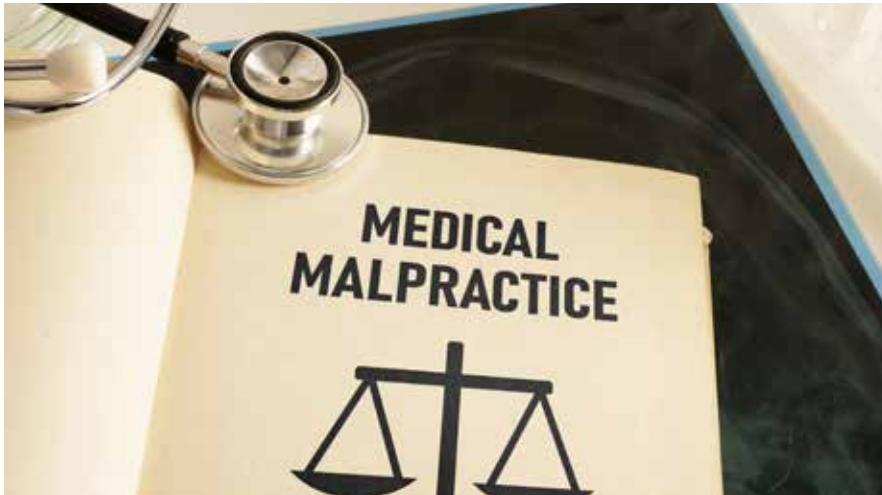


Understanding Medical Malpractice in Delaware: A Guide for Nurses

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Patient safety is paramount, and yet, despite best efforts, medical malpractice incidents can lead to potential legal repercussions. For Delaware nurses, understanding nursing's scope of practice, adhering to standards of care and organizational policies, detailed documentation, and advocating for patients are crucial strategies to safeguard against medical malpractice. This article aims to educate Delaware nurses about the elements of medical malpractice.

Understanding Medical Malpractice

Medical malpractice occurs when a healthcare provider fails to meet the established standard of care, resulting in patient harm. There are four primary components of medical malpractice cases. Duty of care reflects the legal obligation of a healthcare provider to deliver appropriate care. Breach of duty occurs when care falls below the established standard, and causation establishes the link between the breach of duty and the resulting harm to the patient. Damages

encompass compensation for losses resulting from the harm (Hill & Ryu, 2019).

Statute of Limitations

The statute of limitations is an essential medical malpractice consideration. In Delaware, the injured party (plaintiff) must file the malpractice complaint within two years from the date of injury. However, if the injury could not reasonably be discovered within two years, the statute of limitations may be extended to three years. An exception exists for minors under the age of six at the time of the alleged medical malpractice. For these cases, the statute of limitations is paused until the child reaches the age of six, and then the claim must be filed within two years (Delaware Code, n.d.).

Expert Affidavit Requirement

To file a medical malpractice case in Delaware, an accompanying Affidavit of Merit from a qualified expert is required (Delaware Code, n.d.). This expert, who could be a qualified nurse, must review the medical record to determine if the named

nurse or nurses deviated from the standard of care, resulting in a breach of duty. The expert then drafts a detailed report outlining the deviations that occurred. According to the Delaware Code, the expert must have actively treated patients or taught within the three years leading up to the incident and possess experience in the same or a similar field as the accused healthcare provider(s) (n.d.).

Modified Comparative Negligence

There is no cap on a plaintiff's compensation from a medical malpractice case in Delaware. However, the state of Delaware adheres to the principle of modified comparative negligence, wherein an injured party may be held partially at fault. For example, if the injured party is non-compliant with the prescribed therapy or fails to follow up as directed, they may be partially liable. If the injured party is determined to be at fault to a greater extent than the defendant (more than 50%), they may not receive any compensation (Goguen, 2022).

Responding to a Medical Malpractice Lawsuit: Key Steps

If a nurse is a named defendant in a lawsuit, they should first inform their immediate supervisor, who will, in turn, notify the organization's risk management department. The organization's malpractice insurance will be notified, and a defense attorney will be assigned to the case (Morris, 2023). Often, nurses are named alongside the organization, resulting in a single attorney representing both parties. If a nurse possess personal nursing liability insurance, they should also be notified per the policy requirements (American

Nurses Association, 2021).

The assigned attorney will provide directions on the next steps. Be prepared to be interviewed by the defense attorney, review documentation in detail, and be deposed by the plaintiff's attorney. Often, malpractice cases are settled out of court; however, a nurse should remain prepared to testify if the case goes to trial.

Throughout this process, do not alter or conceal any information in the medical record. Exercise caution in communication, limiting discussions about the case solely to the attorney. Avoid sharing case details on social media and refrain from contacting anyone associated with the patient involved in the lawsuit (Morris, 2023). Adhering to these precautions will safeguard your interests throughout the legal process.

Preventing Medical Malpractice as a Nurse

Preventing medical malpractice requires nurses to be proactive. Nurses should prioritize ongoing professional development to remain abreast of standards of care and evidence-based practice. One excellent resource is the American Nurses Associ-

ation's Scope and Standards of Practice (2021). Nurses in all states, including Delaware, should acquaint themselves with the Nurse Practice Act. Moreover, effective closed-loop communication fosters collaboration and may minimize the risk of errors (Douglas et al., 2021). A component of effective communication is meticulous, timely documentation. A detailed and accurate medical record is an integral component of a medical malpractice case. Similarly, adhering to organizational policies and protocols is paramount and can mitigate potential malpractice risks (Shawn Kennedy, 2022).

Nurses must also advocate for their patients and ensure their safety and well-being. Advocacy includes timely notifications to healthcare providers and documentation of such interactions. The chain of command should be followed to ensure that issues and concerns are addressed promptly (Shawn Kennedy, 2022). Finally, the American Nurses Association's Code of Ethics serves as a pivotal resource, outlining nursing responsibilities and ethical obligations of the profession (2017).

In conclusion, Delaware nurses must

remain vigilant and proactive with a basic understanding of the elements of medical malpractice. As patient advocates, nurses play a critical role in preventing medical errors. Nurses can mitigate the risk of malpractice incidents by upholding standards of care, advancing education, fostering effective communication, and advocating for patients. ■

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