Medical malpractice claims can be asserted against any healthcare provider, including nurses. Although there may be a perception that physicians are held responsible for the majority of lawsuits, the reality is that nurses are more frequently finding themselves defending the care they provide to patients. In fact, over $83 million was paid for malpractice claims involving nursing professionals, according to the most recent CNA HealthPro 5-year study*.

Case Study: Alleged failure to properly assess and monitor the impaired, restrained patient and failure to provide proper care in a safe environment

Indemnity Payment: $0.00  Legal Expenses: $500,000

No payment was made due to the successful defense of the claim.

Note: There were multiple co-defendants in this claim who are not discussed in this scenario. Monetary amounts represent only the payments made on behalf of the nurse. Any amounts paid on behalf of the co-defendants are not available. While there may have been errors/negligent acts on the part of other defendants, the case, comments, and recommendations are limited to the actions of the defendant; the nurse.

The patient (plaintiff) was brought to the emergency room where he was well-known to the emergency department staff. He was intoxicated, agitated and aggressive. His behaviors limited the nurse (defendant) and other emergency department staff from completing a comprehensive initial assessment. For the patient’s safety, four point physical restraints were ordered and the defendant nurse requested that security staff apply the restraints per hospital protocol. According to that protocol, the restraint procedure required that security staff also perform a check of the patient’s person for contraband.

The defendant nurse assigned the restrained patient to a quiet single room where there would be a less stimulating environment and where he could sleep and calm down sufficiently to undergo a more thorough admission assessment. The defendant nurse performed patient monitoring and assessment checks every 15 minutes as ordered, missing only one patient check in order to care for a critically ill patient. The missed check, along with the defendant nurse’s monitoring and assessment findings at each of the completed patient checks, were fully documented in the patient’s health information record.

Shortly after the defendant nurse performed a 15-minute check, during which the patient was observed to be resting more comfortably in four-point restraints, the patient attempted to burn off his restraints with a cigarette lighter, igniting his bed linens and clothing. In those few minutes, the patient suffered severe burns over 25 percent of his body including both hands and causing him to lose his fingers on one hand. His injuries required multiple surgeries and he was permanently disabled. The source of the cigarette lighter remains undetermined.

Resolution

Experts determined that the defendant nurse had acted within her scope of practice and in compliance with both the standard of care and hospital policy. Documentation supported the defendant nurse’s frequent checks of the patient and the reasons for the one missed check, which did not occur at the time of the fire. The fact that the defendant nurse did document the missed check provided additional credibility to her overall documentation. It was determined that the case would be taken to trial.

The case against the defendant nurse was defended successfully at trial, with the jury determining that the patient was responsible for his own injuries. The verdict was appealed on two very narrow legal issues, leading to a second trial and a second successful defense of the defendant nurse and all co-defendants.

continued…
The claim took 12 years and two trials to resolve, with total expenses of over $500,000. The patient suffered life changing injuries but they were not as a result of negligence on the part of the defendant nurse. While it might have been less expensive to settle the claim, the defendant nurse’s proper care of the patient and complete documentation of events made an aggressive defense possible and ultimately successful.

Risk Management Comments

Risk Management Recommendations

- Utilize patient physical restraint pursuant to practitioner orders, when clinically indicated to protect a patient from injury to themselves or others and document the clinical findings that resulted in the application of the restraint.

- Apply and monitor physical patient restraint as ordered, in accordance with patient needs and in compliance with state regulations, standards of practice and facility policy and protocol.

- Conduct contraband search in compliance with facility policy to ensure the safety of patients at risk of injuring themselves or others.

- Maintain restrained patients in a controlled environment to facilitate quiet, calm surroundings for the patient and to prevent contact with non-staff who may introduce contraband or unsafe items to the patient.

- Perform frequent monitoring and clinical assessment of restrained patients or those who are otherwise deemed unstable and/or at risk for injury to themselves or others in accordance with the patient’s condition, patient care orders, state regulations and facility policies and protocol.

- Document all patient monitoring, assessment and clinical findings.

- Document any variation in patient monitoring and assessment protocol and include the assessment findings upon resumption of the monitoring and clinical assessment protocol.

Guide to Sample Risk Management Plan

Risk Management is an integral part of a healthcare professional's standard business practice. Risk management activities include identifying and evaluating risks, followed by implementing the most advantageous methods of reducing or eliminating these risks— A good Risk Management Plan will help you perform these steps quickly and easily!

Visit www.nso.com/riskplan to access the Risk Management plan created by NSO and CNA. We encourage you to use this as a guide to develop your own risk management plan to meet the specific needs of your healthcare practice.


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