

Protesting Your Assignment: A Primer on Documenting the Issue

NYSNA Continuing Education

The New York State Nurses Association is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center's Commission on Accreditation.

This course has been awarded 2.0 Contact Hours through the New York State Nurses Association Accredited Provider Unit.

The New York State Nurses Association is accredited by the International Association for Continuing Education and Training (IACET) and is authorized to issue the IACET CEU.

The New York State Nurses Association is authorized by IACET to offer 0.2 CEUs for this course.

This course is intended for RN's working in specialty care units. In order to receive CH/CEUs participants must read the course material, complete and return the post-test answer sheet with a score of 70% or better, and submit the completed evaluation for this course. Contact hours/CEUs will be awarded for this course until March 2, 2023.

NYSNA has been granted provider status by the Florida State Board of Nursing as a provider of continuing education in nursing (Provider number 50-1437).

Declaration of Vested Interest: None

NYSNA wishes to disclose that no commercial support of sponsorship was received.

NYSNA's program planners and presenters disclose no conflict of interest.

How to Take This Course

Please take a look at the steps below; these will help you to progress through the course material, complete the course examination and receive your certificate of completion.

1. REVIEW THE OBJECTIVES

The objectives provide an overview of the entire course and identify what information will be focused on. Objectives are stated in terms of what you, the learner, will know or be able to do upon successful completion of the course. They let you know what you should expect to learn by taking a particular course and can help focus your study.

2. STUDY EACH SECTION IN ORDER

Keep your learning "programmed" by reviewing the materials in order. This will help you understand the sections that follow.

3. COMPLETE THE COURSE EXAM

After studying the course, click on the "Course Exam" option located on the course navigation toolbar. Answer each question by clicking on the button corresponding to the correct answer. All questions must be answered before the test can be graded; there is only one correct answer per question. You may refer back to the course material by minimizing the course exam window.

4. GRADE THE TEST

Next, click on "Submit Test." You will know immediately whether you passed or failed. If you do not successfully complete the exam on the first attempt, you may take the exam again. If you do not pass the exam on your second attempt, you will need to purchase the course again.

5. FILL OUT THE EVALUATION FORM

Upon passing the course exam you will be prompted to complete a course evaluation. You will have access to the certificate of completion **after you complete the evaluation**. At this point, you should print the certificate and keep it for your records.

Course Objectives

At the completion of this course, the learner will be able to:

- Understand the data needed to successfully provide notice to the hospital/nursing home of staffing and patient safety issues.
- Demonstrate how to most effectively fill out a POA.
- Explain how the POA data can be used to facilitate concerted activity and patient advocacy.
- Use critical thinking and the POA process to solve case scenarios.

Introduction

A registered nurse receiving an assignment that in her/his professional judgment places the patient(s) at risk has an obligation under law and ethics to take action. In acting in the interest of the patient, the nurse is required to notify the administrator on duty to whom she/he is reporting to and who has the authority to make staffing decisions.

The NYS Nurse Practice Act, the Code of Ethics for Nurses, and the mandates under the NYS Board of Regents Rules related to Unprofessional Conduct hold the nurse responsible and accountable to her/his patients for the quality of the nursing care provided. However, the responsibility and accountability for the overall level of care ultimately resides with the hospital/agency, including all hospital and nursing administration staff.

Protest of Assignment forms are used when nurses are expected to assume responsibilities and accountabilities that exceed their experience and educational preparation and/or the volume of care is more than the nurse can, in her/his professional judgment, safely administer. Protest of Assignment forms are also used when the nurse has been given an assignment that is beyond the legal scope of nursing practice under the NYS Nurse Practice Act.

For any single situation, multiple forms may be completed if there are multiple nurses who feel care is compromised. More frequently, however, due to time constraints, multiple nurses will file one form objecting to the conditions under which the nurse(s) must practice. This singular form, then, represents multiple nurses' levels of analysis of the patient care situation.

About the Author

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Carol Lynn Esposito, Ed.D., JD, MS, RN-BC, NPD is currently the Director of Nursing Education and Practice for the New York State Nurses Association (NYSNA). Dr. Esposito has been the past Director of Labor Education for the NYSNA, and a past Associate Director of the NYSNA collective bargaining program. Dr. Esposito has been an Adjunct Professor at Adelphi University's School of Nursing, Excelsior College School of Nursing, and Hofstra University's College of Continuing Education. She received her Ed.D. from Dowling College, her JD from Brooklyn Law School, her MS from Excelsior College, and her Baccalaureate degree from Adelphi University.

Dr. Esposito has taught Introduction to Law, Civil Litigation, Risk Management, Medical Malpractice, Birth Injuries, Ethics, Introduction to Hospital Management, Collective Bargaining, and Introduction to Research and Writing at various colleges and universities. She has been Of Counsel to Wagner, Doman, & Leto, a Long Island, New York defense firm concentrating in medical malpractice, has worked for several malpractice firms both on Long Island and in New York City, and has worked for the United States Attorney's Office in the Eastern District of New York.

Dr. Esposito has been an honorarium speaker for Catholic Medical Center School of Nursing, Winthrop University Hospital, Sigma Theta Tau, and the American Association of Legal Nurse Consultants. She has authored articles on Informed Consent and Malpractice Insurance, Transcultural Nursing, Patient Satisfaction, Short Term Medical Missions, End-of-Life Care, Continuous Nursing Education, Leadership Development, and Nursing Ethics, and has developed course and text materials for the National Center for Professional Development. Dr. Esposito taught medical/surgical and pediatric nursing through BOCES and has practiced as a medical/surgical and cardiac nurse.

Purpose of the Protest of Assignment (POA)

POAs generally serve to notify management of its potentially inadequate or absent efforts to:

- Protect the public per the requirements of NYS Public Health Law Article 28 and state regulations, including Title 10 Part 405 of the New York Codes, Rules and Regulations (“NYCRR”), “Hospitals – Minimum Standards”;
- Follow Code of Federal Regulations related to the Centers for Medicare and Medicaid reimbursement Conditions of Participation;
- Follow standards of care as indicated by facility policy and procedures; individual competencies; certification expectations; evidence-based research in the areas of retention and turnover in: ICU/CCU/PICU/NICU, pediatrics, medical/surgical units, psychiatric units, telemetry/stepdown units, maternal/child units, labor and delivery units, and Emergency Departments where specialized orientation programs are utilized;
- Follow Joint Commission standards for leadership;
- Support the staffing guidelines developed in accordance with standards of practice and Joint Commission reports, and to provide minimum staffing levels required to safely care for the volume and acuity of the patients.

