The Ins & Outs of Professional Liability Insurance for Nurses

Bonsall, Lisa
Hello, this is Lisa Bonsall, this senior clinical editor for Lippincott Nursing Center. Today, I'm speaking with Edie Brous, JD, MSN MPH, RN. Edie is a nurse attorney who combines her experience and passion for nursing and law in representing, advising, educating and advocating the interests of licensed professionals, particularly nurses. Edie is also the contributing editor for legal issues for the American Journal of Nursing. Hi Edie. I'm looking forward to speaking with you today about nurses and malpractice insurance.

Edie Brous (Guest)
Hi. Well, thanks for the invite.

Bonsall, Lisa
Can you please begin by telling us about yourself and the work that you do?

Edie Brous (Guest)
I am a nurse, attorney in that order, nurse and then attorney. I am in solo practice right now doing administrative law representing health care professionals before regulatory agencies, primarily licensing boards, and more than any other professional, probably nurses. And the reason for that is just that there are more of us than other professionals.

Bonsall, Lisa
Great. Can you tell us the basics? Like, what is malpractice insurance?

Edie Brous (Guest)
Well, I don't call it malpractice insurance. I call it professional liability insurance because the malpractice coverage is only one product in your policy. The policies for nurses in particular include within it a benefit that is the one that most need their policies for. Nurses tend to have a fear about being sued about malpractice lawsuits. That is far in excess of what the reality is. The fear far exceeds the reality for a nurse.

Most nurses will get through their entire career and they're never going to have a legal problem. They're never going to be sued. They're never even going to be a witness in a malpractice lawsuit much less an actual defendant. And most medical malpractice suits that are filed are against physicians and there are certainly many reasons for that, but also most medical malpractice suits or either settled or dismissed; only about a third of them actually make it to trial. And of those that do make it to trial, anywhere from 75 to 86% of those are defense verdicts, so the actual chances of a nurse being named in a lawsuit that survives to trial with a jury verdict against him or her is really pretty low. The real risk for nurses is in
licensure discipline and other administrative regulatory agencies, and that's far more consequential. As stressful and expensive as a lawsuit might be, discipline on your license to practice can actually take you out of the field in a much more damaging way and have much more permanent damage and many more collateral problems than a simple lawsuit can. So I call it professional liability insurance because the insurance product nurses most need is licensure defense. You are substantially more likely as a nurse to have a legal problem with the nursing board than you are within malpractice lawsuit. And when nurses are only thinking about malpractice lawsuits, that's one of the excuses they use to not have their own policy because they're not thinking that their employer coverage is not going to provide any help for them if they have a problem with the licensing board. And you should never go to the nursing licensing board unrepresented, you should also always have counsel with you and that costs money. So that's why you want your policy in place.

**Bonsall, Lisa**

Thank you, Edie. Why do nurses need professional liability insurance?

**Edie Brous (Guest)**

Well, you know, you ensure your health, you ensure your home, you insure your car. Why wouldn't you want to ensure your livelihood? You work really hard. The insurance policies today are between $100 and maybe $140 for RNs, not for NPs. They're going to be higher when you're into diagnosis and prescription. But for RNs and LPNs, that policy is between $100 and $130 or $140 a year. That is nothing. It's generally about $2 a week to be covered. And think about how much money and time and energy you put into getting those letters behind your name. It's worth $2 a week to protect them. I mean that $150 or whatever you're spending a year for a policy today doesn't cover a textbook in nursing school anymore. So ensure your livelihood.

**Bonsall, Lisa**

Thank you. What can nurses expect from their employer with regards to professional liability insurance?

**Edie Brous (Guest)**

I would say that they shouldn't expect anything. The nurses I know that don't have their own policies because they believe they're covered by their employer, have never actually seen the employer's policy to know what it does and doesn't cover. It doesn't cover 2 main areas that leave huge gaps for nursing coverage. One is again, it doesn't cover licensure defense and the other is it doesn't cover anything that happens outside the scope of your employment or anything that happens off the job.

So what you can expect from your employer for insurance is just not a whole lot of coverage. Remember that the policy that the organization has is a policy to protect the organization and you as the nurse are not the client or the insured. You are an employee of the client or of the insured, but you're not the insured party itself. So you can expect that if there's a medical malpractice lawsuit against your employer that you have some responsibility under that you've named in that the hospital's legal department or whoever they contract out through their insurance to represent the hospital will be representing you in preparing you, but that insurance coverage is only for the medical malpractice lawsuit part of things. It won't cover you for anything that happens if there is a concurrent licensure investigation, and the licensing boards will know that you've been named in a malpractice lawsuit. So you're going to have a license issue at one point or another anyway, and your hospital is not going to be covering you for that.
Bonsall, Lisa  
Interesting. So when should nurses have their own private insurance?

