting compensated for their work while teaching or supervising students in nursing arts, which is considered the practice of professional nursing. (Title 32, § 2102: §§2(c)).

An instructor is also held liable for a student's practice by Statute (Title 32, §102, Chpt 31, sub-chpt 1. (F)). A student's performance is judged by the courts to be equal to that of the instructor for that duty or practice given the student.

It is pertinent to point out that an instructor is responsible for their assignments and for reasonable and prudent supervision of students. Accordingly, if the instructor assigned a student to perform duties for which the student had not been trained, or neglected or omitted supervising the student's performance to ascertain that s/he was competent, the instructor could be held liable. The inherent responsibility of the nurse who supervises aides, orderlies or attendants is a particular person and whether or not the person to whom the duty is delegated or assigned is competent only if personally supervised. An integral part of the clinical instructor's duty is to supervise the fitness and competency of students who give nursing care to patients and any negligence in failing to supervise in accordance with the standard of a reasonable and prudent clinical instructor is the basis of liability.

Examples:

- 1. Instructor trying to give good experience over and above what was taught in the classroom.*
- 2. A patient signaled for a nurse and asked the nurse's aide who came if s/he could go to the bathroom. The aide said s/het could go and handed the patient his/her slippers and housecoat. The unattended patient was seriously injured in a fall shortly thereafter and was allowed to recover damages.*
- 3. The stroke patient who suffered a broken leg while being turned by a nurse's aide in a hospital bed recovered substantial damages.*
- 4. Where a paramedical employee, pulling a good cart, collided with and injured a healthy 70-year-old plaintiff while s/he was legally on the hospital premises, use of the res ipsa loquitur doctrine placed an unfair burden on the defendants. A*

judgment for such plaintiff was reversed and the case sent back for a new trial. Nevertheless, it should be pointed out that paramedical and other hospital employees must exercise ordinary prudent, reasonable care not to injure patients, visitors and others in the hospital.

5. *In a case in which a doctor wrote an order “May dangle PRN” for a 67 year old woman who was paralyzed from the waist down and had no sensation in her legs and who was responding satisfactorily to treatment for decubitus ulcers and persistent fever, a nurse’s aide helped her to a dangle position on the side of the bed and left her sitting alone, contrary to the doctor’s orders. The patient recovered \$208,000 in damages when she fell and seriously injured a leg which after had to be amputated. The patient had asked for some writing paper and the nurse’s aide left the patient alone in order to fill the request. Aides, orderlies and attendants must be sufficiently informed of a patient’s condition, so as not to leave him/her alone when he/she needs assistance.*
6. *A patient who was in the hospital for rehabilitation due to weakness in his/her arm and leg was being pushed to lunch in a wheelchair, and, as the aide pushed the chair up to the table the aide turned it so that the patient’s arm, resting on the arm of the chair, was pinched against the table. Although no incident report was filed, the appellate court ruled that the patient’s testimony was sufficient to raise a prima facie case of simple negligence committed by the hospital aide in the course and scope of his/her employment.*
7. *A patient is awarded \$4000, where s/he was injured when an orderly dropped his/her leg, which was covered by a full-length cast. The patient’s physician was not notified until 24 hours later.*

CTE Training “Centers” – (Respondeat Superior):

As the employer and provider of education opportunities for students, the training center may protect its employees with a professional liability policy. However, the instructor should realize that in a number of instances s/he could carry out duties under the supervision of a physician, surgeon or agent of the facility, e.g. head nurse and could be considered temporarily as a special employee. (In this instance, the employee is personally liable to suit for his/her own negligence.)

Also, some insurance companies in providing umbrella policies for employee liability coverage include wordage that the policy only covers duties which the employee normally performs (according to a job description) and could exclude a particular act which leads to a patient’s harm because of negligence.

Remember: Consistent practice of the profession of nursing in a proper manner is the strongest safeguard against suits for damages.