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NSO and CNA

## Nurses Medical Malpractice Case Study with Risk Management Strategies

### Case Study: Improper management of minor patient's tracheostomy tube and negligent changing of the tracheostomy tube resulting in severe hypoxia, neurologic injury with loss of vision, and cognitive skills.

**Settlement:** in excess of \$250,000

**Legal Expenses:** in excess of \$350,000

#### Summary

(This case discusses the actions of the insured licensed practical nurse, but there were multiple co-defendants in the action that also made confidential settlement payments.)

The one year old minor patient had a history of extreme prematurity and had been cared for in her home by her mother and, for sixteen hours daily, by nurses who provided ventilator care, tracheostomy care, tube feedings, and prescribed medications. The patient had experienced multiple hospitalizations for episodes of respiratory distress and difficulty in replacing the tracheostomy tube, with the most recent episode occurring one day prior to the event at issue.

The licensed practical nurse caring for the patient was trained and certified by her agency to care for infants and children with ventilator and tracheostomy needs and had cared for the patient three shifts a week for several months. According to her deposition, on the day of the event she noted the patient was on the ventilator and was alert but that she was restless and her color was poor. The pulse oximeter revealed an oxygen level of 93%. The nurse telephoned the patient's physician to discuss her concerns and was awaiting his return call. The nurse then administered the patient's tube feeding. Shortly thereafter, when changing the patient's diaper, the patient experienced significant respiratory distress. She suctioned the patient but several minutes later the patient experienced respiratory arrest. The nurse administered oxygen and suctioned the patient but without success. Given the emergency situation, she removed the patient's tracheostomy tube to be certain it was not plugged with secretions. The tube was patent, and she reinserted the tube and again suctioned the patient without success. She called 911 and initiated CPR. She estimated that the patient had been in distress for 30 minutes and without spontaneous respiration for approximately 15 minutes when the ambulance arrived.

Medical malpractice claims can be asserted against any healthcare provider, including nurses. In fact, over \$90 million was paid for malpractice claims involving nursing professionals, according to the most recent CNA HealthPro 5-year study\*.

This case study involves a licensed practical nurse working in the patient's home.



Attempts by emergency medical staff to intubate the patient in the ambulance were unsuccessful, and she was resuscitated by emergency department staff. She suffered severe hypoxic brain damage resulting in her loss of vision, lack of control over her body movements and significantly impaired cognition. Following prolonged hospital care she was determined to be in a permanent vegetative state as a result of the anoxia and was returned to her mother's home with 24 hour nursing care.

The patient's mother filed a lawsuit against the insured nurse alleging she had improperly attempted to change the tracheostomy tube without assistance (the policy of the nurse's employing agency required a second trained person to be available during tracheostomy tube changes), delayed contacting 911 emergency services and had failed to manage the patient's respiratory status. The lawsuit included multiple co-defendants. The demand was for \$5 million.

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## ▶ Resolution

Defense experts stated that the licensed practical nurse had breached her agency's policy of having a second trained person available during tracheostomy tube changes, but deemed her actions to have been warranted given the emergency created by the patient's respiratory arrest. There was criticism of the nurse for administering the tube feeding when the patient was in distress. Also noted was the nurse's failure to contact the 911 emergency services at the initial signs of respiratory distress rather than waiting until she had suctioned the patient and removed and replaced the tracheostomy tube. The decision was made to try to settle the matter on behalf of the licensed practical nurse. Following repeated defense attempts to achieve a reasonable settlement figure, the claim was resolved. Of interest is the fact that despite the plaintiff's expert's assertion that the patient had an expected lifespan of 13 years, the patient died at age three years and eight months.

## ▶ Risk Management Recommendations

Home care presents specific risks for nurses as they are in a non-clinical environment when providing patient care and are generally the sole healthcare provider present at the time of an adverse patient event.

- **Provide ongoing patient assessment and monitoring.**

- **Establish and maintain effective and ongoing communication with the patient's family and healthcare practitioners.** Keep them apprised of the patient's condition on a regular basis as well as when there is a change in the patient's condition or response to prescribed treatment and care.
- **Identify and timely act upon any change in the patient's condition.**
- **Understand that patient emergencies in the home will require immediate clinical decision making and action by the nurse as the healthcare provider responsible for the patient's safety and well-being.**
- **Contact emergency services at the first sign of patient distress.** Even if the patient's condition stabilizes and transport to the hospital is ultimately not required, emergency services personnel may provide additional patient assessment, monitoring and treatment to clarify the patient's condition and ensure their safety.
- **Document timely, complete and accurate results of patient assessments, monitoring, treatment and care rendered and the patient's response.**

## 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](http://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.



\*CNA HealthPro Nurse Professional Liability Exposures: 2016 Claim Report Update, CNA Insurance Company, October 2015. To read the complete study, visit [www.nso.com/nurseclaimreport2016](http://www.nso.com/nurseclaimreport2016).

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