In addition to the duty to care and advocate for their patients, nurses must assume many other collective responsibilities. These include advocating for: themselves; improved nursing standards; a safe work environment that is conducive to the delivery of quality patient care; a work environment that facilitates and supports the standards of nursing practice and the nurse practice act; and, community and national health care needs (Ketter, J. (1997). Nurses and strikes: A perspective from the United States. *Nursing Ethics*, 4(4), 323 – 329).

Understanding the Legal Basis for the filing of the Protest of Assignment Form

The complexity of the delivery of nursing care is such that only professional nurses with appropriate education and experience can provide nursing care. The right of the patient to receive safe, professional nursing care at an acceptable level of quality is at the core of every RN decision to file a protest of assignment. The healthcare law outlines the expectations of the RN staff to deliver no less than minimum-standard nursing care once an assignment has been accepted; to be prepared mentally, physically and educationally to deliver safe care; to delegate care appropriately; and to adequately supervise those to whom care has been delegated.

When an RN accepts employment in a healthcare facility, the nurse enters into an implied contractual agreement with that facility that she/he will provide nursing services in a collaborative practice environment. Under civil tort law, each party to the contractual relationship has responsibilities and is accountable to the other party for the following:

The Nurse's Responsibility

- Provide competent nursing care to the patient.
- Communicate concerns regarding needed resources and/or the work environment that may potentially impede the delivery of quality patient care.
 - This includes utilizing the chain of command as well as use of available documentation tools such as incident reports, QA memos, and POA forms to inform healthcare leaders of issues of concern.
- Exercise informed judgment and use individual competence and qualifications as criteria in giving, accepting or rejecting an assignment.
 - Nurses have individual accountability for the care of each patient.
- Clarify assignments, assess personal capabilities, identify options for alternative patient care assignments when he/she does not feel personally competent or adequately prepared to carry out a specific function.
 - The nurse may be held legally and ethically responsible for judgments exercised and actions taken in the course of nursing practice.
- The nurse has the right to refuse an assignment that he/she does not feel prepared to assume, but must also consciously decide to accept the possible consequence of this decision (being dismissed for insubordination).

Management's Responsibility

- Ensure competent nursing care is provided to the patient.
- Evaluate the nurse's ability to provide specialized patient care and provide appropriate orientation and training to a new or changing clinical setting and/or patient population.
- Nursing competencies must be discussed at the time of employment and updated as competencies change, clearly identifying clinical areas in which the nurse is competent to serve.
- Provide and organize nursing resources to ensure that patients receive safe, effective and appropriate nursing care.
- Communicate, in written policies and procedures, the process to make consistent and appropriate assignments and reassignment decisions.
- Collaborate with staff to clarify assignments, assess personal capabilities and jointly identify options for patient care assignments when the nurse does not feel personally competent, adequately prepared, or appropriately resourced to carry out a specific function.
- Recognize that working frequent long hours and adjusting to shift changes may interfere with a nurse's physical and mental health and impair performance of clinical activities and judgments.
- Recognize that a nurse floated to a charge position requires a substantial amount of clinical experience and a high level of clinical judgment and skill in that area as he/she is responsible for providing consultation and direction to other nursing staff.

- Recognize that the use of agency nurses and/or floating an RN to another unit creates a substantial amount of stress, worry, and unhappiness on all RNs and facilitates nurse burn-out, negative RN satisfaction scores, and facility turnover.
- Recognize that consistent understaffing of patient units contributes to poor patient outcomes and increased readmission within 30 days of discharge.

Administration's / Healthcare Facility's Responsibility

- Ensure the presence and ongoing enhancement of a care environment conducive to the delivery of quality patient care.
- Plan and budget for appropriate resources based on patient requirements and priorities for care, recognizing individual patient safety takes precedence over facility profits, needs, and priorities.
- Ensure competent nursing care is provided to the patient.
- Provide education to staff and management in the decision-making process regarding patient care assignments and reassignments, including patient placement and allocation of resources.
- Recognize staffing decisions must be made by nurses with appropriate education and experience.
- Provide a clearly defined mechanism for immediate internal review of proposed assignments. This should include participation of staff involved, and the documentation and review of incidents in which the appropriateness of assignment is in question.

When, in the RNs professional judgment, one of these responsibilities has been breached, the RN should file a protest of assignment.

The Protest of Assignment Objective

The NYSNA Protest of Assignment, or POA, is a legal document that provides notice to your employer that in your professional judgment, your assignment is unsafe and places both you and your patients at risk of a negative outcome and for potential serious injury. This notice is extremely important if the RN wants to transfer accountability and liability for any subsequent patient damages to the hospital. Let's review why this document is necessary to transfer the liability to the hospital and its management team.

