



Legal Risks In Nursing

Legal Risks In Nursing



How Can A Nurse Become Involved in Legal Proceedings?

- **Defendant**
 - **Civil Liability – Negligence and Malpractice Lawsuits**
 - **Professional Discipline**

- **Accused**
 - **Criminal Prosecution**

- **Witness**

- **Grievor**

Legal Risks In Nursing



1. Defendant - Civil Liability

- allegation of negligence if named as a defendant in a medical malpractice lawsuit, a type of civil lawsuit
- negligence: failure to take the care that a reasonable nurse in similar circumstances would have taken
- Elements to be proven by plaintiff(s):
 - Duty of Care
 - Breach of the standard of care
 - Foreseeable harm was caused by a breach in the standard of care
 - Damages
- Possible Defences available in negligent cases:
 - Actions were those of a reasonable and prudent nurse in the circumstances
 - Error in judgement
 - Actions of other defendants
 - Contributory Negligence
 - Limitation Periods
- Who pays if a nurse is found negligent?

Legal Risks In Nursing



1. Defendant – Professional Discipline

- Nursing licensing bodies, such as CNO, must ensure that their members are competent
- failure to comply with minimum standards of practice may result in a written complaint to the nurse's licensing body
- standard discipline process is then followed by the licensing body
- may involve investigator, complaints committee, and for more serious cases, a hearing in front of a discipline committee
- because of the potential impact on a nurse's practice, nurses are recommended to have legal representation from the outset
- Employer may not provide legal representation to defend complaints
- Assess what protection is available to you

Legal Risks In Nursing



2. Accused – Criminal Prosecution

- Nurse may be reported to the police for suspected criminal conduct
- Charge may be laid pursuant to the provisions of the Criminal Code
- Examples of criminal charges include:
 - Theft of narcotics
 - Theft of patient or institutional property
 - Assisted suicide
 - Criminal negligence
 - Threatening or inflicting bodily harm
 - Sexual Assault
- Consult a criminal lawyer before answering any questions or providing any statements

Legal Risks In Nursing



3. Witness

- As a professional, a nurse may be required to appear as a witness for:
 - Employment related matters
 - Coroners' inquests or fatality inquiries
 - Child welfare proceedings
 - Professional discipline proceedings before a regulatory body
 - Civil lawsuits
 - Criminal Proceedings
- Can be on a voluntary basis or you may be formally summoned
- Good idea to prepare yourself before giving testimony
- Who pays for expenses?

Legal Risks In Nursing



4. Grievor

- Most grievances relate to such employment issues as:
 - Harassment
 - Compensation
 - Layoff
 - Discipline

- Grievance process

- Mediation/Arbitration

Legal Risks In Nursing



SPECIAL NOTATION:

- **Resources utilized for presentation content:**
 - CNPS
 - infoLaws
 - RNAO

- **This is for information purposes only. Nothing in this presentation should be construed as legal advice from any lawyer, contributor, or from MAGNES. Readers should consult legal counsel for specific advice.**

- **For additional information, please contact:**
Roberta Tasson, BA, CIP
Vice President, Corporate Risk
The Magnes Group Inc.
905-845-9793 ext.349
1-800-650-3435 ext.349
www.magnesgroup.com