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Nurse Professional Liability Exposure Claim Report: 4th Edition

Minimizing Risk, Achieving Excellence

In 2020, the world learned what we at Nurses Service Organization (NSO) have always known, nurses are heroes. They have, and always will, respond to and serve their communities in a healthcare crisis.

Nurses do not have the option to 'stay-at-home' during a pandemic. They remain on the frontlines caring for patients and fighting the virus.

NSO extends its heartfelt appreciation to the nursing community for its efforts in battling the pandemic and safeguarding your patients and communities every day. We also wish to note that NSO has never been prouder to serve the insurance needs of nurses. We extend our sincere gratitude to all nurses for their commitment to their profession and patients.

Michael J. Loughran
President, Nurses Service Organization (NSO)

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For more than 35 years, nursing has looked to CNA to provide coverage for the professional liability risks encountered at the front lines of healthcare. CNA has again collaborated on this closed claim analysis to raise awareness of those circumstances that most frequently result in patient harm. Even when excellent nursing care is provided, patient comorbidities or system failures can result in an inadequate patient outcome. Understanding the conditions that lead to a claim help nurses develop techniques to mitigate risk and minimize the potential for litigation. CNA recognizes nurses that represent the foundation of healthcare delivery, and we are pleased to provide this resource to help our nursing heroes enhance patient safety.

Michael Scott
Assistant Vice President, CNA Healthcare Underwriting

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Many of the top findings from this report are discussed in greater detail within subsequent topic-driven publications, entitled Nurse Spotlights. The Nurse Spotlights include resources such as case scenarios, risk control recommendations, and self-assessment checklists designed to help nurses evaluate risk exposures associated with current practice. See page 17 for additional information on Nurse Spotlights.

Top Ten Key Findings of the Nurse Professional Liability Exposure Claim Report

The average total incurred of professional liability claims in the 2020 claim report **($210,513) increased more than 4 percent** compared to the 2015 claim report. (See page 6)

The average total expense of professional liability claims that closed without an indemnity payment in the 2020 claim report **increased 14.6% annually** since the 2015 claim report. This increase was significantly faster than the 2.8 percent annual increase between the 2015 and 2011 claim reports. (See page 7)

Obstetrics represents the **highest average total incurred** in both the prior and present CNA/NSO closed claim reports. (See page 8)

Home care closed claims increased from 12.4 percent of the total claim count in the 2015 claim report to **20.7 percent of the total claim count in the 2020 claim report**. (See page 9)

Claims against a nurse working in the aging services and hospital-inpatient medical services locations have **decreased** when compared to the 2011 and 2015 claim reports. (See page 10)

The allegation related to **treatment/care** continues to be the most frequent allegation. (See page 11)

Death and **pressure injury** are the two most common injuries, representing half of the closed claims. (See page 13)

The average cost **($5,330)** of defending allegations in license protection matters involving a nurse in the 2020 claim report **increased 33.7 percent** compared to the 2015 claim report and **58.9 percent** compared to the 2011 claim report. (See page 18)

Professional conduct, scope of practice and **documentation** allegations have the highest distribution of license protection board matters (See page 19)

Approximately **55 percent** of license board matters lead to some type of board action against a nurse's license. (See page 23)

Part 1: Nurse Professional Exposures and Data Analysis

Introduction

In collaboration with our business partners at Nurses Service Organization (NSO), CNA is the leading professional liability insurer of nurses. In 2009, our joint professional program published the first report reviewing the professional liability closed claims encountered by CNA/NSO on behalf of insured nurses. CNA and NSO are proud to offer this fourth comprehensive analysis of professional liability risks encountered by nurses. Our goal is to help nursing professionals enhance their practice and minimize professional liability exposure by identifying loss patterns and trends of the following categories:

- Nurse specialties
- Healthcare delivery locations
- Allegations against the nurse
- Patients' injuries associated with the claim
- License protection defense matters

Database and Methodology

Unless otherwise noted, the 2020 dataset includes 455 CNA professional liability closed claims that:

- Involved a registered nurse (RN), licensed practical nurse (LPN)/licensed vocational nurse (LVN) or nursing student;
- Closed between January 1, 2015 and December 31, 2019 (although claims may have been reported earlier); and
- Resulted in an indemnity payment of $10,000 or greater.

This report provides selected findings from the CNA/NSO 2011 and 2015 nurse closed claim reports as a means of comparison. As some elements of the inclusion criteria in this report may differ from that of the previous CNA/NSO nurse claim analyses and claim reports from other organizations, we ask readers to exercise caution about comparing these findings with other reviews. Similarly, due to the fundamental uniqueness of individual claims, the **average total incurred** amounts referenced within this report may not necessarily be indicative of the total incurred amounts attributed to any single claim.

