

Has Malpractice Changed Nursing Practice?

Lia Barbacci

INTRODUCTION

Malpractice is the failure to provide the degree of care required under the scope of your license that results in an injury (Pierce, 2019, p. 14).

- Common reasons for malpractice claims are failure to communicate, medication errors, charting by exception, and nurse fatigue.

There must be a duty, breach, cause, and a harm for malpractice case to take place.

- Duty- The nurse has the duty to treat the patient according to the standards of care.
- Breach- A breach of the standard has been established. An example would be a failure to report a decline in the patient's condition.
- Cause- The patient's sustained an injury due to the nurse's error.
- Harm- The injury resulted in damages such as pain or medical bills.

There are economic and noneconomic damages that result.

- Economic damages include: medical expenses, loss of income, and funeral expenses.
- Non-economic damages include: mental anguish, pain and suffering, and loss on consortium.

Malpractice impacts nursing because nurses can be held liable for their actions or non-actions, and then have the potential to be sued.

SIGNIFICANCE

- The minimum number of deaths due to negligence is 25,000 to 120,000. That is, deaths caused by medical malpractice each year ("Medical Malpractice," 2020).
- The percentage of hospital patients who become victims of malpractice is 0.8% to 1% ("Medical Malpractice," 2020).
- The ratio of injuries and deaths caused by malpractice in hospitals to that reflected in medical records is 4:1. Many errors go unrecorded ("Medical Malpractice," 2020).
- The ratio of total malpractice premiums to total economic losses suffered by victims of malpractice is 1:4. In other words, doctors and hospitals avoid paying 80% of the economic harm their errors inflict on patients and their families ("Medical Malpractice," 2020).

POSITION STATEMENT

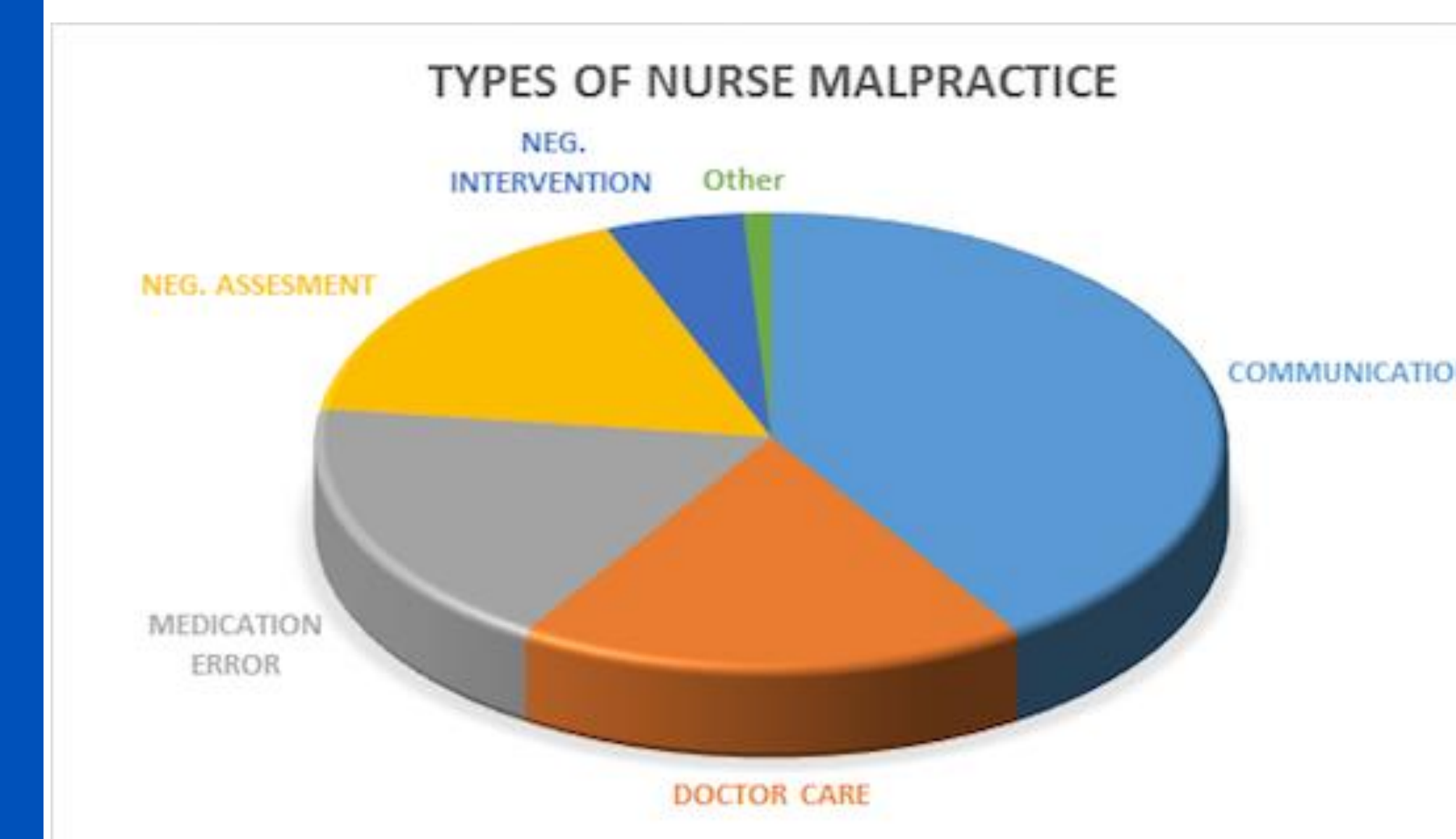
Malpractice has positively changed nursing practice by placing responsibility and accountability on the nurses in order to protect the patients and make nurses more aware of their shortcomings.

