

Occupational Health, Nursing Liability and Workers' Compensation Law

Avoiding Liability Bulletin - October 1, 2014

Those of you who are occupational health nurses know the importance of the role you have in a company's and its employees' lives. One role you may have in occupational health nurse is handling injuries under the state workers' compensation law.

Workers' compensation laws are state laws that provide a remedy for a worker whose injury is job-related and arose out of and during the course of employment. These state laws are not based on the traditional theory of negligence but rather on the relationship between the employer and the employee.

As a result, if a worker is injured and the workers' compensation law applies, the employee does not need to prove fault or negligence on the part of the employer or, in many instances, on the part of fellow employees in order to obtain a monetary award for the injury. The employer benefits by not having to defend itself against a negligence claim. In short, the employer (and possibly other employees) is immune from such a suit by the employee.

Based upon the injury the employee sustains, the statute sets up the monetary compensation for the injured employee. Some authors argue that the monetary awards are less than the employee may win if he or she were able to sue the employer under a negligence theory but the compensation is more certain.

As an occupational health nurse, your potential liabilities depend upon your status within the employer's business. If you are an employee of the business where you perform occupational health nursing services, you might enjoy immunity from any suit as a result of your negligent care because your state workers' compensation statute may provide you with immunity due to being a "fellow employee". In contrast, if you are an independent contractor providing the same services, you are able to be sued since the workers' compensation statute only applies to employers and employees and not third parties, which you would be considered. However, these distinctions are not always that clear.

As an example, in one Indiana case¹, an occupational health nurse who was an employee of a particular business was considered not covered by the workers' compensation "fellow employee" provision. Rather, the court held the controlling relationship was the nurse-patient relationship, and therefore the nurse could be sued for the injury sustained by the employee when she negligently administered an injection to him.

Regardless of the particulars of your state's workers' compensation statute, as an occupational

health nurse, you need to:

1. Know what the state workers' compensation statute says about an injured employee being able to sue "fellow employees";
2. Provide non-negligent care to those employees to whom you provide nursing care regardless of what your state statute says;
3. Document any and all care provided to any employee;
4. If an independent contractor providing occupational health nursing services, be certain to purchase professional liability insurance;
5. Consider purchasing your own professional liability insurance even if you are an employee providing occupational health nursing to employees, since a court interpretation might render you a third-party rather than an employee;
6. Become a member of the American Association of Occupational Health Nurses (www.aaohn.org); and
7. Consider certification in occupational health nursing by the American Board of Occupational Health Nursing (www.abohn.org).

***Please note:** CPH & Associates does not offer workers' compensation coverage. For more

information, please reach out to a local insurance agent for that specific coverage.

GENERAL REFERENCES

1. Mary Linn Green (2001), "The Nurse In The Community", *in* Nurses And The Law: A Guide To Principles And Applications. Second Edition. Philadelphia: W.B. Saunders Company, 413-114.
2. Arlene Guzik (2013). Occupational Health Nursing. Hoboken, NJ: Wiley Blackwell.

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK ADVICE FROM A COMPETENT PROFESSIONAL.

Author:

Nancy Brent