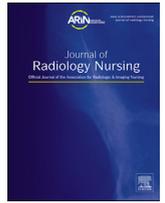




Contents lists available at ScienceDirect

Journal of Radiology Nursing

journal homepage: www.sciencedirect.com/journal/journal-of-radiology-nursing



Legal Awareness

Do All Nurses Need Malpractice Insurance?



Shawna Butler, DNP, JD, RN, CPHRM *

Massachusetts General Hospital, University of Massachusetts, Boston, MA

Yes, all nurses need their own insurance. There are a few schools of thought on whether nurses need malpractice insurance. Malpractice insurance companies typically provide coverage for an attorney for the nurse to represent that nurse's interests when a claim or lawsuit arises. Some nurses may believe that they are not likely to get sued. Some believe this is a more physician-related event (Pohlman, 2015). Although our physician counterparts do bear the brunt of medical malpractice liability, this is factually inaccurate (Pohlman, 2015). Nurses do get sued and are being named in lawsuits regularly (Pohlman, 2015).

Another mindset that has been perpetrated is that nurses with liability insurance are more likely to be sued because the plaintiff knows they are covered. There has been no evidence to support this. When a claim is initiated, or a suit is filed, the status of one's liability insurance is not typically known. This information is found during the discovery phase of a lawsuit (a phase farther along after filing and responses by opposing parties has been completed) (Pohlman, 2015).

One other popular misconception is that nurses are covered by their employers and that this alone is suitable enough coverage. Although this may be true in some circumstances, it is possible that a nurse could wind up in a situation that leaves them without coverage unexpectedly if they solely rely on employer coverage (Pohlman, 2015). Employer coverage varies greatly from institution to institution and from one type of insurance policy to another. Most nurses do not understand the consequences of differing types of coverage. The employer coverage may ultimately still benefit the nurse, but having additional coverage allows for more peace of mind in case the circumstances are those that fall outside the policy of the employer coverage. If using employer coverage, the nurse will usually not have a choice in who represents them (Pohlman, 2015). The attorney is typically assigned to them based on the employer policy (Pohlman, 2015). In a policy purchased individually, nurses can often select their own attorney and the attorney can get reimbursed by the insurer. Some also report that the employer's interest takes precedent over the individual nurse's when a dispute arises and there is employer only coverage. Some report that this could lead to the nurse's interest not being fully protected. Keep in mind that an

attorney takes an oath to zealously advocate for their client, so if they are assigned to you, their duty lies with you and not the employer, but still this can sometimes make nurses uncomfortable.

Health care and nursing practice are incredibly complex today, and many well-meaning nurses may find themselves in an unexpected legal dispute. Having personal coverage (whether solely or in addition to employer coverage) will benefit the nurse should he/she find themselves in one of these situations. The most diligent and competent nurse may end up in a legal case.

As mentioned previously, physicians may be more likely to be named in a lawsuit, but it is important to keep in mind that nurses can have a formal complaint made against their nursing license with their State Board of Nursing (or even possibly more than 1 state if additionally licensed in more than 1 state) even if they are not named in a lawsuit (Pohlman, 2015). These may be about allegations of professional misconduct. Some liability insurance companies that nurses use for personal protection (not employer based) will also provide coverage to the nurse with legal representation for these board complaints (and not only lawsuit coverage). The assigned attorney will represent the covered nurse's interests in this board complaint. This is important to keep in mind as we want all our interests protected. Employers themselves (and not just patients or families) may report their own nurses to the local board. Employer-based coverage may or may not cover board complaints. This is necessary to inquire about at your workplace. The Nurses Service Organization (2018) reports that there are 10 to 30 more licensing complaints than malpractice. It is important to understand that a Board of Nursing is a public advocacy board and not a nursing advocacy board. The board view their role as protecting the public from nurses who should not be practicing or should possibly have limitations on their practice.

Although all nurses regardless of how vigilant and careful they are in their practice may be involved in a lawsuit or board complaint, something to also consider is that you may be at more risk if you are in a specialty area. For example, obstetrics and emergency nursing would be considered high-risk specialties vulnerable for potential legal issues just by the nature of the work (Nurses Service Organization (2015)). Those who work in interventional radiology may also be at risk being that procedural areas lend themselves to high-risk patients and therefore, in turn, are at risk for legal disputes if complications arise.

It can be alarming to hear all the potential negative consequences that may occur because you have chosen the career of

The author discloses no conflicts of interest.

* Corresponding author. Shawna Butler, Massachusetts General Hospital, University of Massachusetts, Boston, Massachusetts.

E-mail address: smbutler@partners.org.

nursing, but you can use this information to arm yourselves with the knowledge of how to protect yourselves and your colleagues. Even when we do our best and always put our patients' best interests first, we can find ourselves in some challenging situations. There are things nurses can do to protect themselves.

What can nurses do to protect themselves?

- 1) Obtain personal coverage (may purchase on the free market, one example is Nurses Service Organization: <https://www.nso.com/>) [Nurses Service Organization (2018)].
- 2) Abide by institutional policies and procedures and job description/scope of practice.
- 3) Know employer coverage (know coverage limits and coverage types; claims made cover you for a given specific period and must be active when it is made, or occurrence made covers for a specific period, but even if it has lapsed, it will cover you during the period) (Pohlman, 2015).

- 4) Know your local nurse practice act (for each state you are licensed in): Go to <https://www.ncsbn.org/npa.htm> (link to National Council of State Boards of Nursing that can direct you to your own state/s) (National Council of State Boards of Nursing, 2019).
- 5) Always act in the best interest of the patient standard.

References

- National Council of State Boards of Nursing. (2019) Find your nurse practice act. Retrieved from <https://www.ncsbn.org/npa.htm>.
- Nurses Service Organization. (2018). Retrieved from <https://www.nso.com/>.
- Nurses Service Organization. (2015) Nurse professional liability exposures: 2015 claim report update. Retrieved from <https://aonaffinity.blob.core.windows.net/affinitytemplate-prod/media/nso/images/documents/cna-nurse-claim-report-101615.pdf>.
- Pohlman, K.J. (2015) Why you need your own malpractice insurance? *American Nurse Today*, 10(11). Retrieved from <https://www.americannursetoday.com/need-malpractice-insuran6ce/>.