How Courts Define Malpractice

Four elements must exist for an incident to be considered malpractice:

1	**Duty**	A nurse-patient relationship must exist.
2	**Breach**	Standard of care was not met.
3	**Cause**	Injury was caused by the nurse's error.
4	**Harm**	Injury resulted in damages.

Terms

For purposes of this report only, please refer to the terms and explanations

- **2011 claim report** – A reference to the prior CNA study, entitled "Understanding Nurse Liability, 2006-2010: A Three-part Approach".
- **2015 claim report** – A reference to the prior CNA study, entitled "Nurse Professional Liability Exposures: 2015 Claim Report Update".
- **2020 claim report** – A reference to the current CNA study, entitled "Nurse Professional Liability Exposure Claim Report: 4th Edition, Minimizing Risk, Achieving Excellence".
- **Average total incurred** – the costs or financial obligations, including indemnity and expenses, resulting from the resolution of a claim, divided by the total number of closed claims.
- **Total paid indemnity** – Monies paid on behalf of an insured nurse in the settlement or judgment of a claim.

Analysis of Claims by Licensure Type

Of the 455 nurse closed claims, 86.8 percent involve RNs, 12.8 percent involve LPNs/LVNs and less than one percent involve student nurses, see **Figure 1**. These percentages are consistent with the overall proportion of CNA/NSO-insured nurses. While the distribution of licensure types within the CNA/NSO insureds varies somewhat over time, the current ratio of our insured nurses represents 89 percent RNs to 11 percent LPNs/LVNs.

In both the 2015 and 2020 datasets, claims asserted against LPNs/LVNs resulted in a higher average total incurred when compared with claims asserted against RNs. The higher average total incurred pertained to a higher frequency of closed claims that settled for $250,000 or more. Most of the claims involving LPNs/LVNs occurred in the patient's home an example of which is shown below:

- An LPN employed by a hospice agency was accused of stealing a patient's pain medications and substituted them with his anti-seizure medication. The family asserted that the actions of the LPN prolonged the patient's suffering. The professional liability claim was difficult to defend for a variety of reasons. These issues included the LPN having served time in prison for diverting the patient's medications, as well as the hospice agency's loss of the patient's healthcare records during a transition from paper to an electronic healthcare record system.

For additional analysis of LPN/LVN closed claims, see **Figure 21** on page 16.

KEY FINDING

The average total incurred of professional liability claims in the 2020 claim report **($210,513)** increased more than **4 percent** compared to the 2015 claim report.

While claims involving student nurses are very infrequent in the CNA dataset, claims arising from care provided by students resulted in the highest average total incurred of all licensure types. These claims involved student nurses caring for high acuity patients with inadequate supervision. Such included circumstances where the students were left alone to perform complex nursing care, as observed in the following example:

- A student nurse was instructed to discontinue an intravenous (IV) antibiotic on a patient with a central venous catheter. When the student discontinued the IV, she unknowingly loosened the catheter connection from the pigtail/lumen luer connector. The loosened catheter would probably have been discovered when the student flushed the line per facility requirement. However, the student testified that she did not know she was supposed to flush the catheter line after the medication was discontinued or clamp the port. Shortly thereafter the patient became unresponsive and a code was called. The code team did not become aware of the disconnection until the patient was transferred to the intensive care unit about three hours later. The patient experienced an air embolism to the brain causing his death.

Figure 2 compares the average total incurred of professional liability claims of the 2020 claim report ($210,513) to the 2015 claim report ($201,670) and 2011 claim report ($204,594) reports.

2 Comparison of 2011, 2015, 2020 Claim Reports Average Total Incurred

Closed Claims with Paid Indemnity of ≥ $10,000

1 Analysis of Claims by Licensure Type

Indemnity and Expenses for Closed Claims with Paid Indemnity ≥ $10,000

Licensure type	Percentage of closed claims	Total paid indemnity	Total paid expense	Average total incurred
Registered Nurse	86.8%	$70,171,018	$11,885,985	$208,636
Licensed practical nurse/vocational nurse	12.8%	$11,091,316	$2,015,567	$219,871
Student nurse	<1%	$590,000	$29,670	$309,835
Overall	100.0%	$81,852,334	$13,931,222	$210,513

Claim Settlement Expenses and Average Indemnity

Nurse Closed Claims with Expense Payments Only

Claims may resolve without an indemnity payment to a plaintiff for various reasons. For example, such a claim may be:

- Successfully defended on behalf of the nurse, resulting in a favorable jury verdict.
- Withdrawn by the plaintiff during the investigation or discovery process.
- Dismissed by the court prior to trial in favor of the defendant nurse.

Claims that resolve without an indemnity payment may nevertheless incur costs. Known as paid expenses, these expenditures can include attorney fees, expert witness fees, and costs involved in investigating the claim. Claim expenses can vary widely due to the unique circumstances of every matter.