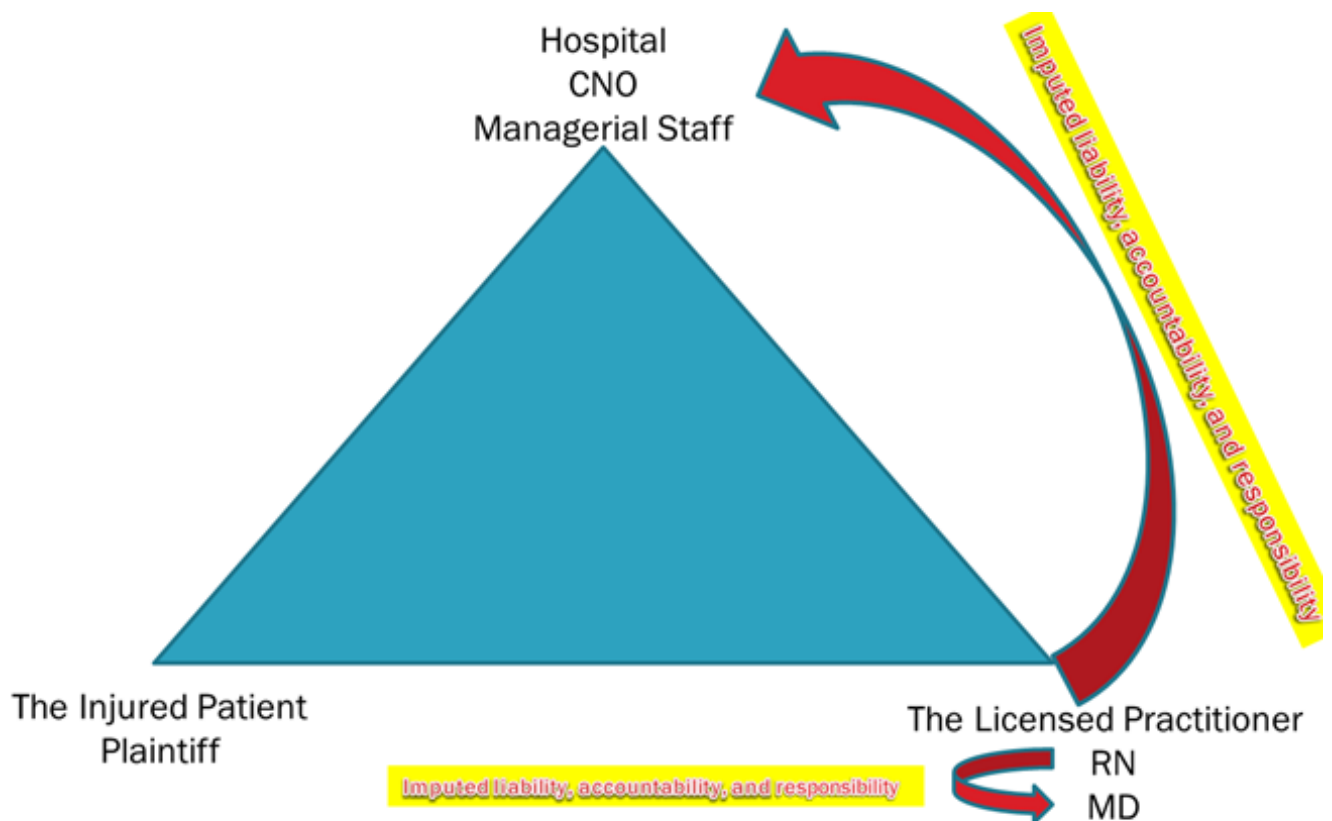
Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury, but who has a particular legal relationship to the person who did act negligently. It is also referred to as *imputed liability*.

The diagram in **Figure 1** shows the theory graphically. When the plaintiff sues the RN for malpractice, the RN can transfer the accountability and responsibility for the injury, and ultimately the liability for the injury, to other parties who the RN has a special relationship with.

The special relationship between the RN and the MD is that of the "captain of the ship" theory. When the RN calls the MD with a change or potential change in a patient's condition, the MD becomes liable for the patient care decision-making regarding the medical regimen.

The special relationship between the RN and the managerial staff, CNO, and hospital is that of an employer/employee or a supervisor/employee relationship. When the RN calls the manager and files a POA with the manager and human resources department, the RN is giving notice to these parties of an actual or potential existing dangerous circumstance. Accountability, responsibility, and ultimately liability then transfers to those parties for the nursing regimen and patient care decision-making.

Figure 1. Vicarious Liability Theory



Initiating the Transfer of Liability: Giving the First Notice to the Hospital

To initiate the transfer of liability, the RN who determines that her/his assignment is unsafe must give immediate notice to her/his supervisor. The best evidence of notice should be person-to-person by way of a telephone call with a witness. When making a call, the reporting RN should tell the supervisor that the call is being made in the presence of a witness, and you should tell the supervisor the name of the witness. You should then tell the supervisor that you are filing a POA for these reasons, and then delineate all of the reasons you are giving notice of a dangerous situation and filing the protest.

Your call should sound like this:

“Hello Supervisor Jane, this is Carol Lynn Esposito on 5W med/surg. I am calling you in the presence of Lucille Sollazzo and I am giving you notice that in my professional judgment, patients are at risk today because we have only 4 RNs on staff today and the unit has 3 1:1 patients on the floor because they are on respirators, are receiving multiple IV drips and antibiotics, we have 5 patients who need safe patient handling equipment and who need turning and positioning every 2 hours and we do not have any SPH equipment on the floor, our CNA was floated to another floor and we have 25 patients on the unit today, 15 of which need moderate to total patient care assistance for all activities of daily living, we will be having 5 discharges and 4 admissions on the day shift, and we have 2 families who are constantly in the patient’s room and have started verbal arguments with the RNs assigned to the patient for the past 3 days. We are demanding that you immediately come to assess the floor and make arrangements for another 2 RNs and 1 CNA. And we are respectfully requesting that if you float RNs to our unit, that they have med/surg experience and have had recent orientation to and are familiar with our unit and the acuity and medical conditions of our patients.”

Next, fill out the **middle section of the form** as follows (See **Figure 4**):

1. Fill in the circle that corresponds to your unit. Also circle the unit type. For example, if you filled in the CCU/ICU/NICU circle, also circle "CCU" if that is your unit. If you work in MICU, write MICU in the spaces provided under the word "Other." Follow this procedure for all other circles denoted on the form.
2. If the name of your unit does not appear on the form, such as "oncology," then provide that name on the "Other" line.
3. Next, fill out the boxes under "Normal or Core Staff." On the RN, LPN, and ancillary line, put the number of RNs that should be on your unit according to your contract or according to your hospital's staffing plan that is submitted to JC and/or CMS. If you do not have contractual numbers, and/or if you do not know what your hospital's staffing plan numbers are, place in the box the number of nurses that you believe are the core or usual numbers your unit should be staffed at and put on the schedule. If you don't know any of these numbers, use the "Protecting Your Patient" Staffing book numbers. To use this book, look in the index, find your specialty unit, go to that page, and refer to the numbers recommended by the specialty nursing organizations. Please write in on top of the line "Normal" which numbers you are reporting. Write in "Contract" for contractual ratios, "Hospital" for the hospital plan, or "Core" for the usual scheduled numbers for your unit, or "Book" if you are using the "Protecting your Patients" references for staffing numbers that are documented by the specialty nursing organizations.
4. For the section on "Number on duty today" place in the appropriate boxes the numbers of RNs, LPN's, and ancillary who are on the unit that day. Please note that the "Regular" numbers includes all F/T, P/T, and P/D staff on the unit that day. Do the same for the numbers of RNs, LPNs and ancillary staff that have been floated onto or out of your unit. Place the word "into" or "out" above the float line to denote whether the staff member has been floated onto the unit, or removed from the unit. Repeat the process for the numbers of agency staff on the unit that day.
5. For the "What you needed" boxes, place the additional number of RNs, LPNs or ancillary staff you believe you needed that day to meet all patient's needs for all of the patients on the unit that day.
6. For the "Bed Capacity" boxes, place the number of beds you have on your unit.
7. For the "Census" boxes, place the total number of patients on your unit that day. This number should include all hallway patients and all patients that have been admitted to the unit on that day.

