Nurse Spotlight: Nurse Leadership Liability

Nurses Service Organization (NSO), in collaboration with CNA, has published our 4th Edition of the NSO/CNA *Nurse Liability Claim Report*. It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help nurses reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: www.nso.com/nurseclaimreport.

This Nurse Spotlight focuses the analysis and risk recommendations regarding one of the most significant topics in the report and for nursing professionals: **Nurse Leadership Liability**.

Nurse Leadership Liability

The majority of professional liability closed claims in prior CNA/NSO claim reports and in the *Nurse Professional Liability Exposure Claim Report: 4th Edition* ("2020 claim report") involved nurses performing direct patient care. However, in each report, we also examined professional liability closed claims that involved nurses working in leadership roles. For this analysis, nurses in leadership roles, or "nurse leaders", include charge nurses, nurse managers, directors of nursing (DONs) and chief nursing officers.

Unique liability concerns are associated with nurses providing direct patient care and nurses in leadership roles (nurse leaders). Nurse Leaders have a duty to orient, educate, and evaluate staff, ensuring nurses are performing safe and competent care. Allegations asserted against nurse leaders may include negligent hiring practices, failure to train staff or organize professional development, and failure to properly assign, delegate and supervise staff within acceptable standards of professional nursing practice (Yoder-Wise, 2015, pp. 76-78). While not as frequent as individually insured nurses providing direct patient care, professional liability closed claims were identified in the 2020 claim report in which the nurse in a leadership role was personally named in a lawsuit, although the nurse leader did not provide direct patient care or services to the patient. These claims are based upon the assumption that the nurse leader was responsible for the actions of the members of the nursing care staff and for the care of each patient within the organization.

A professional liability claim may be asserted against a nurse leader based upon the legal theories of corporate liability and/or vicarious liability, otherwise known as *respondeat superior* (which means "let the master answer"). Vicarious liability makes employers and supervisors accountable for the negligence of their employees within the scope and course of their employment. For example, an employed nurse performing direct patient care would not have been in the position to have caused the wrongdoing unless hired by the employer. Corporate liability holds the institution responsible for maintaining an environment that ensures quality healthcare delivery for consumers (Yoder-Wise, 2015, p. 75). Therefore, any nurse, directly or indirectly involved in the patient's care, may be included in a professional liability claim if a patient's injury is related to the action or inaction of a nurse (i.e., treating nurse, nurse supervisor/manager, charge nurse and/or nurse leader).

In the CNA/NSO analysis, the allegations brought against nurse leaders were related to management or administrative responsibilities, such as hiring and educating staff, as well as **making patient care assignments** and **delegating nursing care**. Closed claims against nurses in leadership roles where the injuries were alleged to have occurred as a result of direct patient care provided by the nurse leader were not included in this analysis.

The following claim scenario illustrates a liability risk associated with a Director of Nursing's (DON's) negligent hiring and substandard human resource practices by failing to screen job applicants or enforce protocols which may lead to a patient injury:

A 42-year-old female was a resident at an aging services facility due to injuries sustained during an automobile accident. A male licensed practical nurse (LPN) was assigned to the patient on six occasions over three months. A few weeks after the assignment, the resident left the facility and filed a complaint with the local police, asserting sexual battery and inappropriate touching by the LPN. The LPN continued to work at the facility until his license was suspended by the state, at which time his employment was terminated.

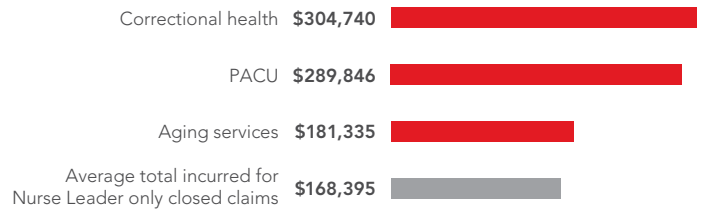
One year after filing the complaint, the patient sued the aging service facility, the DON and the administrator, alleging negligent hiring and improper supervision. Discovery revealed that although the DON knew of similar accusations made against the LPN while employed by another facility, she was personally convinced of the nurse's innocence, and had failed to perform adequate background checks prior to hiring. The administrator and other staff members testified that they had never witnessed any inappropriate behavior by the employee. However, they observed that he routinely closed treatment room doors when treating female patients, despite being told that facility policy required him to leave the doors open. A settlement was eventually reached on behalf of the insured DON. The indemnity and expenses totaled over $160,000.