KEY FINDING

The average total expense of professional liability claims that closed without an indemnity payment in the 2020 claim report **increased 14.6% annually** since the 2015 claim report. This increase was significantly faster than the 2.8 percent annual increase between the 2015 and 2011 claim reports.

Figure 3 displays average paid expenses per year for nurse claims that closed with no indemnity payment. While we promote efficient and focused defense of every claim, the trend in **Figure 3** illustrates that expense costs continue to rise. The reasons for the increased costs vary, including the escalating costs of defense counsel, as well as the need for skilled experts knowledgeable in the science and regulations relating to the practice of nursing. These expense costs are integral to an aggressive defense of an insured nurse against non-meritorious claims.

Distribution of Closed Claims

Figure 4 displays that more than half of all claims result in an indemnity payment of less than $100,000.

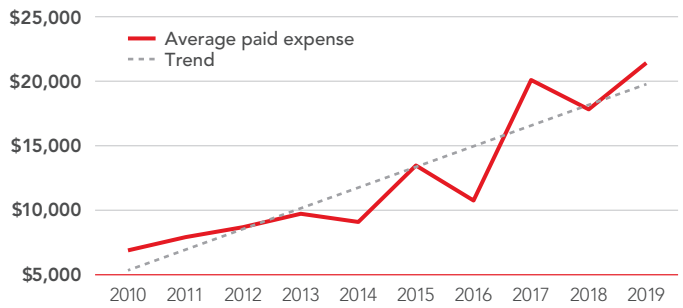
While these claims comprise only 10 percent of the total incurred, the average expenses associated with defending these claims (excluding indemnity) represents more than $20,000 per claim.

Claims between $250,000 and $500,000 have increased to almost 16 percent of the total claims in the 2020 claim report compared to 11 percent in the 2011 and 2015 reports.

While closed claims of $1,000,000 and above represent a relatively small portion of the total claim counts (<4 percent), they represent over 20 percent of the total incurred dollars.

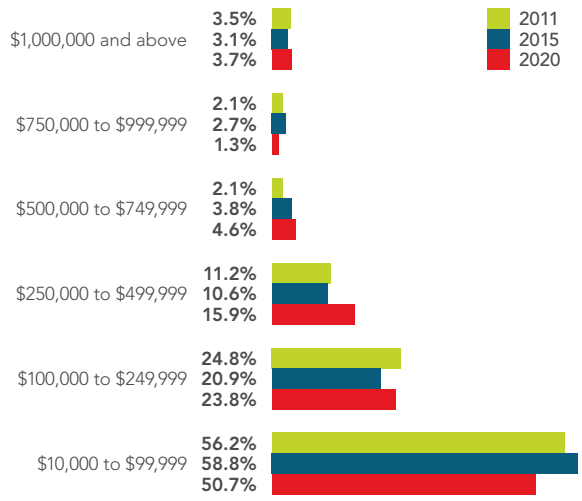
3 Average Paid Expenses for Closed Claims

Closed Claims where No Indemnity was Paid and with Expenses ≥ $1.00



4 Comparison of 2011, 2015, and 2020 Closed Claim Count Distributions

Closed Claims with Paid Indemnity of ≥ $10,000



Analysis of Claim Outcomes by Specialty, Location, Allegation, and Injury

The following sections summarize the percentage of total claims and the average claim costs across various categories, including by specialty, location, allegation and injury. In addition to average incurred severity metrics, the 2020 claim report also includes additional information regarding unfavorable outcomes.

- Healthcare is a challenging industry and is experiencing an increase in the frequency of higher professional liability verdicts. Nursing professionals should be cognizant of a greater risk of professional liability claims settling for higher than anticipated amounts relative to historic averages.
- Although the average of incurred losses may be similar when comparing averages across specialties, locations, allegations, or injury types, the range of adverse claim outcomes can vary significantly.

Nursing professionals should be mindful that there is **a greater risk** of professional **liability claims settling for higher** than anticipated amounts relative to historic averages.

5 Average Total Incurred of Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

Nurse specialty	Average Total Incurred
Obstetrics-labor and delivery	$558,007
PACU	$384,912
Behavioral health	$228,518
Correctional health	$219,924
Home care (includes Home health, Hospice, and Palliative care)	$216,051
Critical care- Adult (ICU/SICU)	$215,015
Ambulatory surgery	$214,911
Emergency/urgent care	$174,866
Adult medical/surgical	$146,101
Gerontology - in aging services facility	$145,685
Aesthetic/cosmetic	$104,132
Overall Average Total Incurred	$210,513

Analysis of Specialty

As a specialty, **obstetrics** consistently experiences the highest average total incurred. This is due primarily to the cost of lifelong, one-on-one nursing care required by the injured party. Examples of allegations against nurses that resulted in patients requiring lifelong, one-on-one nursing care include:

- **Improper management of an obstetrical patient** by a nurse who failed to identify and treat fetal distress resulting in cerebral palsy.
- **Delay in identifying and notifying supervising provider** of infant respiratory distress resulting in cerebral hypoxia.