Figure 4. Filling Out the Middle Section of the Protest of Assignment Form

What type of nursing unit is this? (shade the type that best applies)		What was your staffing schedule today? (write numbers in boxes)				Regular is sum FT/PT/PD	
<input type="radio"/> CCU/ICU/NICU <input type="radio"/> Med/Surg <input type="radio"/> ER <input type="radio"/> Maternity/GYN <input type="radio"/> Peds/NICU/PICU <input type="radio"/> Psychiatry <input type="radio"/> Ambulatory Surgery <input type="radio"/> Other	<input type="radio"/> Home Care/Public Health <input type="radio"/> School <input type="radio"/> Correctional Facility <input type="radio"/> Ambulatory Care/Clinic <input type="radio"/> OR/Anesth/Recovery <input type="radio"/> Stepdown/Telemetry <input type="radio"/> Nursing Home/Rehab	Number On duty today					
		Staffing	Normal or Core staff	Regular*	Float	Agency	What you needed
		RN	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		LPN	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Ancillary	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Bed Capacity		<input type="text"/>	Census		<input type="text"/>

1. Fill in the Circle of your Unit. Circle the type of unit you are on.
2. If your unit type does not appear on the form, write it in on the "other" line.
3. Fill in the contractual, hospital staffing plan, or usually scheduled numbers of staff in the "core staff" boxes. Use the "Protecting Your Patients" book as a reference.
4. Fill in the total numbers of F/T, P/T, P/D staff that are on the unit today for all regular, float, and agency staff.
5. Fill in the total ADDITIONAL numbers of staff you need for today.
6. Fill in the total numbers of beds on your unit.
7. Fill in the total number of patients on the unit today, including hallway and admission patients.



The next section to fill out is the "Reasons you are protesting" section. Fill in *ALL CIRCLES that apply* to your situation today. Your choices are: patient acuity higher than usual; inadequate number of qualified staff; volume of admissions and discharges; not adequately trained for this situation; don't have the supplies I need such as supplies, equipment, or medications; case load too high and impedes safe care; inadequate time for documentation; mandatory overtime; and other (See **Figure 5**). Refer to your NYSNA **ASSURE** and **WWAAA palm card** when filling in the circles (See **Figure 6**). All WWAA reasons should be written on the "Other" Line.

Figure 5. Filling Out the Reason for Filing the Protest of Assignment Section.

For what reasons are you protesting this assignment? (shade all that apply)

- patient acuity higher than usual
- inadequate number of qualified staff
- volume of admissions and discharges
- not adequately trained for this situation
- don't have resources I need such as supplies, equipment, or medications
- case load too high and impedes safe care
- inadequate time for documentation
- mandatory Overtime
- Other

The legal basis for the "reason" section on the POA form is civil tort (AKA malpractice) law. Under tort law, the hospital employer has corporate responsibilities both to the patient and to its employees. Failure

Protecting Your Assignment: A Primer on Documenting the Issue

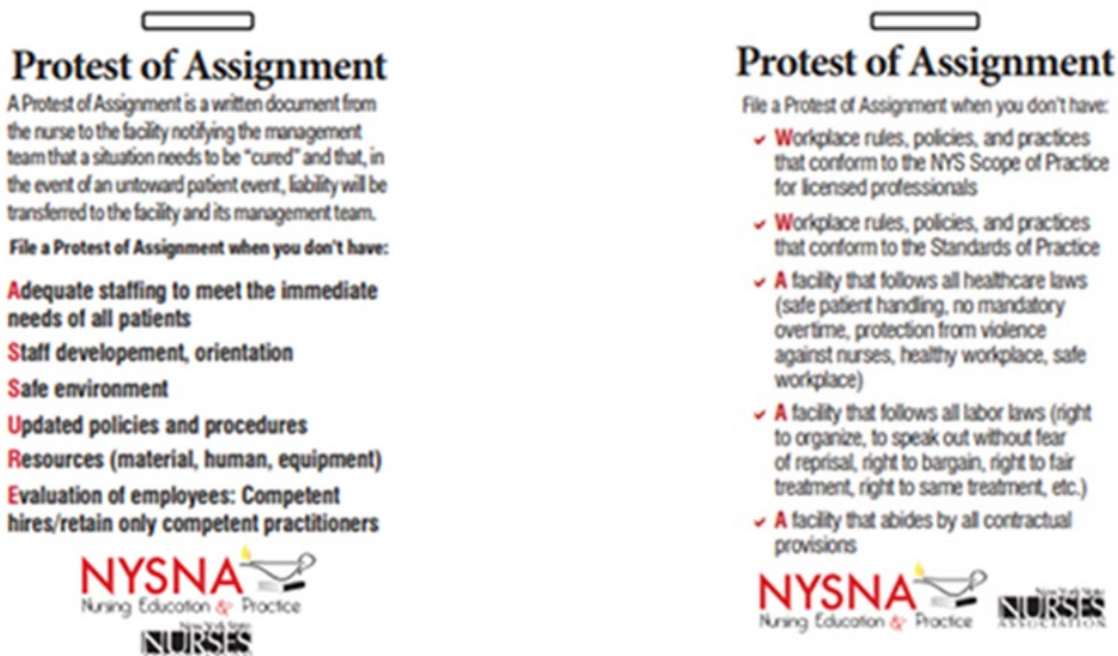
to meet its responsibilities can be the basis of a *corporate negligence* lawsuit. Only injured patients can file a corporate negligence lawsuit against the hospital. Injured RN employees are barred by the NYS Workers' Compensation law from bringing such a lawsuit. Nevertheless, both injured RNs and those who anticipate being injured can file a POA, along with filing an OSHA, Joint Commission, NYS DOH, PESH, and/or NYS DOL complaint.

