

## The Nurse as Expert Witness

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Traditionally the great majority of health care related malpractice suits have involved physicians and hospitals. Increasingly, however, greater attention is being given to nurses as potential defendants and thus as sources for recovery in malpractice suits. As a result, more recognition is emerging for nursing as a profession accountable for its practice. This article will examine the concept of accountability by:

1. reviewing selected legal principles of malpractice;
2. discussing the trend toward increased inclusion of nurses in malpractice actions and the implications of this trend; and
3. describing an Expert Nurse Witness and Consultation Service which was developed to provide nursing opinion on the professionally accepted standard of nursing practice.

### Principles of Malpractice

Nursing malpractice falls within the section of law referred to as the tort of negligence. This tort, a civil wrong, is comprised of four elements, all of which the allegedly injured person (the plaintiff) must prove in order to succeed with a lawsuit. The plaintiff must introduce evidence at trial which establishes:

1. the existence of a *duty* owed to the plaintiff by the defendant;
2. *breach* of the duty by the defendant;
3. *damages* suffered by the plaintiff; and
4. a *causal connection* between the defendant's action and the plaintiff's damages.

Establishing the first two elements, the duty and the breach, involves demonstrating the standard of care which is applicable in the particular situation. For example, if the claim is that the nurse negligently administered an injection, the plaintiff must introduce evidence to show the proper technique for the procedure, and demonstrate that this technique was not followed.

A major way a plaintiff introduces evidence to show what the appropriate standard of care should have been is through the use of an expert witness. Expert opinion is usually helpful in *any* situation where some special knowledge, skill or training is either necessary or would be essential in enabling the court or jury to form a rational conclusion from the facts. The areas which require expert testimony are as diverse as are the possible subject matters of litigation.

### Use of Nurses as Expert Witnesses

Historically, the use of nurses as expert witnesses has been limited. One reason for this has been the small number of malpractice suits against nurses. With few suits questioning the nursing standard of care, the need for nurses to testify about that standard

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has been minimal. Another reason has been the refusal by courts to recognize nursing as a profession with an independent body of knowledge. Courts have been reluctant to specifically state a *requirement* that nurses be used as expert witnesses in cases where negligent nursing care is alleged. In cases involving nursing malpractice, courts have allowed physicians to give expert opinion as to the applicable standard of nursing care, and this became acceptable practice.

One of the cases dealing with expert witnesses in nursing malpractice suits is *Jones v. Hawkes Hospital*.<sup>1</sup> In this case the plaintiff was in the hospital's labor room awaiting the birth of her first child. She was sedated and had made previous attempts to climb out of

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