

Legal Perspectives Related to Wound Care

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Objectives



1. Appraise **scope of practice** issues that can result in legal action & strategies to avert litigation
2. Appraise **practice issues** that can result in legal action & strategies to avert litigation
3. Appraise **standard of care** issues that can result in legal action & strategies to avert litigation

Conflict of Information Disclosure

Diane L. Krasner & Lia van Rijswijk certify that, to the best of our knowledge, no affiliation or relationship of a financial nature with a commercial interest or organization has significantly affected our views on the subject on which we are presenting.

How Nurses Interact with the Legal World:

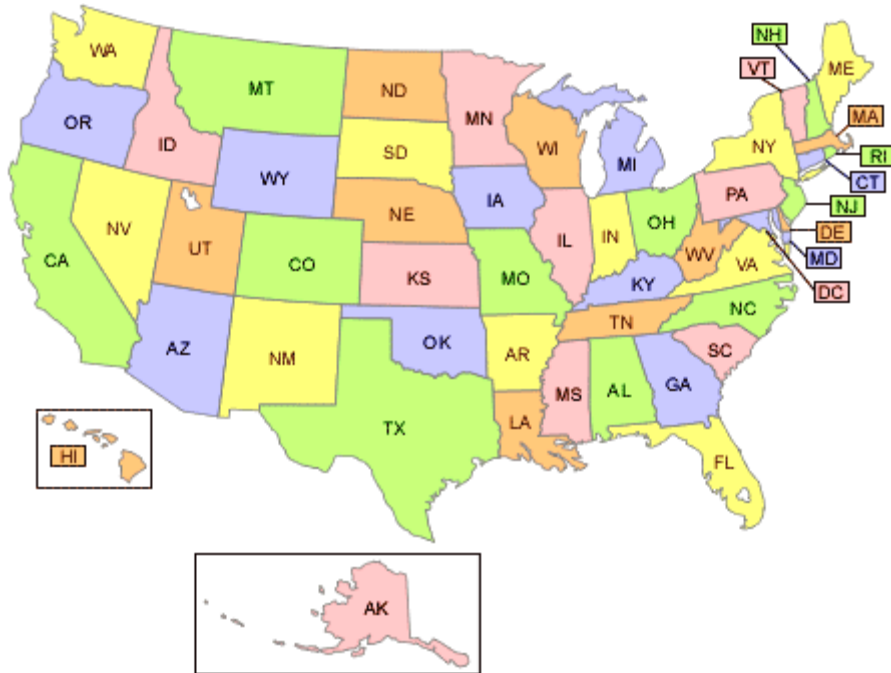
- **As Fact Witnesses**
- **As Defendants**
- **As Plaintiffs**
- **As Legal Nurse Consultants**
- **As Expert Witnesses**
- **As Nurse Attorneys**



Wound Care: Legal Perspectives



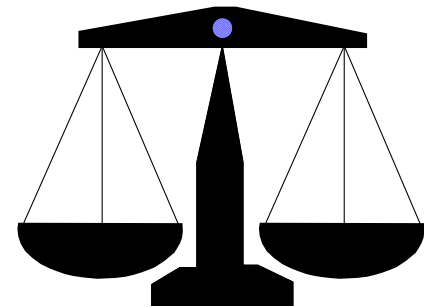
Wound Care: Scope of Practice



- Reflects State Nurse Practice Acts
- May be different in different states for RNs and Advanced Practice Nurses (APRNs)
- Different for RNs and LPNs
- CNAs / NAs practice under direction of a nurse

Wound Care: Common Scope of Practice Legal Issues for Nurses

- Diagnosing wound etiology (practicing medicine)
- Nurse performing a debridement procedure that is not allowable by statute
- Nurse without prescriptive privileges ordering prescription medications (e.g. Collagenase)

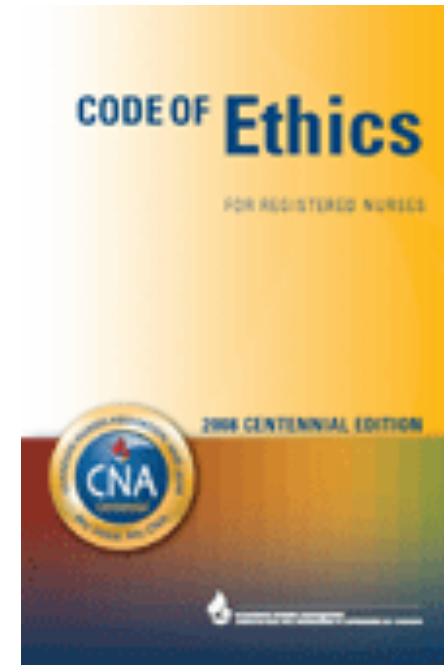
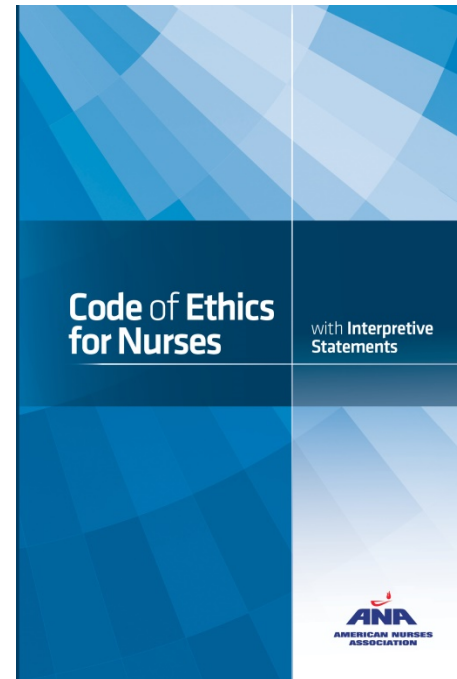