Figure 1 displays that the average total incurred of closed claims against nurses in leadership roles is $168,395. This average total incurred is lower than the 2020 dataset's overall average total incurred of $210,513. These closed claims occurred in a variety of locations, but the majority occurred at either an aging services facility or a patient's home, as displayed in **Figure 2**.

1 Average Total Incurred of Nurses in Leadership Roles Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

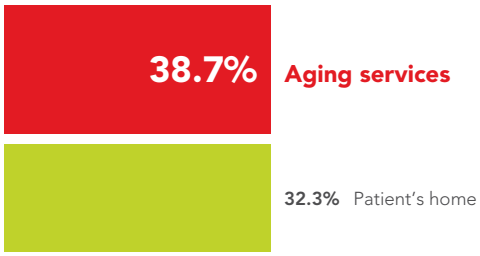
This figure highlights only those nurse leader closed claims by specialty with the highest average total incurred



2 Distribution of Nurses in Leadership Roles Closed Claims by Location

Closed Claims with Paid Indemnity of ≥ $10,000

This figure highlights only those nurse leader closed claims by location with the highest distribution.



Competencies, Roles and Responsibilities of Nurse Leaders

Competencies. According to the American Nurses Association (ANA), leadership is a significant competency of the nursing standards of professional performance *(ANA Nursing Scope and Standards of Practice 4rd Edition, 2021).*

The *ANA Standards of Professional Practice* describe a competent level of behavior in the professional role appropriate to their education and position *(ANA Nursing Scope and Standards of Practice 4rd Edition, 2021).* The competencies of a nurse leader include the following:

- **Contributes** to the establishment of an environment that supports and maintains, respect, trust and dignity.
- **Encourages** innovation in practice and role performance to attain personal and professional plans, goals and vision.
- **Communicates** to manage change and address conflict.
- **Mentors** colleagues for the advancement of nursing practice and the profession to enhance safe, quality health care.
- **Retains** accountability for delegated nursing care.
- **Contributes** to the evolution of the profession through participation in professional organizations.
- **Influences** policy to promote health. *(ANA Standards of Practice, Standard 11. Quality of Practice).*

Roles and Responsibilities. Nurse leaders should understand how their role and responsibilities impacts patient care. As a leader in healthcare, nurse leaders should promote quality patient care all while influencing, leading, and delegating to nursing staff.

Over the last several decades, the scope of job responsibilities and workload required by nurses in leadership roles have incrementally expanded and increased, and this trend has continued during the course of the COVID-19 pandemic. In fact, in a 2020 survey, 77 percent of nurse leaders reported an increase in workload when compared to past years (Spader, 2020, p. 20). Compared to prior versions of the survey, 60 percent of survey respondents in 2019 reported their workload had increased and 58 percent reported the same in the 2018 survey (Spader, 2020, p. 20).

Nurse leaders bear considerable responsibility and authority to create and maintain a culture of safety and quality throughout the organization (The Joint Commission, 2017, Sentinel Event Alert 57, available here). But even prior to the COVID-19 pandemic, the role of nurse leaders had expanded to also include responsibility for budgets/finances, staffing, patient clinical and satisfaction

outcomes, while simultaneously working to provide a safe, engaging, positive work environment for the staff. Creating and maintaining a culture of safety and quality in concert with managing the fiduciary responsibility of an organization can lead to difficult and often conflicting priorities, expectations, and decisions.

Nurse leaders are expected to foster relationships with various interdisciplinary teams throughout their practice setting, yet they often are not authorized to make decisions affecting the operations in their areas. This imbalance can undermine their authority, leading to dissatisfaction with the work (Nelson, K., E. 2017, p. 406). The collective personal, psychological and professional stressors of consistently attempting to reconcile conflicts over time can lead to cynicism, inefficacy and chronic job stress with eventual overload and burnout.

Balancing Leadership Responsibilities

In the analysis of closed claims involving nurse leaders, there was evidence that many of the insured nurse leaders involved in these claims were suffering from chronic job stress, work overload and burnout around the time the adverse event. Nurse leaders should feel empowered to take steps to prevent work overload and burnout. Work satisfaction and job retention of nurse leaders is vital for the success of the organization and ultimately contribute to increased staff engagement and better patient outcomes (Nelson, 2017, p. 407). Nelson reports multiple factors contributing to the work overload and burnout of nurse leaders, including:

- A high span of control (the number of individuals that directly report to a nurse leader);
- Role conflict (hiring the most experienced and qualified staff while managing the fiduciary responsibility of an organization); and
- Scope creep (the scope of the nurse leader's role to manage departments or staff that were once traditionally outside the nursing realm).

