The Nurse Manager's Legal Companion is your essential resource for up-to-the-minute legal insights related to nursing practice and managing staff, including hiring and firing practices, discrimination risks, and workplace safety. This book is the most comprehensive and current offering on the market, with specific coverage highlighting new nursing legal issues, including those related to social media use and a nurse's right to refuse certain types of work.

This book will help nursing professionals understand:

- Liability risks related to social media misuse
- Safety in the workplace from a legal perspective, including implications of dealing with occupational violence, bullying, and highly contagious diseases
- Increased liability issues related to interprofessional collaboration and accountability
- Dealing proactively with nurse whistleblowers
- Ten best practices to reduce liability risks
THE NURSE MANAGER’S LEGAL COMPANION
A Practical Guide to Best Legal Practices

DINAH BROTHERS, RN, JD

HCPro
a division of BLR
Contents

About the Author ...................................................................................................................................... vii
Acknowledgments .................................................................................................................................... ix

Book Resources .......................................................................................................................................... v
  Nursing Continuing Education ............................................................................................................... v
  Educational Objectives .......................................................................................................................... v

Introduction ................................................................................................................................................ xi

Chapter 1: The Legal Environment of Nursing Management ................................................................... 1
  The Role of Nurse Manager .................................................................................................................. 2
  The Standard of Care in Nursing Practice ............................................................................................. 3
  Nurse Manager’s Liability for Patient Care ........................................................................................... 7
  References ............................................................................................................................................... 7

Chapter 2: Employment Law for the Nurse Manager .............................................................................. 9
  Illegal Discrimination ............................................................................................................................ 11
  Family Medical Leave Act ..................................................................................................................... 20
  Conclusion ............................................................................................................................................ 21
  References ............................................................................................................................................ 22

Chapter 3: Hiring and Maintaining Competent Staff ............................................................................. 23
  The Hiring Process ............................................................................................................................... 24
  Defining the Job .................................................................................................................................... 24
  Recruiting for the Position ..................................................................................................................... 26
  Making the Job Offer ............................................................................................................................. 30
  Orientation ............................................................................................................................................ 33
  Conclusion ............................................................................................................................................ 33

Chapter 4: The Legal Significance of Policies and Procedures ............................................................... 35
  The Role of Policies and Procedures ..................................................................................................... 36
  Keeping Staff Education and Certifications Current .......................................................................... 39
  References ............................................................................................................................................ 41
About the Author

**Dinah Brothers, RN, JD**, is a nurse attorney based in Texas. Brothers is a solo practitioner specializing in civil litigation. In her practice, she defends healthcare professionals in civil and administrative proceedings.

Prior to becoming an attorney, Brothers worked as a nurse for 10 years. Her nursing experience includes psychiatric nursing, nursing management, and nursing education.
Acknowledgments

My heartfelt appreciation is extended to the editorial staff at HCPro. I specifically want to thank Claudette Moore, whose professional work ethic made this experience very rewarding and enjoyable.
Book Resources

All the book’s resources are available to download and customize for your practice. To access the resources, please visit: www.hcpro.com/downloads/12432.

Nursing Continuing Education

_Nursing contact hours_

HCPro is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center’s Commission on Accreditation.

You will find complete information about earning 3 hours of Continuing Nursing Education credits, as well as instructions on how to take the continuing education exam, on our website.

Disclosure statement

The planners, presenters/authors, and contributors of this CNE activity have disclosed no relevant financial relationships with any commercial companies pertaining to this activity.