KEY FINDING

Obstetrics represents the **highest average total incurred** in both prior and present CNA/NSO closed claim reports.

While the average incurred loss for other specialties is significantly lower than obstetrics, displayed in **Figure 5**, many of these specialties have the potential for settlement and expense outcomes that far exceed the average total incurred. These specialty areas include **ambulatory surgery, correctional health,** and **post-anesthesia care units (PACU)**. Examples of allegations against nurses that resulted in patients requiring lifelong, one-on-one nursing care in ambulatory surgery, correctional health and PACU include:

- **Failure to recognize post-operative complications** which resulted in sepsis causing an extended hospitalization.
- **Failure to follow facility policies and conduct a time-out procedure** prior to a left lateral ankle ligament repair/reconstruction resulting in a wrong side/site surgery.

In the 2020 dataset there are specialties that have an average total incurred significantly higher than the overall average total incurred of **$210,513** due primarily to the cost of lifelong, one-on-one nursing care required by the injured party. While claims in these areas are very infrequent and do not represent a trend, the allegations against the nurse demonstrate a failure to fulfill core nursing responsibilities. These specialty areas include **pain management** and **out-patient radiology**. Examples of allegations against nurses that resulted in significantly higher than average total incurred in the pain management and outpatient radiology include:

- **Failure to monitor and timely report** a pediatric patient's vital signs resulting in a hypoxic brain injury.
- **Improper management of a patient** receiving anesthesia resulting in a hypoxic brain injury.

In previous CNA/NSO closed claim reports, the **adult medical/surgical** specialty represented the highest distribution of closed claims. However, as predicted in the 2011 and 2015 claim reports and displayed in **Figure 6**, claim distribution has continued to increase in the **home care** areas that include home health, hospice and palliative care.

KEY FINDING

Home care closed claims increased from 12.4 percent of the total claim count in the 2015 claim report **to 20.7 percent of the total claim count in the 2020 claim report**. (Figure 6)

This paradigm shift of patient care from the hospital to the home will likely continue as technology, such as telehealth and other virtual healthcare tools, improves and its use is adopted by third-party payors. The shift does not necessarily mean that nurses working in the home care specialty are more likely to be involved in a lawsuit. Rather, it is more reflective of the overall shift in patient care locations. An example of a claim in the home care specialty where a nurse failed to communicate pertinent health information with a provider and/or patient/family members includes:

- A home care nurse was caring for a patient on a Friday afternoon. The patient was diabetic and suffered from a stage III pressure injury to his left heel. While assessing the foot, the nurse informed the patient that the wound had worsened and appeared infected. Knowing that the provider's office was closed for the day/weekend, the nurse advised that the patient be evaluated and treated by an emergency department (ED) provider. The patient refused to go to the ED as he could not afford additional medical bills. He also reminded the nurse that he had an appointment with his provider the following Monday morning. The following day (Saturday), the patient began having a low-grade fever. Over the next twelve-hours, his physiological condition continued to decline and he ultimately went to the ED on Sunday night. He was diagnosed with sepsis and due to his body's response to the infection developed gangrene in his fingers and toes, which led to amputation. For reasons unknown, the nurse did not document in the electronic medical record or communicate her findings to either the referring or the on-call providers. The nurse testified that she had educated the patient and his spouse on the signs and symptoms of infection and what to do if he started to experience a fever. However, there was no documentation to support her testimony.

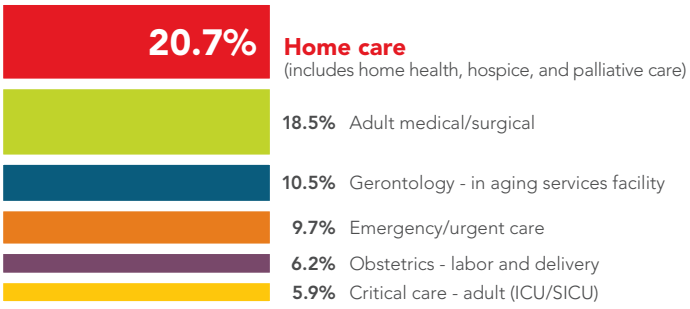
Figure 7 demonstrates the distribution of closed claims by nurse specialty in the 2020 dataset compared to the 2011 and 2015 datasets. As previously referenced, the increase in distribution of home care claims has steadily increased from the prior CNA/NSO claim reports.

As predicted in the 2011 and 2015 claim reports, **claim distribution** has **continued to increase** in the **home care areas** that include home health, hospice and palliative care.