Organizational leaders should understand that staff turnover, burnout, and stress can lead to increased clinical errors, lapses in care, and exposure to liability lawsuits. This may also result in reduced patient satisfaction as well as reputational risk in the community your facility serves. Therefore, organizational leaders should take measures to ensure that nursing leaders have a balanced workload responsibility, as well as a work/life balance. For more on clinical burnout and strategies to prevent burnout, see CNA's Vantage Point publication entitled, "Provider Burnout: A Root Cause Approach to Reducing Stress".

Nurse Spotlights

For risk control strategies related to:

- Defending Your License
- Documentation
- Communication
- Home Care
- Medication Administration
- Depositions

Visit nso.com/nurseclaimreport

Self-assessment Checklist for Nurse Leaders

This resource is designed to help nurse leaders evaluate the professional liability exposures associated with management or administrative responsibilities, such as hiring and educating staff, as well as making patient care assignments and delegating nursing care. For additional risk control tools and information see **www.nso.com**.

RISK CONTROL MEASURES

A. Professional Leadership	Yes/No	Comments/Action Plans
Nursing policies and procedures are patient-centered and written to reflect current professional nursing standards of practice.		
Nursing policies and procedures are reviewed and updated on an annual basis.		
Licensures, qualifications, and competencies for nursing staff are reviewed annually.		
Nursing staff serve as the patient's advocate in ensuring patient safety and the quality of care delivered.		
Nursing staff are required to review, and acknowledge their review, of nursing policies and procedures. Although this may vary by facility, review may be required upon hire, annually, when policies and procedures are updated or modified, and as new policies and procedures are implemented. Acknowledgements are retained in the employee education files.		
Nursing supervisors/managers/directors are aware of how their leadership style can have a positive or negative influence on the quality of clinical nursing care. Any opportunity needed for improvement is communicated appropriately.		
An open and direct line of communication culture between leaders and staff has been created and cultivated.		
Nursing supervisors/managers/directors monitor the needs of their staff and anticipate nursing or patient care problems before they arise.		
The roles and responsibilities of the nursing staff are clearly documented and articulated during staff meetings, performance reviews and as needed. *This includes the obligation of:* – Serving as patient care advocate. – Invoking the clinical chain of command, when necessary. – Notifying leadership of situations that may result in a risk event or patient injury.		
Communicate effectively in all areas of practice. Effective communication can facilitate change and address conflict.		
B. Hiring	**Yes/No**	**Comments/Action Plans**
Staff use behavior-based questions in hiring interviews to determine whether candidates possess the requisite integrity, decision-making ability and communication skills, as well as a caring and respectful manner.		
A thorough pre-employment screening process is consistently utilized and includes the following elements, among others: – Verification and documentation of references and licensure. – Review of Office of Inspector General and sex abuse registries/employee disqualification lists. – Criminal background investigation, encompassing all states where the applicant has lived or worked. – Review of Office of Inspector General and sex abuse registries/		

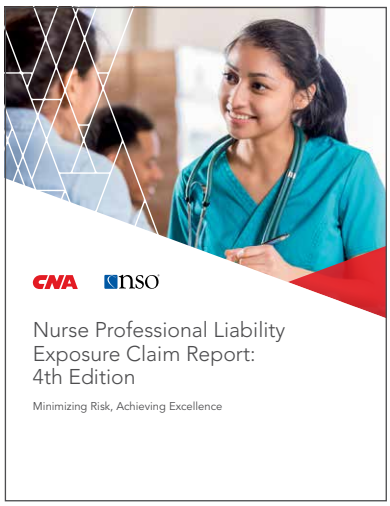
B. Hiring	Yes/No	Comments/Action Plans
employee disqualification lists. – Check of credit history, if relevant and legally permissible in the jurisdiction. – Drug screen, once a job offer has been made.		
On at least an annual basis, review employee files and keep them organized to ensure that required documents and records are current and accessible, as necessary.		
Employee files, whether electronic or paper, are secured to protect privacy.		
Employee files are continually updated, and include the following documents: – Pre-employment screening documents (e.g., criminal background check, drug screen results, reference verifications). – Required employment documents completed by the employee (e.g., application, tax forms, contracts). – Current professional licensure/certification. – Position-specific skill certifications (e.g., CPR, ACLS, fetal monitoring). – Job description, signed by employee and supervisor. – Copy of photo identification card. – Emergency contacts. – Confidentiality statement, signed by employee. – Signed form indicating that the employee has read, understood and accepted the terms of employment as described in the employee handbook. – General orientation documentation, with a signed acknowledgement of completion by the employee and a human resources representative. – Department orientation documentation, with a signed acknowledgement of completion by the employee and his/her supervisor. – Performance evaluations, signed by the employee and his/her supervisor. – Professional liability claims history, if applicable, including a list of both pending and closed claims. – Reports of disciplinary licensing board actions, if any.		
Ensure that employment policies are clearly conveyed to new staff members during the orientation process and are routinely reviewed thereafter. Issues to discuss include the following, among others: – Compensation, benefits, hours of operation, paid time off, holidays, and personal and professional leave. – Code of conduct. – Acceptable business and professional practices. – Occupational health and safety issues. – Disciplinary measures and warnings. – Absenteeism and tardiness. – Dress code. – Rules governing conflicts of interest, workplace solicitation, outside employment and whistleblower protection. – Smoking bans, drug testing and recreational drug and alcohol use policies. – Cell phone, Internet, email and social media rules. – Concealed weapons ban. – Harassment definition and prohibition. – Equal opportunity and diversity policies. – Contract worker rules and regulations.		
Performance appraisals are conducted annually, with results acknowledged in writing by the supervisor and employee.		