SUPPORT FOR POSITION

- Malpractice has made nurses increasingly sensitive to their responsibilities for quality care.
- Professional accountability obligates nurses to be knowledgeable about hospital policies and procedures related to the setting and to follow written protocols (Koniak-Griffin, 1999, p. 298).
- The medical record should provide a factual, complete, and objective account of how the nursing process (assessment, diagnosis, interventions, and evaluation) was implemented, including direct and indirect communications among health care professional and only clinically relevant information should be documented (Koniak-Griffin, 1999, p. 298).
- Professional nurses responsible for supervising and determining the appropriate use of UAPs must possess a clear understanding of the legal and professional definitions of the concept of delegation and this knowledge will enable them to appropriately use UAPs for direct patient care (Koniak-Griffin, 1999, p. 298).
- Nurses now have a more open and honest communication role with the patients and their families.
- Nurses offer no opinions and stick to only answering medically supported positions.
- Nurses can not provide an admission of guilt for themselves or the other practitioners (Pierce, 2019, p. 14).
- The nursing community should embrace these new insights into the concept of malpractice and use them to develop educational and training methods. This can improve patient care and decrease the likelihood of malpractice occurring and doing so should lead to improve patient care and reduced liability for nurses (Weld, 2009, n.d.)
- Increasing nurse staffing is plausibly the most important and direct strategy a facility can pursue if trying to avoid lawsuits and improve quality of care (Konetzka, 2013, n.d.).
- Nurses must attend thirty contact hours of continued education every two years to maintain their licensure.

IMPLICATIONS FOR PRACTICE

- The most common malpractice claims against nurses in the nursing literature between 2010 and 2012 include: failure to get informed consent, failure to use medical device properly, failure to communicate, failure to assess and monitor, failure to document, failure to properly supervise a patient, medication errors, and working while impaired (Watson, 2014, p. 2).
- To reduce potential liability, use proper nursing judgement, maintain open and honest relationships with patients and staff, maintain competence in your specialty area of practice, follow chain of command, obtain conformed consent, practice within bounds of professional licensure, document, assess and monitor, and know your strengths and weaknesses (Watson, 2014, p. 5).
- To help decrease the risk of a malpractice claim, every nurse should know his or her nurse practice act, relevant laws and legal doctrines, agency policies and procedures, and applicable standards of care that impact daily clinical practice (Watson, 2014, p. 1).
- Liability insurance is used to protect the nurse if a mistake is made. The two types are:
- An occurrence policy covers any incidents occurring a policy period, regardless of when the claim is filed. Even if you drop the policy, it would still cover you while it was in effect (Wilkinson, 1998, p. 35).
- A claims-made policy protects you only against claims during the policy period. Since the coverage is less extensive, it costs less. However, you can purchase an extended-reporting endorsement to broaden your coverage (Wilkinson, 1998, p. 35).



CONCLUSION

Nursing malpractice occurs when the nurse makes a mistake that harms the patient. The injured patient must prove the nurse did something a reasonably prudent nurse would not have done, and the mistake was a proximate cause of the patient's injury. Malpractice has made a positive impact on nursing practice because it improves patient safety by addressing the need to be more accountable, and to provide better quality care. When nurses are more accountable, it reduces errors, promotes a better patient relationship, and encourages nurses to acknowledge their errors. This applies to nursing practice because nurses can be held liable for their actions and need to practice ways to reduce malpractice. Malpractice can be reduced by proper documentation, knowing strengths and weaknesses, and operating within the scope of practice. Nursing malpractice is an important contribution to nursing practice because it continues to improve quality care by maintaining a high standard for nurses.

REFERENCES

- Croke, E. (2003). Nurses, Negligence, and Malpractice. *The American Journal of Nursing*, 103(9), 54-64. Retrieved April 2, 2020, from www.jstor.org/stable/29745362
- Konetzka, R.T., Park, J., Ellis, R. and Abbo, E. (2013). Malpractice Litigation and Nursing Home Quality of Care. *Health Serv Res*, 48: 1920-1938. doi:10.1111/1475-6773.12072
- Koniak-Griffin, D. (1999). Strategies for Reducing the Risk Of Malpractice Litigation in Perinatal Nursing. *Journal of Obstetric, Gynecologic, & Neonatal Nursing*, 28: 291-299. doi:10.1111/j.1552-6909.1999.tb01994.x
- Medical Malpractice by the Numbers. (2020, March 9). Retrieved March 31, 2020, from <https://centerjrd.org/cjrg/Numbers.pdf>
- Pierce, L. (2019). Malpractice 101. *Colorado Nurse*, 119(4), 14-15.
- Waldron, T. (2020, March 31). *Nursing Negligence and Birth Injuries*. [Digital Image]. Retrieved March 31, 2020, from <https://www.millerandzois.com/nursing-malpractice-birth.html>
- Watson, E. (2014). Nursing Malpractice: Costs, Trends, and Issues. *Journal of Legal Nurse Consulting*, 25(1), 26-31.
- Weld, K.K. and Garmon Bibb, S.C. (2009). Concept Analysis: Malpractice and Modern-Day Nursing Practice. *Nursing Forum*, 44: 2-10. doi:10.1111/j.1744-6198.2009.00121.x
- Wilkinson A.P. (1998). Nursing malpractice: how to avoid your day in court. *Nursing*, 28(6), 34-40. Retrieved from <https://search-ebcohost-com.libproxy.misericordia.edu/login.aspx?direct=true&db=ccm&AN=107275403&site=host-live>