6 Distribution of Top 6 Closed Claims by Specialty

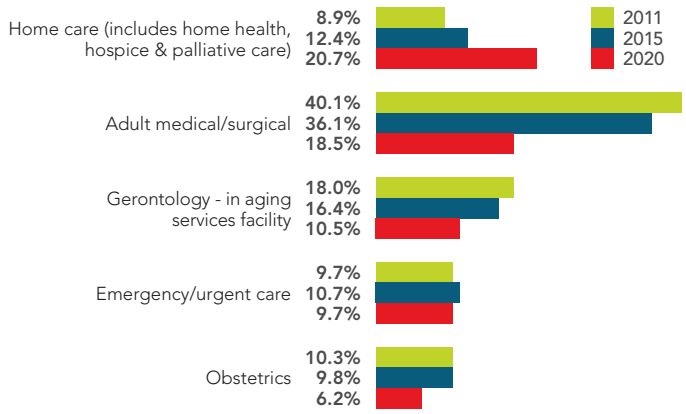
Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those specialties with the highest distribution.



7 Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000



Analysis by Location

The closed claim locations with the highest average total incurred, excluding obstetrics, tend to be relatively infrequent. In settings such as **PACU** and **practitioner offices,** the closed claims frequently involve the failure to fulfill the core nursing responsibilities, duties and/or expectations of licensed nurses resulting in patients requiring lifelong or one-one nursing care. An example of a closed claim involving **practitioner office** location is illustrated below:

- A nurse working in an oncology practice administered a cancer medication intravenously (IV) to a patient. Since it was the first infusion, the desensitization protocol called for the patient to receive Diphenhydramine 25 mg IV 30 minutes prior to the cancer infusion. The nurse failed to administer the Diphenhydramine and 30 minutes into the infusion, the patient suffered an anaphylaxis reaction which resulted in his death.

Figure 8 displays the locations with the highest average total incurred of closed claims. As with the nurse specialty category, **obstetrics as a location** has the highest total incurred at $558,007. Although the average incurred loss for other locations is significantly lower than obstetrics, it should be noted that many of these locations have the potential for an average total incurred that far exceed the overall average total incurred of $210,513. Examples include **critical care (all ages), behavioral/psychiatric health** and **ambulatory surgery** settings.

8 Average Total Incurred of Closed Claims by Location

Closed Claims with Paid Indemnity of ≥ $10,000

Nurse Location	Average Total Incurred
Hospital - obstetrics	$558,007
Hospital - (PACU)	$386,325
Critical care	$232,609
Behavioral/psychiatric health	$228,675
Ambulatory surgery	$223,196
Correctional health - inpatient or outpatient	$219,924
Patient's home	$210,325
Clinic-outpatient non-hospital	$204,412
Emergency/urgent care	$175,605
Hospital - inpatient medical services	$168,820
Aging services	$141,185
Hospital - inpatient surgical services	$129,335
Hospital - operating room/suite	$129,259
Overall Average Total Incurred	$210,513

Claims against a nurse working in the aging services and hospital-inpatient medical services locations have decreased when compared to the 2011 and 2015 claim reports. (Figure 10).

KEY FINDING

Figure 9 displays the top distribution locations in the 2020 dataset.

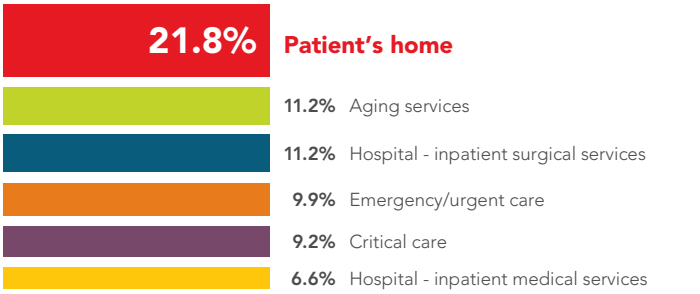
Figure 10 compares the 2020 dataset to the 2011 and 2015 datasets. This comparison details that **hospital inpatient medical services** and **aging services** (includes residents/patients in nursing homes, assisted living centers and independent living facilities) locations have decreased in distribution. The decreases can be attributed to the growth in caring for patients in their homes, as discussed in the nurse specialty section.

The decrease in aging services closed claims may be attributed to the rise of senior adults preferring to 'age in place'. With advancements in healthcare technology and the cost savings of staying at home, many seniors are opting to age safely and comfortably in the home (LeadingAge©).

9 Distribution of Top 6 Closed Claims by Location

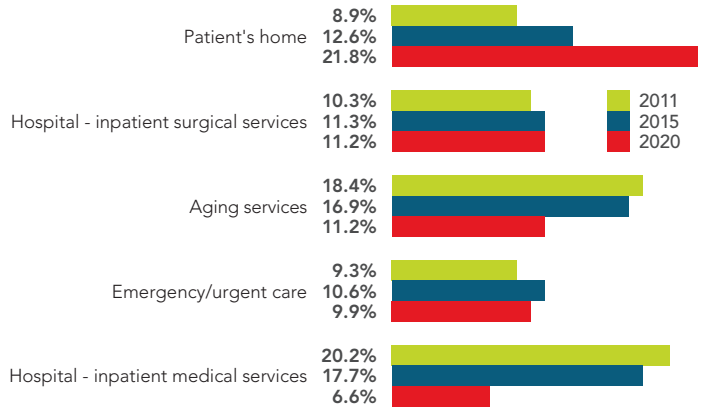
Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those locations with the highest distribution.



