

# Professional Negligence: A Brief Primer

written by Nancy Brent | November 1, 2011

## **Avoiding Liability Bulletin - November 1, 2011**

The first Bulletin covered the topic of liability and briefly discussed a nurse licensee's potential involvement in several types of lawsuits, including professional negligence. A closer look at the cause of action of professional negligence is important.

Negligence and professional negligence (that is, negligence involving a nurse, lawyer, or physician, as examples) are included in the category of tort laws. A tort is a civil wrong for which damages can be obtained (1). Negligence has been described as a breach of a duty that the law imposes to protect another from an unreasonable and foreseeable risk of harm (2).

The law imposes a standard of "due care" towards others in your everyday life. That translates into what other ordinary, reasonable and prudent people would do in the same or similar circumstances in the same or similar community (2). In a given situation, if your conduct conforms to that standard in a negligence case when you are a defendant in a lawsuit, a verdict would be in your favor. If your conduct did not conform to that standard, a verdict against you would be rendered.

As a nurse, these same principles of negligence apply to your professional role. You have a duty to protect your patients from unreasonable and foreseeable risks of harm. As was stated in the first Bulletin, your standard of care is what other ordinary, reasonable and prudent nurses would do in the same or similar circumstances in the same or similar community. The "similar" community part of the standard is really a national standard. In other words, the nurse expert who testifies on your behalf as a defendant, or the nurse expert who testifies on behalf of the patient who filed the suit, will be testifying as to standards of care applicable across the county, not just in your city or town.

Because of this national standard, the nurse expert you use at trial, or the nurse expert of the patient's (plaintiff), may come from anywhere in the United States. A nurse expert is defined in state statutes that spell out the requirements for the individual to be declared a nurse expert at trial. Such statutes list educational qualifications, length of time in the actual practice or teaching of nursing, and other requirements. The role of the nurse expert is to educate the jury and provide an opinion as to whether the standard of care was met by the nurse defendant in the case before the court.

There are four essential elements, each of which must exist and each of which must be proven by the injured person, for a lawsuit alleging negligence to be successful against a defendant:

- a duty must exist between the person who allegedly caused the injury (you as a nurse) and the injured person (the patient);
- a breach of the duty occurs;

- the breach of the duty is the proximate cause (or legal cause) of injury to the victim; and
- damages or injuries or both are suffered that the law recognizes as compensable. (3).

In a professional negligence case against you as a nurse, the first element of negligence—a duty exists between you and the patient—is perhaps the easiest to prove. If you are working a particular shift and you are assigned patients, you owe a duty to provide non-negligent care to those patients and protect them from unreasonable and foreseeable risks of harm.

The patient's lawyer may also be able to prove that you breached your duty or duties of care to the patient. As an example, you may administer a wrong medication to a patient (you had a duty to administer the right medication non-negligently).

What may become more difficult is proving the third essential element—that the breach was the legal cause of injury to your patient. A breach of your duty took place, but if the wrongly administered medication is proven not to be the legal cause of the death of the patient, then this essential element cannot be met or proven. Therefore, a verdict in your favor occurs.

Another key principle in the law of negligence is that you does not have to intend or want to cause injury or damages to another. Rather, the key is that because the risk of injury or death is foreseeable, you have a duty to identify the risk(s) and protect another person from those risks (4).

Many cases have been filed across the country against RNs, LPNs and LVNs alleging negligence. Some have resulted in verdicts for the nurse defendant and some have not. To see how the courts have utilized the principles discussed in this Bulletin, an interesting article that studied cases from 1995-2001 involving nurses, including nursing practice areas most frequently involved in negligence cases, is Eileen Croke's "Nurses, Negligence and Malpractice" (5). Give it a read. The article will be a good foundation for you to begin to understand professional negligence in nursing and how the cause of action is managed in the civil courts.

## **REFERENCES**

1. Bryan Garner (Editor) (2001). Black's Law Dictionary. 2nd Pocket Edition. St. Paul, MN: West, 712-713.
2. Id., 470-471.
3. Dan Dobbs (2001). The Law Of Torts. St. Paul, MN: West, 269-280.
4. Id.
5. 103(9) American Journal Of Nursing (2003), 54. Available at:

[http://www.nursingcenter.com/library/journalarticle.asp?article\\_id=423284](http://www.nursingcenter.com/library/journalarticle.asp?article_id=423284). Accessed October 19, 2011.

***THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.***