The NYSNA **ASSURE** and **WWAAA** palm card was developed for NYSNA RNs to assist them in identifying the responsibilities, or duties owed by the hospital corporate owner to its patients and employees. The palm card can be worn behind the ID tag and referred to whenever necessary. The tort law corporate responsibilities are arranged with the acronyms **ASSURE** and **WWAAA** as follows (**Figure 6**):

- A**dequate staffing to meet the immediate needs of the patient
- S**taff development, orientation
- S**afe environment
- U**dated policies and procedures in accord with current standards of practice
- R**eadily available resources (human, material, equipment)
- E**valuation of employees (competent hires, retain only competent practitioners)

- W**orkplace rules, policies and practices that conform to NYS scope of practice for RNs
- W**orkplace rules, policies and practices that conform to standards of practice in nursing
- A** facility that complies with all healthcare laws (safe patient handling, no mandatory overtime, protection against violence in the workplace, safe and healthy workplace)
- A** facility that complies with all labor laws (right to organize, to speak out without fear of employer retaliation or reprisal, right to bargain terms and conditions of employment, right to fair and non-disparate treatment, right to engage in concerted activities, etc.)
- A** facility that abides by all contractual provisions

Figure 6. NYSNA Protest of Assignment Palm Card



Passing along the Liability: Filling out the “Other Comments” Section on the Protest of Assignment Form

Deciding which “reason” circle to fill in and what to write in the “additional comments” section on the protest of assignment form requires critical thinking and reasoning. Refer to the “How to substantiate your claims” document (**Figures 8, 9**) to help you fill in the additional comments section. This document gives you some ideas on how to embellish on the situation according to the circle you have chosen on the “Reason you are filing a POA” section. Remember, this section substantiates your claim that a dangerous situation exists on your unit today (See **Figure 7**).

Figure 7. Additional Comments

Additional Comments
Print in Block letters!

Number of RNs signing this form

In this section, be sure to tell the story of what your staffing and the patient population looks like on your unit today. You want to describe the situation so that if anyone read the information, they would be able to conclude that it would be both physically and mathematically impossible to meet all patient needs.

- Describe how many 1:1 are on the unit, how many multiple drips that need to be checked every hour, how many turning and positioning every 2 hours, how many vital sign every 15 minutes checks that need to be done, etc.
- Describe if staff have been floated in or out of the unit. If staff have been floated, it would be important for all of the nurses on the corresponding unit that the staff was floated onto and from, to file their own POA as well.
- Describe if the staff are novice staff, on orientation, or are not specialists in the type of nursing needed for your unit. For example, if a med/surg nurse is floated onto an ICU unit, denote that the hospital has provided you with an RN that does not have adequate orientation and training for the patient population.
- Also describe if your patients are obese, fully or partially dependent, and need safe patient handling equipment, whether you have the equipment available to you. Describe any violence on the unit. Denote any equipment that is faulty or missing on your unit.

Also be sure to fill in the number of RNs that are signing the form in the box provided next to the additional comments section on the protest of assignment form. This number should correspond to the number of actual signatures placed on the bottom of the protest of assignment form. NYSNA counts this number (along with the concomitant numbers of actual signatures) as the true number of protests of assignment that were filed on the unit, on that day, and for the reasons circled.

The New York State Nurses Association has developed a “cheat sheet” to help RNs in this critical thinking process (**Figures 8, 9**).


Figure 8. Deciding Which Reason to use on the Protest of Assignment Form



How to substantiate your claims on a Protest of Assignment Form

Add into the Additional Comments box one or more of the following statements:		
For Patient Acuity Higher than Usual		
➤ List all nursing care duties required on your high acuity patient	➤ Give the number of patients that you are caring for today with high acuity levels	
For Inadequate Numbers of Qualified Staff		
➤ Give the numbers of ancillary staff/clerical staff needed AND on duty today	➤ Inadequate number of clinical staff to provide 1-to-1 patient observation	
➤ Give the numbers of agency staff on duty today	➤ Give the numbers of staff floated OFF of your floor, leaving your floor short	
➤ Give the time you made a request for help and the time the help arrived (consults, MDs, manager, etc.)	➤ Provide a statement of the type of practitioner who is not readily available to you (MD, wound nurse, rapid response team, security, etc.)	
➤ Give the numbers of staff floated onto your floor who have not been oriented	➤ Give the time of day the POA was filed	
➤ Give the numbers of staff floated onto your floor who were asked to perform outside their area of clinical specialty	➤ Inadequate number of security personnel to promptly respond to dangerous situation on unit	
For Volume of Admissions and Discharges Too High		
➤ Provide the actual numbers of admissions and discharges during your shift	➤ Provide the nursing care hours necessary to perform the admission / discharge	
➤ Provide the number of patients you handled today (admissions, discharges, and regular patients)		
For Not Adequately Trained for This Situation		
➤ Provide a statement as to why you are not able to properly care for your patients		
✓ lack of orientation	✓ lack of staff development	✓ lack of nurse educators
✓ lack of mentor/preceptor	✓ charge nurse had to take patients so he/she was not available as a mentor	✓ inadequate facility policies/procedures to guide your practice
✓ floated to an area outside of clinical expertise	✓ adult patient admitted onto pediatric floor	✓ pediatric patient admitted onto adult floor
✓ have not received training on the health risks and protections needed when exposed to hazardous chemicals/drugs used on the unit		
✓ there are not enough environmental services personnel to adequately clean/disinfect patient care areas		
✓ patient admitted onto floor who is clinically difficult (describe)		