Educational Objectives

1. Define the role of the nurse manager
2. Discuss the legal definition of the standard of care
3. Distinguish between negligence and professional malpractice
4. Identify protected persons under Title VII
5. Describe the legal components of the Americans with Disabilities Act
6. Define the purpose of the Family Medical Leave Act
7. Describe the five major steps in the hiring process
8. Evaluate a job applicant’s qualifications within the boundaries of the law
9. Discuss when job descriptions must be updated on your unit
10. List the purposes of policies and procedures
11. Define the duty of the nurse manager in enforcing policies and procedures
12. Discuss how hospital policies and procedures are applied in court
13. Explain the legal significance of the yearly employee evaluation
14. Explain the four steps of progressive discipline
15. Implement the termination process in a confidential and respectful manner
16. Discuss conscientious objection
17. Discuss the impact of violence against nurses
18. Explain reasons for violence in the workplace
19. Discuss the nurses legal duty to report illegal and unsafe practices
20. Discuss how the nurse manager may contribute to retaliation against employees
21. Understand forms of retaliation which a whistleblower may experience
22. Identify the liability risks associated with inadequate staffing
23. Explain the nurse manager’s responsibility for agency nurses
24. Define patient abandonment in the context of inadequate staffing
25. Define nursing delegation
26. Discuss the role of the nurse manager and the charge nurse in delegation
27. Enumerate the principles of delegation
28. Discuss the expectation of privacy in regards to social media
29. Enumerate examples of social media misuse
30. Discuss the “no tolerance” policy of social media misuse
31. Discuss the importance of teamwork in healthcare delivery
32. List the four core competencies of interprofessional collaboration
33. Identify the role of communication in interprofessional collaboration
34. Discuss the reasons to purchase professional liability insurance
35. Identify three actions a nurse must take when appearing before the disciplinary panel of a state nursing board
Introduction

Nurse managers serve a very important role in the healthcare field; achieving the position of nurse manager signifies that hospital management recognizes your professionalism, leadership, and contribution to nursing. As a nurse manager, your professional responsibilities increase significantly, and you are held to a different level of accountability. To be successful as a nurse manager and to avoid legal issues, you must understand what is expected of you in that role and comprehend the legal risks that come with the job.

Nurse managers often have little to no management training, but they are expected to operate within the law and will be held legally accountable should they fail to do so. The purpose of this book is to examine the common legal risks nurse managers face and to provide them with practical skills they can use to minimize those risks. We will discuss the law and legal standards for nurse management, risk reduction behaviors, and tools that the nurse manager can implement with specific legal examples.

On the first page of each chapter, you’ll notice an excerpt from a typical nurse manager job description. You’ll see that these definitions of the nurse manager’s professional responsibilities are directly tied to the legal risks explored in each chapter.

What You Will Find in This Book

Every nurse manager must be well versed in employment law and in how to approach employment issues within the bounds of state and federal law. Employment law is lengthy, detailed, and often
difficult. This book boils down complicated employment law and defines the employment law “must knows” for the nurse manager, including all aspects of human resource management.

Interviewing, hiring, and maintaining staff is a primary responsibility of the nurse manager, but it must be done in compliance with the law. This book discusses the legal aspects of interviewing, hiring, and orienting new staff and the legal ramifications for failing to do so. It also addresses the difficult decision to terminate an employee and how to do so legally and respectfully.

Nursing issues, such as safety in the workplace, unit staffing, and delegation and supervision, have specific, and increased, liability risks for the nurse manager. We will discuss these issues from the nurse manager’s point of view, identifying liability risks and risk management techniques to incorporate into daily practice. We will examine the liability risk of social media use and how the nurse manager should respond when off-duty nursing staff violate social media policies. The nurse as whistleblower has been given much media attention lately, so we have dedicated a chapter to that topic, providing the nurse manager with guidelines for protecting whistleblowers from retaliation.

Above all, nurse managers must be proactive about protecting their nursing licenses. Your nursing license is a property right, and you must treat it as such. We insure everything important to us—our homes, our cars, our vacations—and our nursing licenses should be insured as well. Even when nurse managers do everything correctly in their nursing practice, they can still be sued or called before their state licensing board. This book discusses the steps to take should such an issue arise.

