

CHAPTER 37

LEGAL RESPONSIBILITIES OF NURSE SUPERVISORS

I. INTRODUCTION

Although a nursing supervisor is liable for her own negligent acts, the employer is liable for the negligent acts of all employees, including nursing supervisors. Supervisors are not generally liable under the doctrine of respondent superior for the negligent acts of those being supervised, unless they can be shown to be independently negligent in how they supervise or fail to supervise. They have the right to direct the nurses who are being supervised. In a health care facility, the supervisor's powers are derived directly from the facility's right of control.

A supervisor who knowingly fails to supervise an employee's performance or assigns a task to an individual he or she knows, or should know, is not competent to perform can be held personally liable if an injury occurs. The employer will be liable under the doctrine of respondent superior as the employer of both the supervisor and the individual who performed the task in a negligent manner. The supervisor is not relieved of personal liability even though the employer is liable under respondent superior.

In determining whether a nurse with supervisory responsibilities has been negligent, the nurse is measured against the standard of care of a competent and prudent nurse in the performance of supervisory duties. Those duties include the setting of policies and procedures for the prevention of accidents in the care of patients.

A supervisor ordinarily may rely on the fact that a subordinate is licensed or certified as an indication of the subordinate's capabilities in performing tasks within the ambit of the license or certificate. Nonetheless, where the individual's past actions have led the supervisor to believe that the person is likely to perform a task in an unsatisfactory manner, assigning the task to that person can lead to liability for negligence on the part of the supervisor because the risk of harm to the patient is knowingly increased. For example, if under normal circumstances if charting a patient's fluid intake was assigned to a nurse's aide not instructed in performing this task and under normal circumstances such an assignment normally was not made until the supervisor personally ascertained the aide's ability to chart fluids satisfactorily, the departure from the standard of care that causes a patient harm would justify imposing liability for negligence.

In addition to those discussed in this chapter, please see the chapter in this Manual concerning the legal duties all nurses have.

II. FAILURE TO PROPERLY SUPERVISE

Nursing supervisors must properly supervise the care rendered to patients by their subordinates. Failure to do so can lead to disciplinary action by a state regulatory agency. An example of this is Hicks

v. New York State Dept. of Health, in which the New York State Supreme Court, Appellate Division, held that evidence was sufficient to support a finding that a practical nurse was guilty of resident neglect for failing to ensure that a resident was properly cared for during her assigned shift. 570 N.Y.S.2d 395 (N.Y. App. Div. 1991). “The record . . . demonstrates that petitioner was responsible for ensuring that the nursing aides’ tasks were properly accomplished by, inter alia, conducting a visual check of each resident while making rounds at the end of her shift before leaving work.” “The nurse’s record . . . indicated that a security guard found HC . . . lying in the dark, half in his bed and half still restrained in an overturned wheelchair. HC was in his undershirt with his briefs partially off, and his pants, shirt, and socks on the floor near the door. The nurse’s record also indicated that HC was ‘covered [in] urine [and] stool’” The Commissioner of Health denied the petitioner’s request to expunge the patient neglect report and assessed a penalty of \$200 of which the petitioner was required to pay \$50 because the nurse supervisor failed to fulfill her responsibility of properly supervising her subordinates and ensuring that the nursing aides’ tasks were properly accomplished.

A. SPECIAL DUTY NURSE

A special duty nurse is a nurse hired by the patient or the patient’s family to perform nursing care for the patient. An organization and its supervisors are generally not liable for the negligence of a special duty nurse unless a master-servant relationship can be determined to exist between the organization and the special duty nurse. If a master-servant relationship exists between the organization and the special duty nurse, the doctrine of respondent superior may be applied to impose liability on the organization for the nurse’s negligent conduct.

Like a staff physician, a special duty nurse may be required to observe certain rules and regulations as a precondition to working in the organization. However, the observance of organization rules is insufficient to establish a master-servant relationship between the organization and the nurse. Under ordinary circumstances a special duty nurse is employed by the patient, and the organization has no authority to hire or fire the nurse. The organization has the responsibility to protect the patient from incompetent or unqualified special duty nurses.

B. STUDENT NURSES

Student nurses are entrusted with the responsibility of providing nursing care to patients. When liability is being assessed, a student nurse serving at a health care facility is considered an agent of the facility. This is true even if the student is at the facility on an affiliation basis. Student nurses are personally liable for their own negligent acts and the facility is liable for their acts on the basis of respondent superior. Students must be supervised by a registered professional nurse who is either the direct agent of the student’s nursing school or one who has been designated by the school to serve in that capacity.

A student nurse is held to the standard of a competent professional nurse when performing nursing duties. The courts, in several decisions, have taken the position that anyone who performs duties customarily performed by professional nurses is held to the standards of professional nurses. Each and every patient has the right to expect competent nursing services even if the care is provided by students as part of their clinical training. It would be unfair to deprive the patient of compensation for an injury merely

because a student was responsible for the negligent act. Until it is demonstrated clearly that student nurses are competent to render nursing services without increasing the risks of injury to patients, they must be supervised more closely than graduate nurses.

III. UNLICENSED ASSISTIVE PERSONNEL

Every time you delegate tasks to unlicensed assistive personnel (UAPs), you're legally accountable for the outcome. What can you do to reduce your malpractice risk? Here are some tips:

1. Assess the patient's needs, the staff available to meet those needs, and the level of supervision required for a UAP to safely perform any task you delegate;
2. Know the training and qualifications of the UAPs you supervise;
3. Assign the right person to carry out a task, based on her competence and the patient's condition;
4. Provide clear directions for the task you want performed. Ensure that the UAP understands your expectations and knows to ask for help if questions or problems arise;
5. Monitor the UAP's performance of the task and the patient's response; and
6. Accurately document the care provided.

Once a UAP is hired, the supervisor must delegate tasks appropriate to the UAP's training, credentials, and experience. If the tasks exceed the UAP's competency level, the employer may be liable for negligent training. Furthermore, under the theory of vicarious liability nurses, physicians, facilities, or agencies may be held responsible for UAPs' actions. In essence, a supervisor is liable if she assigns inappropriate tasks to anyone who lacks the skill or training to perform them. A good way to prepare UAP's is to provide standardized training or testing in basic skills and to assign only tasks in which the UAP's have shown competency.

IV. INADEQUATE STAFFING

Health care organizations must continuously monitor their staffing needs in order to provide adequate care. The organization's leaders, including nurse supervisors, define for their respective areas the qualifications and job expectations of staff and to evaluate the degree to which expectations are satisfied.

Under federal law nursing facilities must have sufficient nursing staff to provide nursing and related services adequate to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing

facilities must provide 24-hour nursing services that are sufficient to meet the total nursing needs in accordance with patient care plans. 42 C.F.R. § 483.20 (1989). As nursing facilities are increasingly filled with older, disabled residents with ever-increasing complex care needs, the demand for highly educated and trained nursing personnel continues to grow. Inadequate career ladders and wage scales lower than those found in acute care hospitals, make it difficult for long-term care facilities to attract nurses.