Figure 9. Deciding Which Reason to use on the Protest of Assignment Form



How to substantiate your claims on a Protest of Assignment Form

For Not Adequately Trained for This Situation Don't Have Medications/Supplies/Equipment/Resources		
➤ List all medications, supplies, etc. that you do not have	➤ Describe the support staff you are currently lacking	
➤ Provide the amount of time it took to get what you needed		
➤ List all safety equipment you do not have such as safe patient handling equipment, sharps containers, appropriate personal protective equipment (gloves, gowns, face shield, goggles, masks or respirators, booties)		
For Not Adequately Trained for This Situation Don't Have Medications/Supplies/Equipment/Resources For Case Load Too High and Impedes Safe Care		
➤ Give the total number of patients you handled that day	➤ Give the total number of discharges you handled that day	➤ Give the total number of admissions you handled that day
➤ Give the total number of high acuity patients you handled that day	➤ Give the contractual number of patients you are supposed to have	➤ Give the facility set number of patients you are supposed to have
For Inadequate Time for Documentation		
➤ Give the total nursing hours required of you to complete your documentation	➤ Provide a statement if nursing administration made you leave without completing your documentation	➤ Provide a statement of how much time elapsed between your provision of care and when you could document your care
Environment		
➤ List any areas that have limited access to sharps containers, exit doors, fire extinguishers, sprinklers, etc. because of clutter and/or "hallway patients."	➤ Safe patient handling equipment (e.g., lifts, stand assist devices, friction-reducing sheets, etc.) is not available/easily accessible	➤ There is less than 6 ft. clearance between patient being x-rayed and other patients and/or staff (including portable x-rays)
➤ Odors from chemical cleaners/disinfectants or other products are causing staff to feel ill	➤ Patients being treated in the hallway	➤ 2 or more patients placed in single patient room
➤ Workplace violence hazards (i.e. doors without locks, lack of panic buttons\panic buttons not working, blind spots around corners, nurses station unsafe, unsafe visitation policies, inadequate safety policies and procedures, etc.)		
Infection Control		
➤ Because of "hallway patients," there is not enough space between patients for adequate infection control	➤ There is not an adequate number of negative pressure rooms available (for patient with airborne infectious disease)	➤ There is not an adequate number of positive pressure rooms available (for patient with compromised immune system)
➤ Appropriate personal protective equipment not available	➤ Limited or no access to hand washing facilities on unit	
➤ Red bag waste receptacles are not available or are full	➤ Infection control policies/procedures are not adequate or not adhered to	
➤ Sharps disposal containers are not available	➤ Sharps disposal containers are not emptied/replaced when ¾ full	

The last sections for the POA form is the signature, date, and management comments sections (See **Figure 10**).

EVERY RN on the unit should sign the POA. Sign your name clearly and legibly. *If you sign your name illegibly, you may be waiving the imputing of the liability because the plaintiff's attorney might argue you never signed the POA.*

Place in the date boxes the date you filled out the POA. Try to insure that you deliver the POA to the manager on the same day you filled out the POA.

Don't worry if the manager doesn't come down to assess the unit or doesn't write anything in the management comments section.

If the manager doesn't respond, it **DOES NOT NEGATE THE VALIDITY OF YOUR POA AND NOTICE.**

If the manager doesn't respond, you can write in the management comments section "manager did not assess the unit." If the manager calls you and tells you what he/she tried to do to correct the situation, only document negative comments the manager makes, such as, "There is no one available to send to you," or "Just make do for today." Remember, you are passing along the liability, so you don't want to document any comment that might pass the liability back to you.

Figure 10. The Signature and Manager Comment Section on the Protest of Assignment Form

Under the laws of this state, as a registered professional nurse, I am responsible and accountable to my clients. Therefore, this is to confirm that I notified you that, in my professional judgement, today's assignment is unsafe and places my clients at risk. As a result, the Hospital/Agency and you share responsibility for any adverse effects on patient care.

I will, under protest, attempt to carry out the assignment to the best of my professional ability.

Signature _____

Date / /
M M / D D / Y Y

Management Comments

Best Practices for the Filing and Storage of a Protest of Assignment

Every New York hospital represented by NYSNA for collective bargaining has its own process for the filing and distribution of the POA form to necessary parties. You should make sure you are aware of the process in your hospital.

Despite individual hospital procedures, best practices for the filing and storage of the POA form are as follows:

- Give one copy of the POA to your NYSNA representative.
- If you have a POA captain in your facility, or a POA delegate on your unit, give a copy to that person as well.
- Give one copy of the POA to the manager you first gave verbal notice to.
- One copy should be filed with the human resources department in your facility.
- Keep one copy for yourself.
- Do not store your POA copies in your locker or desk at the hospital. These are hospital owned areas. The hospital has a right to search and confiscate items from these areas.
- Store your POAs for a minimum of 10 years. This is the maximum time frame for a patient to sue you for malpractice in New York State.
- Store your POA copies in both paper in a file drawer at home and as a scanned copy onto your home computer. Make sure you keep an external hard-drive copy of the scanned documents as well.

Barriers to Filing a Protest of Assignment

Many nurses have indicated that they do not fill out a POA for the following reasons:

- Fear of retaliation
- Their manager said the policy doesn't allow me to file a POA
- The manager said the situation doesn't warrant a POA
- My peers are not supportive of the filing of a POA
- My peers will not sign the POA form

Don't let your manager bully you.

You have an ethical, professional, legal, and most likely a contractual right to file a POA. All state nurses associations have implemented protest of assignment forms in their state's hospitals. National and international nurse's organizations support the right of the nurse to file a protest. The ANA has made the following statement with regard to POA:

“The American Nurses Association (ANA) believes that registered nurses – based on their professional judgment and ethical responsibilities – have the right to reject, accept, or object in writing to any patient assignment that potentially puts patients or themselves at serious risk for harm. The professional obligations of the registered nurse to safeguard patients are grounded in the Code of Ethics for Nurses with Interpretive Statements (ANA, 2001a), Nursing: Scope and Standards of Practice (ANA, 2005), and state regulations governing nursing practice.”

If your manager retaliates against you for filing a POA, you should do the following:

- Tell your manager that you are filing another POA, a grievance, and a labor board complaint for his/her interference with your contractual, ethical, professional, and legal right to file a POA.
- If your contract has a provision about the filing of POAs, contact your NYSNA representative and ask them to file a grievance.
- Contact your NYSNA representative and ask them to file a complaint with the Labor Board because your manager retaliated against you for taking a legal concerted action on behalf of your patient.
- You can file a complaint with the EEOC because your manager has created a hostile work environment. Hostile work environment includes sexual, racial, and gender-related harassment.

Build a team spirit on your unit.

Colleagues who do not want to sign the POA place themselves at risk. Explain to your colleagues how the vicarious liability theory works. Also talk about the concept that when you do nothing, then nothing changes.

If, after several attempts you fail to get your colleagues on board with signing a POA, contact your NYSNA representative and ask him/her to have a conversation with your colleagues and schedule a POA workshop at your facility.

Engaging in Concerted Activity

Federal law (the National Labor Relations Act in the private sector, and the Taylor Law in the public sector) protects a nurses right to engage in union activity. These laws protect your right to band together with coworkers to improve your lives at work. Improvements can include demands for increased staffing, ancillary staff, safe patient handling equipment, safe work environment, policies to address workplace violence, etc.