At the very end of this book, you’ll find a short chapter presenting 10 strategies that nurse managers should practice daily to reduce the risk of liability and to support their roles as respected nursing leaders. For nurse managers facing the challenging and rewarding tasks of ensuring that patient care on their units is delivered in a safe, effective, and legal manner, we hope you will find this book to be a trusted source of support.
Nurse Manager Job Description
The nurse manager advocates for patient health by developing day-to-day management and long-term planning of the assigned unit, directing and developing human resources, collaborating with interprofessional teams, and maintaining the standard of care.
Learning objectives

After reading this chapter, the participant will be able to do the following:

• Define the role of the nurse manager
• Discuss the legal definition of the standard of care
• Distinguish between negligence and professional malpractice

With the increased responsibility accorded to your role as nurse manager comes added legal accountability for your work and your team. To be successful in avoiding legal issues, you must understand what is expected of you and how to meet those expectations within the realm of the law. This book as a whole gives you the “must knows” for minimizing legal risk; in this chapter, we explore the underpinnings of the legal environment for nursing management.

The Role of Nurse Manager

As a nurse manager, you are responsible for directing, organizing, and supervising the work of the hospital nursing staff assigned to your unit. The staff typically includes registered nurses, licensed vocational/practical nurses, nursing assistants/orderlies/aides, and medical clerks/secretaries. The nurse manager usually reports to the chief nursing officer, director of nursing, or vice president of nursing, although there is some variation depending upon the setting and its governance.

Your role as nurse manager is very important, and you must be adequately prepared to meet your obligations; you represent “on-the-floor” hospital administration and are the first line of defense in ensuring that patient care delivery is within the standard of care. Nurse managers are “critical in the provision of high-performing effective and efficient care in the patient care delivery setting” (Chase, 2010).

As a nurse manager, you are responsible for the day-to-day management and clinical care delivered on your assigned unit. You’re expected to be competent in a number of skills and behaviors, including but not limited to the following:

• Human resource management, including interviewing, hiring, and disciplinary actions
• Quality improvement and risk management
• Maintaining the competency of nursing staff
• Financial and budget management
• Interprofessional collaboration and communication
• Ensuring that patient care is delivered within the standard of care
As stated earlier, newly minted nurse managers frequently have little or no management training before they assume their duties (Chase, 2010), but they are still expected to operate within the law and will be held legally accountable if they do not.

Experienced and new managers alike must place emphasis on two areas of concern—upholding the standard of care in nursing practice and following established policies and procedures.

**The Standard of Care in Nursing Practice**

Nurses are expected to be competent to provide patient care and to deliver that care within the scope of their defined practice. When a nurse fails to provide competent care in his or her particular specialty or practices outside the scope of practice, that nurse may be found liable for violating professional nursing standards and may be held legally accountable.

When the quality of a nurse's professional practice is at issue, one of the first questions asked is whether he or she practiced within the standard of care. The *standard of care* is a set of minimal competencies that a nurse must possess and practice to provide acceptable care. In *King v. State of Louisiana*, 728 So.2d 1027, 1030 (La. App. 1999), the court defined the standard of care as follows:

> A nurse who practices her profession in a particular specialty owes to her patients the duty of possessing the degree of knowledge or skill ordinarily possessed by members of her profession actively practicing in such specialty under similar circumstances. It is the nurse’s duty to exercise the degree of skill ordinarily employed, under similar circumstances, by members of the nursing profession in good standing who practice their profession in the same specialty and to use reasonable care and diligence, along with his/her best judgment, in the application of his/her skill to the case.

The standard of care has been further defined as the *reasonably prudent nurse standard*, or what a nurse with similar experiences and education would do in similar circumstances.

**Standard of care example**

Evaluating how courts have applied this standard clarifies the legal expectations of the standard of care. For example, in *Sabol v. Richmond Height General Hospital*, 676 N.E.2d 958 (Ohio App. 1996), Mr. Sabol was admitted to the intensive care unit of a general acute care hospital following an overdose suicide attempt. The unit’s intent was to stabilize Mr. Sabol while arrangements were made to transfer him to a psychiatric facility. While in intensive care, however, Mr. Sabol became increasingly paranoid and delusional.
The nursing staff discussed the steps that should be taken to calm the patient and decided against the use of restraints, fearing that they would increase Mr. Sabol’s agitation. Instead, in an attempt to calm the patient, a nurse remained at Mr. Sabol’s bedside. Mr. Sabol got out of bed, knocked down the nurse in his room, fought past two other nurses, and ran off the intensive care unit. Once off the unit, Mr. Sabol knocked out a third-story window and jumped, fracturing his arm and sustaining other minor injuries.