10 Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Location

Closed Claims with Paid Indemnity of ≥ $10,000



Analysis of Allegation

Figure 11 displays the top allegation categories with the highest average total incurred. Examples include:

- **Failure to communicate** pertinent health information with providers and/or patient/family members occurred relatively infrequently in the 2020 dataset analysis. However, communication allegations reflect an average total incurred of $324,260, which is more than one and a half times greater than the overall average total incurred of $210,513. An example of a closed claim in this category can be found on Page 9.
- **Failure to monitor** a patient accounts for 7.6 percent of the closed claims in the 2020 dataset, with an average total incurred of $265,010. These claims most often occurred because the nurse failed to monitor vital signs in areas of high patient acuity, such as the ED, ICU and PACU.
- **Documentation** deficiencies are contributing factors in many nurse professional liability claims. **Failure to document** or **falsifying documentation** closed claims increased in distribution and severity. In the 2011 dataset, 0.2 percent of the closed claims were related to documentation allegations and 0.5 percent in the 2015 dataset. In the 2020 database increased to 2.0 percent of all the closed claims. Professional liability claims alleging a nurse's failure to document or falsifying documentation can be difficult to defend and often result in a license protection defense matter. License protection defense matters related to documentation errors and omissions can be found on Page 22.

11 Average Total Incurred of Closed Claims by Allegation

Closed Claims with Paid Indemnity of ≥ $10,000

Allegation	Average Total Incurred
Communication	$324,260
Monitoring	$265,010
Scope of practice	$252,531
Documentation	$238,761
Medication administration	$214,035
Treatment/care	$209,937
Assessment	$192,880
Patients' rights/abuse/professional conduct	$165,732
Overall Average Total Incurred	$210,513

- **Scope of practice** allegations have the potential for higher unfavorable outcomes relative to other types of allegations. Similar to allegations related to documentation, scope of practice allegations can be difficult to defend and often result in a license protection defense matter. **Scope of practice** allegations include patient abandonment, prescribing medications and performing procedures without a practitioner's order. An example includes:
  - A nurse replaced a percutaneous endoscopic gastrostomy (PEG) tube that had accidentally been pulled out by a certified nursing assistant. The facility required a practitioner's order prior to replacing PEG tubes. However, the nurse replaced without a practitioner's order. Placement of the tube was verified by auscultation, but not by stomach content residuals and/or abdominal X-ray, per facility policies and procedures. The patient received two tube feedings which resulted in peritonitis, sepsis and ultimately patient death.

KEY FINDING

The allegation related to **treatment/care** continues to be the **most frequent allegation.**

As displayed in **Figure 12, treatment/care** allegations account for 56.0 percent of the closed claims in the 2020 dataset analysis. These allegations reflect a failure to fulfill core nursing responsibilities, duties and expectations. Examples include improper nursing technique or negligent performance of treatment resulting in an injury, such as inserting peripheral intravenous catheters (IVs), nasogastric tubes or urinary catheters.

- A patient, with a recent history of a carpal tunnel release of the left arm (dominant hand), was undergoing a surgical procedure under anesthesia. Due to the type of procedure, an IV was recommended for the patient's left hand/arm. The pre-procedure nurse, without consulting the surgeon or anesthesia, placed the IV in the volar aspects of the patient's left wrist, despite multiple requests and pleas, by the patient, that the IV be placed in the right arm/hand. The patient underwent the procedure without any complications. However, when the patient was contacted the following day, he relayed having difficulty using his left hand and forearm. Over the following weeks, the patient continued to have increased pain and decreased range of motion to his left hand and forearm. He sought treatment from his hand surgeon, who diagnosed complex regional pain syndrome. Since the patient was left hand dominant and employed as an electrician, he was unable to work and was placed on disability. Experts concluded that the placement of the IV caused the patient's disability. Furthermore, they testified that the pre-procedure nurse should have notified anesthesia of the patient's requests so that accommodations could have been made to place the IV in the other hand.