In short, you have the right to act with coworkers to address work-related issues in many ways. Some other examples include: talking with one or more co-workers about your wages and benefits or other working conditions, circulating a petition asking for better hours, participating in a concerted refusal to work in unsafe conditions (the POA), and joining with coworkers to talk directly to your employer, to a government agency, or to your legislators about problems in your workplace. Your employer cannot discharge, discipline, or threaten you for, or coercively question you about, this "protected concerted" activity. However, you can lose protection by saying things about your employer that are egregiously offensive or knowingly and maliciously false, or by publicly disparaging your employer's reputation or services without relating your complaints to any labor controversy.

Concerted Activities Related to the Protest of Assignment

Examples of concerted activities nurses can engage in with their Protest of Assignments can include:

1. Fill out Protest of Assignment Forms collectively or individually.
2. Collect and save a copy of ALL Protest of Assignment Forms filled out on your unit. Review them and make an action plan on how you will use the data on the forms to support the reason for your concerted activity.
3. Present the Protest of Assignment Forms that were filled out over the past month (or the period of time that is most effective) at your next unit meeting to address the issues that have been emphasized on the Protest of Assignment forms.
4. Circulate a Petition asking for better staffing and include copies of all of the POA's that have been filed in a particular time frame, and give the petition to management with a copy of all of the POA's pertaining to that issue.
5. Work with NYSNA representative to determine further concerted activities that are effective in protecting your license and the boundaries of your right to engage in concerted activity.

CASE SCENARIO 1: Unfamiliar Drug

Nurse Ima Nu has been asked to administer an experimental chemotherapeutic agent to one of her pediatric patients. Ima is a novice nurse who has just come off of orientation. She has no knowledge or experience with the drug. How should Ima respond?

Ima is being asked to do something that is beyond her personal knowledge, skill set, and experience. Answer the following questions about Ima's ethical, legal, and professional rights and responsibilities by circling the best answer.

1. Does Ima have the legal right to notify her manager that she does not feel she is competent to administer the drug?
 - a. Yes, the right is rooted in healthcare law.
 - b. No, the right is only rooted in ethics, not in law.

2. Does Ima have the legal right to ask her manager to give the patient to another RN who has knowledge of the drug?
 - a. Yes, Ima can self-assess that the demands of her current patient assignment precludes her from safely administering the drug.
 - b. No, Ima already accepted the assignment and asking another RN to take over would constitute abandonment of her patient.

3. Does Ima have the legal right to ask her manager to assist another RN who has knowledge of the drug?
 - a. Yes, she has the legal right to determine she is not qualified to monitor the patient because she is not familiar with the potentially serious side effects of the drug.
 - b. No, the research protocol, unit policies and procedures, and the pharmacy are available to her and she has an obligation to render herself competent to administer the drug.

Use the POA sheet (on the next page) to practice filling out the POA for this case scenario.

This scenario is rooted in both law and ethics. The nurse's actions should be guided by the following:

- ✓ The Code of Ethics for Nurses (Provision 4) states, "The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the Nurse's obligation to provide optimum patient care."
- ✓ The New York State Health Code 10 NYCRR 405.5 (a) (1),(4) states the hospital shall provide RNs who are qualified by training and experience for the job and shall have a written evaluation of the performance, credentials, and competence of registered professional nurses and ancillary nursing personnel shall be conducted on at least a biennial basis.
- ✓ The Joint Commission Competency (HR.01.01.01 and HR.01.06.01) requirement states that the hospital must have the necessary staff to support the care, treatment, or services it provides, and that staff must be competent to perform their responsibilities. Competency is defined as a combination of observable and measurable knowledge, skills, abilities and personal attributes that constitute an employee's performance. The ultimate goal should be that the employee can demonstrate the required attributes to deliver safe, quality care.
- ✓ The New York State Education Law (130 Education Law 6509) and the Board of Regents Rules, Part 29.2 states that it is professional misconduct and unprofessional conduct to practice nursing with negligence or incompetence.

If Ima cannot come to an agreement with the management team about any of her requests, then she must:

- ✓ *Accept the assignment documenting carefully on the POA form her concerns related to patient safety using the process outlined in this program.*
- ✓ *Keep a personal copy of this documentation, provide a copy to the immediate supervisor, send a copy to the NYSNA representative, and another to Human Resources*
- ✓ *Ask the other RNs on the unit to co-sign the POA.*

Or...

- ✓ *Refuse the assignment and accept the possibility of disciplinary action, up to and including termination.*
- ✓ *Document carefully her concern for patient safety and the process she used to inform the manager of her concerns.*
- ✓ *Keep a personal copy of this documentation, provide a copy to the immediate supervisor, and send a copy to the NYSNA representative.*

ANSWERS TO SCENARIO 1

1. **A**
2. **A**
3. **A**

CASE SCENARIO 2: Floating to another Unit

Nurse Ima Nu has been asked to float out of her pediatric unit onto an adult medical unit to fill a shortage of RNs due to sick calls. What actions can Ima take?

Once again, Ima is being asked to do something that is beyond her personal knowledge, skill set, and experience. Answer the following questions about Ima's ethical, legal, and professional rights and responsibilities by circling the best answer.

1. Does Ima have the legal right to notify her manager that she does not feel she is competent to float?
 - a. Yes, Ima has never been oriented to the adult medical units by the facility.
 - b. No, there are no specialty RN licenses. An RN can be assigned to any unit in New York State.

2. Does Ima have the legal right to ask her manager to ask another RN who has knowledge of the medical patient float?
 - a. Yes, Ima can self-assess that these patients require specialty knowledge and skills that she does not possess and cannot, therefore, deliver safe nursing care.
 - b. No, Ima has taken and passes the NCLEX and has, therefore, minimally acceptable knowledge in medical nursing.

3. Does Ima have the legal right to ask the manager on the medical floor to assign her to another RN who can assist her with her patient assignment?
 - a. Yes, Ima has the legal right to determine she is not qualified to monitor the medical patient because she is not qualified or experienced in the adult patient and is not familiar with the procedures and/or medications she will be expected to administer.
 - b. No, Ima has access to the unit policies and procedures, and the pharmacy and Lippincott online is available to her for reference. In addition, Ima has a legal and ethical obligation to render herself competent. In addition, Ima has passed every hospital competency assessment.

4. Does Ima have the right to ask the manager on the medical floor to limit her patient assignment?
 - a. Yes, Ima can self-assess that she is not skilled in the nursing care of complex procedures and medications of the adult medical patient with comorbidities.
 - b. No, under ethics, assurance of competency is the responsibility of the individual nurse, and Ima is aware that pediatric nurses are frequently asked to float to the medical units.