A "credentialling system" is established to manage due dates for appraisals and licensure recertification.		
Exit interviews take place whenever staff members voluntarily end their employment.		
C. Balancing Leadership Responsibilities **I continue to find my role as a nurse leader is meaningful.**		
My organization provides opportunities for me to develop and grow effective leadership competencies.	**Yes/No**	**Comments/Action Plans**
I make wellness a priority by combating the effects of stress through an ongoing commitment to a healthy diet, frequent hydration, regular daily breaks and vacations, and sufficient sleep, generally seven to nine hours per night. Also, limiting alcohol and nicotine intake helps maintain energy levels and mental focus.		
I manage stress proactively by participation in relaxing activities – such as sports, hiking, gardening, craft work, recreational reading and music making. These activities can be helpful in reducing anxiety and frustration, as well as lowering blood pressure, heart rate and muscle tension. In addition, online workout videos, workplace quiet spaces and mindfulness activities – including meditation, yoga and prayer – can help neutralize environmental and interpersonal stress factors.		
I developed or participate in a support network. Isolation intensifies feelings of anxiety, depression and emotional detachment. By reaching out to colleagues, healthcare professionals can share their concerns with sympathetic listeners, identify common issues and explore possible solutions. If social distancing requirements or long shifts make in-person interaction difficult, consider organizing regular discussion groups on online meeting platforms.		
I practice time management skills. By taking classes in organizing time, setting priorities and enhancing efficiency, busy healthcare professionals can obtain more control over their schedule and reduce the feeling of being overwhelmed by urgent, complex and/or overlapping workplace demands.		
I seek professional counseling, if necessary. When stress reaches the crisis point, seek help promptly from mental health professionals through dedicated telephone support lines, teleconferencing tools and/or organizational crisis management counselors. Chronic and/or excessive anger, reckless behavior, increased substance use and feelings of hopelessness are among the indicators of a stress level or emotional state requiring immediate intervention.		
As a nurse leader, I am an advocate for a healthier work environment. Consider organizing and participating in forums on the topic of workplace stress and clinical burnout. Ongoing two-way communication can lead to improved management-staff relations and help educate leaders about the need to periodically reassess staffing, scheduling and break policies, among other staff-related concerns.		

Resources

American Nurses Association. (2021). *Nursing Scope and Standards of Practice* (4rd Ed.). Silver Spring, MD: ANA.
Nelson, K. E. (2017), Nurse manager perception of work overload and strategies to address it. *Nurse Leader*, 15(6), 406-408. Retrieved from doi:httsp://doi.org/10.1016/j.,nl.2017.09.009
Spader, C. (2020). 2020 nursing trends and salary survey results. *American Nurse Journal*, 15, 17-22.ISSN 1930-5583.
Yoder-Wise, P. S. (2015). *Leading and managing in nursing* (6th Ed.). St. Louis, MO: Mosby.
Gullatte, M. (2018). *21st Century Nursing Leadership.*
Perlo J, Balik B, Swensen S, Kabcenell A, Landsman J, Feeley D. (2017). *IHI Framework for Improving Joy in Work.* IHI White Paper. Cambridge, Massachusetts.

This information is designed to help nurses evaluate risk control exposures associated with their current practice. It is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.



This information was excerpted from NSO and CNA's full report, *Nurse Professional Liability Exposure Claim Report: 4th Edition*. www.nso.com/nurseclaimreport

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In addition to this publication, CNA and Nurses Service Organization (NSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to nurses, as well as information relating to nurse insurance, at www.nso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com. The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situation. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporation subsidiaries use the "CNA" trademark in connection with insurance underwriting and claims activities.

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F-14423-0722