Wound Care: Legal Perspectives



Wound Care: Common Practice-Related Legal Issues for Nurses

- **Care Planning**
- **Communication**
- **Consults**
- **Documentation**
- **Ethical Standards**



Wound Care : Common Practice-Related Legal Issues for Nurses

- Care plan not done, not individualized, or not up-to-date
- Failure to communicate / report a change in condition
- Delay in reporting a change in condition
- Delay in obtaining appropriate consults
- Failure to document interventions (e.g., turning/ repositioning, special mattress in place)
- Documentation inconsistencies (shift to shift/day to day)
- Less-than-optimal patient/caregiver **communication**
- Failure to advocate for the patient

Wound Care : Common Practice-Related Legal Issues for Nurses

✓ Documentation should reflect a consistent, inter-professional, patient-centered, team approach to care



Wound Care: Legal Perspectives



Why Wound Care?

MEDICAL STUDENTS AND RESIDENTS

Wound Care: Common Standard of Care Legal Issues for Nurses

Standard of Care : Legal Definition

What a reasonably prudent nurse would do with a similar patient in similar circumstances in a similar setting.



Wound Care: Common Standard of Care Legal Issues for Nurses

Standard of Care = Actual Care

NOT

Clinical Practice Guidelines

“Best Practices”

Policies & Procedures

Textbook information



Wound Care Defense: Case Analysis # 1

- Male, 60's, Pancreatic Pseudocyst surgery
- Unmodifiable Risk Factors for PU development: Diabetes Mellitus, Obesity, History of smoking, Critically ill post-op
- Develops suspected Deep Tissue Injury (DTI) on post op day 1
- DTI noted on post op day 2
- Evolves to full thickness pressure injury requiring debridement and months to heal



Patient sues. Unable to resolve. Jury award to Plaintiff over \$800,000.

Wound Care Defense: Case Analysis # 1

TAKE-HOME MESSAGES FOR PRACTICE FROM THIS CASE

- **Communicate with patient (if possible) & his/her circle of care about the wound care plan of care & document [Medical & Nursing Practice Issue]**
- **Evaluate your facility's system for documenting turning & repositioning and be sure that your staff are in compliance [Medical & Nursing Practice Issue]**
- **The Devil is in the details: Be specific when ordering support surfaces & topical treatments [Medical & Nursing Standard of Care Issue]**

Wound Care Defense: Case Analysis # 2

- Female, 83 years old, 17 facilities in last year of life
- Adult Failure to Thrive, Admitted with Sepsis Syndrome, Critically ill, Albumin 1.3
- Stage 2 sacral pressure ulcer (PU) present on admission
- Deteriorates to unstageable PU during her four week ICU stay.
- Patient dies 8 months later.



Family sues. Unable to resolve. Jury trial. Jury rules in favor of the Defense (hospital)

Wound Care Defense: Case Analysis # 2

TAKE-HOME MESSAGES FOR PRACTICE FROM THIS CASE

- Document, document, document [Medical & Nursing Practice Issue]
- Pressure ulcer prevention protocol interventions checked off on flow sheets every shift; specialty beds by brand identified on flow sheets [Medical & Nursing Practice Issue]
- When appropriate, discuss Palliative/Hospice Care or and document these conversations in the medical record [Medical & Nursing Standard of Care and Practice Issues]

Wound Care Plaintiff Case Analysis

(Expert Witness D.L.Krasner)

- 50 year old man
- Diabetes Mellitus, Hypertension, Obesity, PAD, PVD, Sleep Apnea, Smoker
- s/p Bilateral Fem-Pop Bypass for claudication in 2003
- s/p redo with Reverse Saphenous Vein Grafting in 2005
- May 2006 Rt. Femoral Endarterectomy + patch angioplasty (bovine) - Florida Medical Center (FMC)
- 3 weeks later: pain, redness, swelling at the groin site, fever, N/V
- Presents to Physician's Office on a Wednesday morning, I & D of groin site. Admitted with diagnosis of "wound infection right groin"