The Sabol Court held that the intensive care nurses were not liable for Mr. Sabol’s injuries. According to the court, the nurses realized that the patient was a threat to himself and had acted reasonably under the circumstances. The actions taken were fully consistent with basic professional standards of practice for medical-surgical nurses in an acute care facility. According to the Sabol Court, these nurses did not have, nor were they expected to have, specialized psychiatric nursing skills, and they would not be judged as though they did.

THE BOTTOM LINE

The King and Sabol decisions reassure nurses because the standard established is one of reasonableness: That is, nurses will be held accountable within their specialty area but will not be expected to possess knowledge and skills outside their specific area of practice.

Establishing the standard of care

In nursing, the standard of care is established through several channels, including research, state authorities, and professional associations. First, through research, the profession of nursing works to develop a foundation of knowledge upon which nursing care is delivered. Standards are also established by state authorities, such as state nursing boards. Such boards write laws and rules that dictate the scope of practice for nurses and govern the nurse’s duty to patient care. There are also numerous state and national professional associations that define the standard of care.

As a nurse manager, you need to be aware of how and where the standard of care is defined, and you must understand the expectations of those standards. In a lawsuit related to standard of care, both parties (the one who initiated the proceeding and the one against whom the suit was brought) will call nursing professionals to establish the standard of care. These nurses are considered expert witnesses, meaning that they are authorities for the practice area in question and can speak to the knowledge and skills necessary to perform competently. These witnesses will give an opinion regarding whether the nurse on trial practiced within the standard of care.
Negligence in nursing

When a nurse fails to practice within the standard of care or practices outside the scope of his or her identified practice, that nurse may be sued for negligence. Negligence is defined as “conduct which falls below the standard established by law for the protection of others against unreasonable risk or harm.” (Restatement [Second of Torts §282 1965). Therefore, when any person, regardless of professional status, is careless or fails to exercise reasonable conduct and another is injured, the acting party may be held negligent. Note that negligence may occur when a person acts or fails to act when a reasonably prudent person would have taken action in a similar situation.

Five elements must be established to hold a person liable for negligence:

1. A duty of care owed by the defendant (the person sued in a civil proceeding) to the plaintiff (the party who brings the civil suit in a court of law)
2. A breach of that duty
3. An actual causal connection between the defendant’s conduct and the resulting harm
4. Proximate cause, which questions whether the harm was foreseeable
5. Damages resulting from the defendant’s conduct

Each of the five elements must be established in order to hold a person liable for negligence.

Professional malpractice

Professional malpractice is negligence committed by a professional person. A person may be found liable for professional malpractice when, acting within their professional capacity, they fail to exercise reasonable conduct. The standard for establishing professional malpractice is effectively the same as that for establishing negligence. When applied to nursing, the five elements of professional malpractice may be analyzed in the following case.

Professional malpractice example

In Dent v. Memorial Hospital of Adel, 509 S.E.2d 908 (Ga, 1998), a 15-month-old child was admitted to the hospital after being successfully resuscitated when he stopped breathing at home. The physician ordered the child to be placed on a pediatric apnea monitor. Although the patient was placed on the monitor, the nursing staff failed to activate the alarm. When the child stopped breathing, the alarm did not sound a warning, and the child died. The Dent Court found the nurse negligent and therefore liable for professional malpractice for failing to turn on the pediatric apnea monitor.
The standards of negligence applied to the *Dent* case would be analyzed as follows:

1. **Was there a duty of care owed by the defendant to the plaintiff?**
   
   Yes. The professional duty of the nurse was activated when he/she assumed care of the pediatric patient.