Many of the closed claims in the **patients' rights/abuse/professional conduct** category involve falls, which occurred due to a nurse's failure to follow a facility's fall-prevention policies and procedures. This failure violated the patient's right to a safe environment. An example of a claim related to the nurse's failure to provide patient care in a safe environment resulting in a fall is illustrated below:

- A terminally ill elderly patient was admitted to the hospital with a gastrointestinal (GI) bleed. The initial nursing assessment on admission listed the patient as a 'low fall risk', despite meeting many of the facility's 'high fall risk' criteria. By the third day of the hospital admission, the patient's low risk of falls remained unchanged despite being confused and attempting to get out of bed unassisted. On the day of the incident, the patient was found by a family member lying on the floor next to the hospital bed. The patient suffered from an intracranial hemorrhage caused by the fall, which resulted in his death.

Figure 13 reveals that distribution of allegations in the 2011, 2015 and 2020 claim reports have fluctuated.

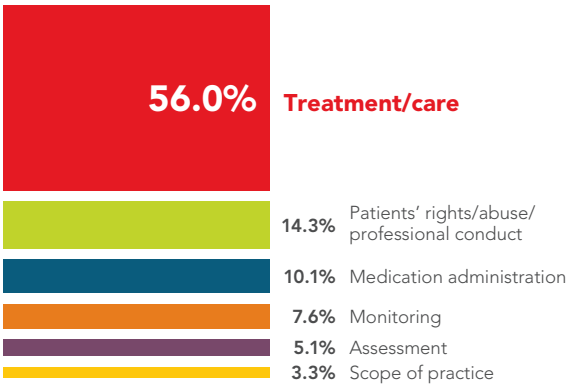
- For example, the distribution related to **medication administration** allegations decreased significantly in the 2015 claim report when compared to 2011. However, in the 2020 claim report, the distribution increased.
- In both the 2015 and 2020 claim reports, many of the **medication administration** claims were difficult to defend. These claims involved the use of "work-arounds" to bypass the facility's established safety procedures or failed to follow established facility policies and procedures or diverted medications. An example of a medication administration claim can be found on Page 10.
- As noted previously, many of the closed claims in **patients' rights/abuse/professional conduct** category involve falls, which occurred because a nurse failed to follow fall-prevention policies and procedures, thereby violating the patient's right to a safe environment. The locations with the highest frequency of falls include **hospital-inpatient medical** and **surgical services,** the **patients' home** and **aging services.** Similar to medication administration, claims involving patient falls can be difficult to defend if the nurse fails to follow fall-prevention policies and procedures.

Many of the **medication administration claims** were difficult to defend as the **nurse used "work-arounds"** to bypass the facility's established safety procedures or **failed to follow** established **facility policies** and procedures or diverted medications.

12 Distribution of Top 6 Closed Claims by Allegation

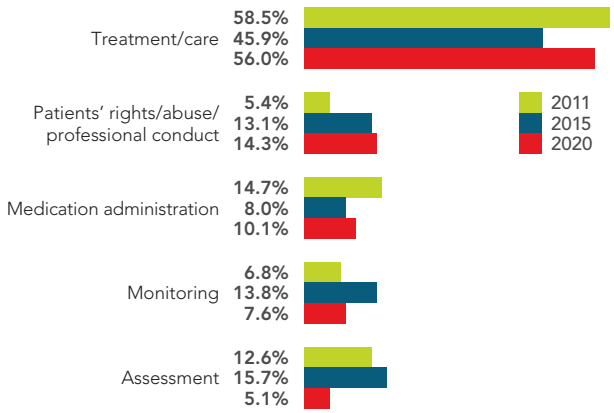
Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those allegations with the highest distribution.



13 Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Allegation

Closed Claims with Paid Indemnity of ≥ $10,000



Analysis of Injury

Higher than average total incurred injuries typically represent lifelong medical costs for patients who will require 24-hour nursing care. An example includes:

- **Fetal/infant birth-related brain injury** comprised the highest average total incurred, reflecting the expected lifelong cost of care for such infants.

Consistent with this theme, **Figure 14** shows higher average losses and higher unfavorable outcomes for certain loss types including **paralysis**, **brain injury other than birth-related** and **amputation.**

KEY FINDING

Death and **pressure injury** are the two most common injuries, representing half of the closed claims.

Figure 15 displays injures with the highest distribution of closed claims. The injuries with the highest distribution of closed claims, accounting for **71.7 percent** all closed claims, are **death, pressure injury, infection/abscess/sepsis, fracture, fetal birth-related brain injury** and **abrasion/bruise/contusion/laceration.**

Death is the most common injury, comprising for **40.9 percent** of the closed claims. Injuries involving death are analyzed on pages 14-15.