Wound Care Plaintiff Case Analysis

- **Wednesday afternoon VAC applied by wound nurse per physician order. Wound has tunneling, but nurse chooses routine VAC care (M-W-F changes, GranuFoam, 125 mmHg)**
- **Friday afternoon wound has slough, nurse calls in the PA who orders D/C home with IV Vancomycin and home care – it's a holiday weekend.**
- **Home care arrangements for VAC fall through the cracks. VAC home care visit not scheduled until following Tuesday (PRN Discharge Planner)**
- **Monday morning at 4 am Mr. McDonald exsanguinates through the VAC in front of his wife and grandson. He is pronounced dead in FMC's ER.**

Wound Care Plaintiff Case Analysis

Top 10 failures

- 1. Failure to appreciate the signs and symptoms of wound infection and develop a plan of care accordingly [Nursing SOC & Practice]**
- 2. Failure to perform cultures in a timely manner to guide therapy based on the culture results (Vanco did not cover all the organisms) [Medical Issue]**
- 3. Failure to properly evaluate appropriateness of VAC Therapy for this wound and consider other options [Medical Issue]**
- 4. Failure to document VAC dressing change orders (with specifics) in the Medical Record and in the Discharge Instructions for the Home Care Agency [Nursing Practice Issue]**

Wound Care Plaintiff Case Analysis

Top 10 failures (cont.)

5. **Failure to utilize appropriate VAC dressings and dressing change schedules according to manufacturer instructions / guidelines [Medical & Nursing SOC Issue]**
6. **Failure to educate patient and family about VAC risks, home care, etc. [Medical & Nursing SOC Issue]**
7. **Failure to train staff (nursing and medical) in the appropriate use of the VAC and VAC instructions for use [Medical & Nursing SOC Issue]**
8. **Failure to arrange an individualized plan of care for home care [Medical & Nursing SOC Issue, Nursing Scope of Practice Issue]**

Wound Care Plaintiff Case Analysis

Top 10 failures (cont.)

- 9. Failure to communicate between members of the inter-professional team and up the chain of command when necessary [Nursing Practice Issue]**
- 10. Failure to report device-related death to the FDA Center for Devices and Radiologic Health (CDRH) [Administrative Regulatory Issue]**

Wound Care: Legal Perspectives

Consider this:

549 closed claims (nurses)

- **88.5% RNs – 11.5% LPNs/LVNs**
- **36.1% adult medical/surgical nurses**
- **45.9 % involve treatment/care issues**
- **Pressure ulcers: 6% of cases**
- **Pressure ulcer as cause of death: 13.6% of cases**

Nurses Service Organization. *Nurse professional liability exposures: 2015 claim report update*. 2016. Retrieved from <http://www.nso.com/Documents/pdfs/CNA%20NURSE%20CLAIM%20REPORT%20101615.pdf>

Wound Care : Legal Perspectives

Take Home Messages

1. Routinely evaluate your own practice for Scope of Practice, Practice and Standard of Care issues.
2. Audit charting & documentation and provide ongoing education based on findings.

How Nurses Interact with the Legal World:

- **As Fact Witnesses**
- **As Defendants**
- **As Plaintiffs**
- **As Legal Nurse Consultants**
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Wound Care Nurses

Wound Care Nurse can also be / serve as:

- 1) Legal nurse consultants
- 2) Expert witnesses
- 3) Nurse attorneys

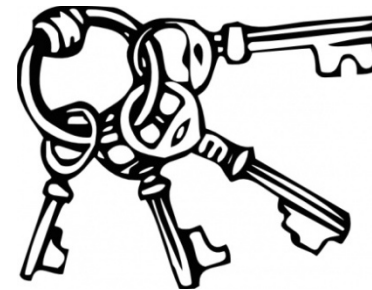
Resources / information:

Association for Legal Nurse Consulting (www.aalnc.org); SEAK (www.seak.net); the American Association of Nurse Attorneys (www.taana.org).

Iyer, P. The Path to Legal Nurse Consulting (2nd ed.), 2015
(www.amazon.com)

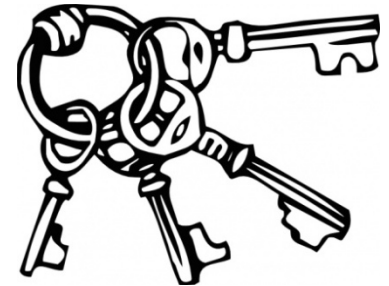
Key Nursing Concepts

- **Assessment**
- **Care Planning**
- **Communication**
- **Consults**
- **Documentation**
- **Ethics**
- **Evidence-based practices**



Key Nursing Practice Issues

- **Nurses must be aware of and practice within their scope of practice per their state nurse practice acts**
- **Accurate wound assessment and documentation is critical for legal protection**



www.WhyWoundCare.com

References

- Baranoski S, Ayello E, Langemo D. Wound Assessment. In: Baranoski S, Ayello E. (eds) *Wound Care Essentials, Practice Principles*. Philadelphia, PA: Wolters Kluwer; 2016: 189-219.
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- Van Rijswijk L, Eisenberg M. Wound assessment and documentation. In: Krasner DL, ed. *Chronic Wound Care: The Essentials*. Malvern, PA: HMP Communications; 2014:29-46.