2. **Was there a breach of that duty?**
   
   Yes. The nurse had a duty to provide competent nursing care to the patient. A competent pediatric nurse in similar circumstances would have activated the pediatric apnea monitor. The duty to provide competent nursing care was breached when the nurse failed to do so.

3. **Was there an actual causal connection between the defendant’s conduct and the resulting harm?**
   
   Yes. There was a causal connection between the defendant’s failure to activate the pediatric apnea monitor and the plaintiff’s death. It could be successfully argued that, but for the nurse failing to activate the apnea monitor, the patient would not have died.

4. **Were the defendant’s actions the proximate cause of the plaintiff’s injuries? Was it foreseeable that the plaintiff would sustain such injuries?**
   
   Yes. It was foreseeable that the failure to activate the pediatric apnea monitor (especially in a pediatric patient with previous apnea episodes) would cause the plaintiff to sustain such injuries and resulting death. It could be successfully argued by the plaintiff’s attorney that the defendant’s actions were the proximate cause of the plaintiff’s death.

5. **Was the plaintiff damaged from the defendant’s conduct?**
   
   Yes. The defendant’s conduct caused damage to the plaintiff.

Here, all elements have been established to hold the nurse liable for professional negligence or professional malpractice.

The significant element in *Dent* is that a prudent nurse who was practicing within the standard of care would have activated the alarm for the pediatric patient, and the nurse who failed to do so was negligent and therefore liable for professional malpractice. Again, when a nurse is sued for professional malpractice, that nurse’s professional actions will be compared to how a prudent and competent professional would have responded in a similar situation.
Nursing is defined by a set of specialized skills, knowledge, and abilities, and the law requires that nursing professionals practice within these established professional standards. Practicing outside the established professional standard of care constitutes professional malpractice.

**Nurse Manager’s Liability for Patient Care**

One of a nurse manager’s greatest concerns is that he or she may be held liable if a patient is injured due to staff nurse negligence. This is a valid concern: In some situations, nurse managers may indeed be held liable for a staff nurse’s actions; in others, the liability lies with the hospital.

**Respondeat superior**

In law, the doctrine of *respondeat superior*, or vicarious liability, is based on the premise that employers are liable for the negligent acts of employees. Hospitals and other healthcare providers are engaged in the business of providing healthcare to the public, and it is the duty of that healthcare facility to hire competent, skilled employees to deliver that care. Therefore, when a nurse who is employed by a specific hospital is found to be negligent, the employing hospital may also be assigned liability, because the nurse’s negligent act occurred within the scope of employment.

As a nurse manager, you are not held liable under the *respondeat superior* doctrine because you are not the employer of the negligent staff nurse. However, there are other ways that liability may be assigned to the nurse manager. For example, a nurse manager who fails to delegate nursing tasks within the standard of care may be held liable for negligent delegation.

Additionally, even though you are the nurse manager, there may be times you are required to provide direct patient care on your unit. In such situations, remember you are held to the reasonably prudent nurse standard and you will be held liable if the care you provide a patient is below the standard of care.

**THE BOTTOM LINE**

Knowing the legal risks of nurse managers will allow you to “play defense” and reduce the potential of legal liability.

**References**

The Nurse Manager's Legal Companion is your essential resource for up-to-the-minute legal insights related to nursing practice and managing staff, including hiring and firing practices, discrimination risks, and workplace safety. This book is the most comprehensive and current offering on the market, with specific coverage highlighting new nursing legal issues, including those related to social media use and a nurse's right to refuse certain types of work.

This book will help nursing professionals understand:
- Liability risks related to social media misuse
- Safety in the workplace from a legal perspective, including implications of dealing with occupational violence, bullying, and highly contagious diseases
- Increased liability issues related to interprofessional collaboration and accountability
- Dealing proactively with nurse whistleblowers
- Ten best practices to reduce liability risks