

# Liability and the Certified Nursing Assistant / Nursing Aide

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As you know, your role of a certified nursing assistant / nursing aide (CNA) is an important and essential one in the delivery of health care to patients. Your role involves many duties, the top five listed as feeding, bathing and dressing patients; taking patient vital signs; serving meals, making beds and keeping patient rooms clean; setting up medical equipment and assisting with some medical procedures (based on state law); and answering calls when patients need help and observing changes in the patient's condition or behavior.<sup>1</sup>

As is the requirement for all health care providers, your duties must be performed in a legal and ethical manner. When your conduct violates a law or an ethical principle, liability for you can occur. Your liability can be *civil* alleging negligence when caring for a patient, *criminal*, and/or the loss of your CNA certification/license.

Negligence allegations are one of the more common allegations against CNAs. Reported examples of negligence by CNAs include giving a patient a bath and not checking the water temperature first and the patient is burned.<sup>2</sup> Or, transferring a patient alone from his bed to a wheelchair rather than with two other staff members pursuant to the patient's care plan, and the patient falls and is injured.<sup>3</sup> In one more instance, another patient's food tray is not checked to see if it is the correct tray and the patient who receives the wrong tray chokes on the food because it is not a pureed diet as ordered.<sup>4</sup>

Assault and battery allegations are also common allegations against CNAs as well. Assault occurs when you put the patient in reasonable fear or apprehension of an immediate touching, or the threat or use of force to touch the patient.<sup>5</sup> A battery, in contrast, is when you intentionally and offensively touch the patient without his or her informed consent.<sup>6</sup> Reported examples include slapping, shaking or pinching<sup>7</sup> a patient or using unnecessary force when handling a patient in any way.<sup>8</sup>

Assault and battery allegations by CNAs often result in criminal liability as well. In one reported case, a CNA working in a New York facility was arrested for slapping an elderly dementia patient in the face. She was arrested for Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree, a class E Felony. The CNA faces 4 years in prison if convicted.<sup>9</sup>

Abuse allegations are another frequent accusation against CNAs. The abuse can be verbal (e.g., calling the patient names), physical, emotional (e.g., making fun of the patient), or sexual (e.g. rape<sup>10</sup>).

Neglect of a patient often is coupled with abuse. Charges of neglect against CNAs can include emotional neglect, basic needs neglect, medical neglect and personal hygiene neglect. Signs of neglect include pressure sores, malnutrition, withdrawn behavior, and sudden weight loss.<sup>11</sup>

These are just a few of the potential ethical and legal pitfalls that befall you if you breach your duties to your patients. They can be easily avoided by carefully carrying out your roles and using your judgment concerning patient care wisely. Some other risk management principles to utilize in your practice include:

1. Always think before you act;
2. Practice in accordance with your scope of practice and seek input from an RN, LPN, or APN if you have a question about a patient's care or condition;
3. Know and adhere to your facility's policies and procedures as they pertain to your role;
4. Be kind and humane to all patients;
5. When performing patient care that requires touching the patient, inform the patient what you are going to do and be certain the patient understands what you are going to do;
6. If a patient refuses your care, do not force or threaten the patient. Report the refusal to your nurse supervisor quickly and without shaming or accusing the patient;
7. Carry out all of your patient care responsibilities. If you cannot do so for whatever reason, report this to your nurse supervisor;
8. If you observe another CNA acting in an unprofessional manner towards a patient or patients, report that observation confidentially to your nurse supervisor;
9. Keep current with practice issues;
10. Attend CE and update courses for CNAs; and
11. If legal or ethical violations are alleged against you, notify your professional liability insurance agent so that you can be assigned an attorney to represent you. If you do not have professional liability insurance, retain a nurse attorney or attorney to represent you.

Future bulletins will present more details about legal cases involving CNAs.

## FOOTNOTES

1. "Top 5 Duties Of A Certified Nursing Assistant (CNA)".

Available at: <http://www.allalliedhealthschools.com/duties-of-certified-nursing-assistant/>. Accessed 2/13/15.

2. CNAs Empowering CNAs (2012). "Legal Issues For CNAs" by Patti, 1-8. Available at: <http://nurseassistantresources.blogspot.com/2006/02/legal-issues-for-cnas.html> . Accessed 2/13/15.

3. Id ., at 2.

4. Id .

5. Brian A Garner, Editor (2004). Black's Law Dictionary.

West Publishing, 122.

6. Id. , at 162.

7. Gallivan & Gallivan (2014), "Nursing Aide Loses Certification License After Pinching Patient's Breast", 2-3. Physical Abuse Of Elderly Archives: New York Nursing Home Abuse Lawyer Blog. Available at: <http://www.newyorknursinghomeabuselawyerblog.com/physical-abuse-of-elderly> . Accessed 2/12/15;

Perkins & Paul, PA (2015). Nursing Home Abuse Guide. Available at: <http://www.nursinghomeabuseguide.com> . Accessed

2/12/15.

8. "Legal Issues For CNAs", *supra* note 2, at 4.

9. Gallivan & Gallivan, *supra* note 7, at 1-2.

10. Id., at 5.

11. Perkins & Paul, *supra* note 7.

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