Use the POA sheet (on the next page) to practice filling out the POA for this case scenario

This scenario is rooted in both law and ethics. The nurse's actions should be guided by the following:

- ✓ The Code of Ethics for Nurses (Provision 4) states, "The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the Nurse's obligation to provide optimum patient care."
- ✓ The American Nurses Association (ANA) states that "assurance of competence is the responsibility of the profession, individual nurses, professional organizations, credentialing and certification entities, regulatory agencies, **employers**, and other key stakeholders."
- ✓ New York State RN licenses carries with it certain expectations and responsibilities. It represents both basic qualifications and the commitment to maintaining competency and rendering quality services throughout the career. A licensee may legally perform services that are in the definition of the scope of practice but licensees must also be competent to deliver those services.
- ✓ The literature denotes that core competencies in nursing include: keen observation and judgment, efficiency, skillfulness, responsibility, accountability, communication and collaboration, management, self-development, innovation and research, stress-adjustment, critical thinking skills, and the ability to integrate problem-based and evidence-based learning approaches into practice.
- ✓ The New York State Health Code 10 NYCRR 405.5 (a) (1),(4) states the hospital shall provide RNs who are qualified by training and experience for the job and shall have a written evaluation of the performance, credentials, and competence of registered professional nurses and ancillary nursing personnel shall be conducted on at least a biennial basis.
- ✓ The Joint Commission Competency (HR.01.01.01 and HR.01.06.01) requirement states that the hospital must have the necessary staff to support the care, treatment, or services it provides, and that staff must be competent to perform their responsibilities. Competency is defined as a combination of observable and measurable knowledge, skills, abilities and personal attributes that constitute an employee's performance. The ultimate goal should be that the employee can demonstrate the required attributes to deliver safe, quality care.
- ✓ The New York State Education Law (130 Education Law 6509) and the Board of Regents Rules, Part 29.2 state that is it professional misconduct and unprofessional conduct to practice nursing with negligence or incompetence.

If Ima cannot come to an agreement with the management team about any of her requests, then she must:

- ✓ *Accept the assignment documenting carefully on the POA form her concerns related to patient safety using the process outlined in this program.*
- ✓ *Keep a personal copy of this documentation, provide a copy to the immediate supervisor, send a copy to the NYSNA representative, and another to Human Resources*
- ✓ *Ask the other RNs on the unit to co-sign the POA.*

Or...

- ✓ *Refuse the assignment and accept the possibility of disciplinary action, up to and including termination.*
- ✓ *Document carefully her concern for patient safety and the process she used to inform the manager of her concerns.*
- ✓ *Keep a personal copy of this documentation, provide a copy to the immediate supervisor, and send a copy to the NYSNA representative.*

ANSWERS TO SCENARIO 2

1. A
2. A
3. A
4. A

Conclusion

This program describes some of the current ethical and legal issues surrounding the nurse's legal and ethical rights and responsibilities regarding the protest of assignment. When an assignment is within a nurse's scope of practice but not within your realm of experience or training, law and ethics allow the nurse to make a self-determined judgment that they are not individually possessed of the necessary skills, knowledge, or experience to deliver safe nursing care. Nevertheless, an outright refusal to do the assignment carries the risk of discipline for insubordination. It's crucial to speak up when a nurse, using her independent judgment and self-analysis, deems her/himself not competent to deliver safe and quality nursing care. Try to negotiate instead. Tell your supervisor you're perfectly willing to help provide care for patients in the ICU, for instance, but that you have never worked with the new ventilator and monitoring equipment and have very limited experience caring for critically ill patients and should neither be left in charge, nor given a full patient assignment.

If that tactic fails and you have little recourse other than to take on the assignment, submit a protest of assignment form. Describe the task or assignment you don't feel equipped to handle, the reason for your feelings, and the training you would need to be more confident and better prepared.

In addition to this resource, nurses are encouraged to turn to other resources, such as the Code of Ethics for Nurses, nursing colleagues, ethics committees, management, facility policies, and nurses associations, in supporting the nurses' ethical and legal commitment and obligations to the patient's right to quality patient care.

Protesting Your Assignment: A Primer on Documenting the Issue

Course Exam

After studying the downloaded course and completing the course exam, you need to enter your answers online. **Answers cannot be graded from this downloadable version of the course.** To enter your answers online, go to the e-learn web site, www.elearnonline.net and click on the Login/My Account button. As a returning student, login using the username and password you created, click on the “Go to Course” link, and proceed to the course exam.

Note: Contact hours/CEUs will be awarded for this online course until March 2, 2023.

1. All members of the healthcare team, from staff nurses to administration, share a joint responsibility to ensure that safe, effective, and appropriate nursing care is provided to patients.
 - A. True
 - B. False
2. Registered nurses do not have the right and responsibility to make informed decisions about their personal skill set, knowledge base, and experience level.
 - A. True.
 - B. False.
3. The nurse’s decision regarding accepting or rejecting assignments is based solely on her/his professional and personal value system.
 - A. True.
 - B. False.
4. The nurse always assumes individual accountability for her/his nursing judgment and actions.
 - A. True.
 - B. False.
5. Nursing staff, management, and administration may differ in their interpretation of the ethical and legal principles and rights of nurses to accept or reject their assignment. These differences may create conflict and can lead to disciplinary action.
 - A. True.
 - B. False.
6. The objective of a protest of assignment is to provide notice to the employer of a potential unsafe situation and to impute liability onto the management team and hospital. The nurse still remains liable to a degree for any untoward patient outcomes.
 - A. True.
 - B. False.
7. The purpose of the protest of assignment is to constructively notify the management team of the laws, regulations, and contractual terms they may be in violation of.
 - A. True.
 - B. False.
8. The nurse should not hesitate to fill out a protest of assignment form when they do not have the requisite knowledge and performance skills to care for the assigned patient population. Courts have held that if an average prudent nurse would not have accepted a particular assignment, the

nurse who does accept the assignment will be held to a strict professional standard of a competent nurse in that specialty practice area.

- A. True.
 - B. False.
9. Nurses who refuse a patient assignment will not risk disciplinary action from their employer if they file a protest of assignment and cite the law.
- A. True.
 - B. False.
10. Filling out and delivering a copy of a POA form to the immediate supervisor does not impute liability and does not protect the nurse from any action taken against the nurse's license.
- A. True.
 - B. False.