Edie Brous (Guest)  
In my opinion, from the time they’re students, until they’re in the grave. For your entire career, you need to have your own policy, and even after you’ve stopped because you’ve retired or you’re not currently in practice, that ends your working days. It does not end your liability. You still need to have a policy that covers you because you’re not a layperson anymore. You are a licensed professional, and even if you have not renewed that license or you haven’t been in practice for a while, you will never again be held to the standard of a layperson. You’re always going to be held at the standard of a professionally licensed nurse. It’s not an expensive policy to keep you covered, so there’s really no reason not to maintain that policy forever.

Bonsall, Lisa  
Great advice. Thank you. Edie, do you have any case studies or examples that you could share with our audience?

Edie Brous (Guest)  
Well, I can tell you with most of my clients on my client intake form, one of the questions I ask is do you have malpractice insurance or professional liability insurance and if so, with whom? So I know what kind of coverage you have and if not, why not? And then I ask the nurse is one of the reasons that they don't have their own policy and they give me a lot of the reasons that they've heard that are untrue, like they're more likely to, it makes them a target to have their own policy. They're more likely be sued if they have coverage. That they don't think they need it because their employer has a policy or because they think they have immunity because they work under charitable or religious or a government institution, or they didn't think they needed it because they're not currently in practice or whatever those reasons are that they don't have policies anymore or never did have a policy, and frequently a lot of what I have to do is educate them. And I can't tell you how sad it is that the nurses don't have a policy or they didn't have a policy the day of the event, and now they're spending thousands or 10s of thousands of dollars on legal fees to be represented before the licensing Board, not only in the state where I'm representing them, but in any other state in which they have ever held a license, because those states will also come after them and they didn't know that their policy would have covered them.

Bonsall, Lisa  
Wow. This is a great education for our listeners. Thank you so much. What are some tips to help nurses being to avoid being named in a malpractice suit?

Edie Brous (Guest)  
Well, the two things I would say...there are a lot of different things you can do, of course related to practice issues, but the two things I think that are the most important is number one, interpersonal
skills. It is very, very hard to sue somebody you like even when they screw up. It's just hard to do. And one of the reasons nurses are not sued as much as other providers is because the nature of the relationship we have with patients is different. We are not making cameo appearances and just coming in and going out. Nurses are there 24/7, 365. And nurses are the lifeline that patients have to the rest of the entire healthcare system. And when a patient’s been hospitalized, after they leave, regardless of why they were there or how long they were there or what happened to them while they were there, what they remember most about their hospital experience is the nursing care and that nurse patient relationship can create a bond that is very protective because if a nurse makes a mistake and a patient is harmed, that patient is substantially less likely to sue that nurse because they like that nurse. So they believe in that nurse. So number one is interpersonal skills. That is a challenge now because we've always had staffing shortages. But right now that staffing shortage is on steroids, so having the time to actually communicate with the patient and make that patient feel like “I might not be able to spend as much time with you as I would like to. But your best interests are always on my mind and all I care about is doing what is good for you” to communicate that to a patient that you can be trusted and that you care about that patient is very, very protective and then the next thing I would say is certainly is documentation because in a med mal suit, sometimes the medical record is the best evidence and sometimes it's the only evidence that you have to actually defend yourself with so in documentation I would say one thing to always keep in mind when you're charting anything is you look at all the different people who will be reviewing your entries into the medical record - the insurance companies, the lawyers, the quality assurance people, the medical records people. There are a lot of people who are going to be looking at your records, but the most important reader of your entries into a medical record is you in the future. So document today so that five years from now, by reading your note, you can reconstruct a timeline of events that is an accurate chronology, and you can describe what that patient looked like because of the way you wrote. So years from now because of what you write today, you can because of what you're reading, reconstruct events clearly. That's what you keep in mind as you're documenting. So between interpersonal skills and good documentation, that is more preventive than anything else you can do.

Bonsall, Lisa
Thank you so much for speaking with me today. This has been really enlightening. I think that it's very valuable for nurses to hear these words from someone so experienced in this field. I appreciate your time.

Edie Brous (Guest)
Sure. Thank you.