Responding to Adverse Events

Adverse events should be reported to a clinical supervisor or risk manager per policy requirements, and an incident report should be completed promptly. Adverse events include incidents involving one or more of the following:

- ☐ **A patient is harmed or sustains an injury.**
- ☐ **Potential clinical significance.**
- ☐ **An outcome differs from anticipated results.**
- ☐ **An unexpected safety crisis.**

For more information on patient safety and responding to adverse events, we recommend consulting the following resources:

- NSO: Are You Completing Incident Reports Properly?
- The Joint Commission
- AHRQ: TeamSTEPPS® Trainings
- Institute for Safe Medication Practices (ISMP)
- Institute for Healthcare Improvement (IHI)
- National Quality Forum (NQF)

14 Average Total Incurred of Closed Claims by Injury

Closed Claims with Paid Indemnity of ≥ $10,000

Injury	Average Total Incurred
Fetal/infant birth-related brain injury	$660,980
Paralysis	$506,491
Brain injury other than birth-related brain injury	$500,776
Amputation	$400,847
Death	$204,363
Infection/abscess/sepsis	$155,112
Burn	$139,819
Fracture	$123,760
Abrasion/bruise/contusion/laceration	$102,253
Emotional distress/pain/suffering	$84,722
Pressure injury	$65,762
Overall Average Total Incurred	$210,513

15 Distribution of Top 6 Closed Claims by Injury

Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those injuries with the highest distribution.

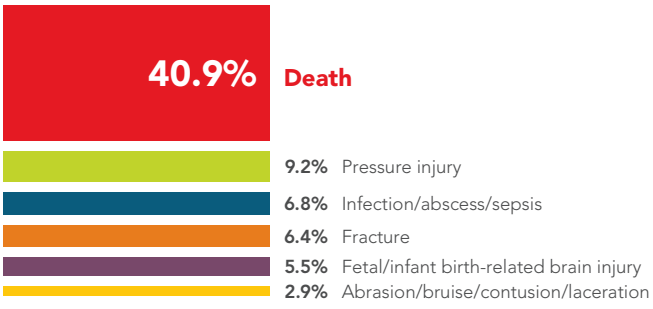


Figure 16 reveals the distribution of injuries in the 2011 claim report, 2015 claim report and 2020 claim report.

- The distribution of **death**, **fracture** and **fetal/infant birth-related brain** injuries has remained relatively consistent in the 2011, 2015 and 2020 claim reports.
- **Pressure injury,** represents **9.2 percent** of closed claims and when pressure injury claims involving death are included the distribution rises to 12.5 percent. **Pressure injury** and **infection/abscess/sepsis** injuries increased in distribution in the 2020 claim report when compared to the 2011 and 2015 claim reports. The increase in distribution of pressure injury and infection/abscess/sepsis closed claims is multifactorial. One factor may include the emphasis healthcare facilities have placed on early detection and treatment of pressure injuries and infection/sepsis. Many of the closed claims related to **pressure injury** involve the nurse's failure to identify the development of a pressure injury or failure to timely notify the provider of a patient's change in condition.
- **Infection/abscess/sepsis** injuries typically involve the nurse's failure to follow facility policies, procedures regarding counting surgical items, discontinuing IVs and/or using sterile technique in dressing changes and failure to timely notify the provider of a patient's change in condition. When infection/abscess/sepsis injury mortality is included the distribution of these closed claims increased to 10.3 percent.

Analysis of Fatal Injuries by Identified Cause of Death

As previously noted, **40.9 percent** of all injuries were fatal.

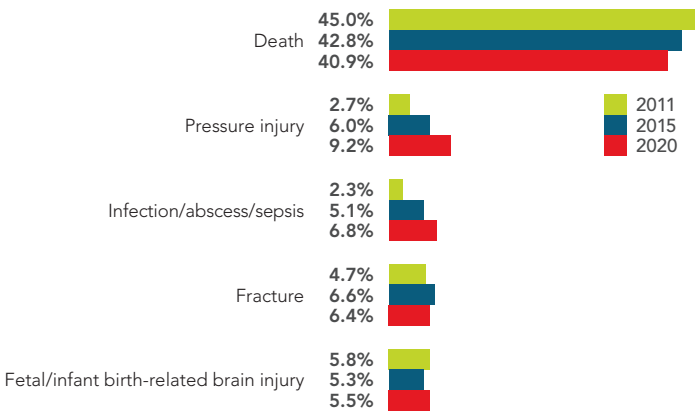
- **Cardiopulmonary injury/arrest** accounts for 47.3 percent of all fatal injuries. Many of these closed claims involved patients whose clinical course included a series of illnesses, injuries and symptoms occurring over a period of time, which contributed in varying degrees to the patient's overall decline. This pattern of multiple adverse patient events and injuries leading to eventual cardiopulmonary arrest occurred in various locations, including **correctional health - inpatient or outpatient, aging services, emergency department/urgent care, patient's home** and **hospital - inpatient medical and surgical services.**
- **Pressure injury** as a cause of death occurs more often in aging services facilities and the patient's home, where the patient's comorbidities may impede recovery**.**

As shown in **Figure 17** death claims involving **infection/abscess/sepsis** or **bleeding/hemorrhage** have the potential for higher unfavorable outcomes on average relative to other types of death claims.

Pressure injury and **infection/abscess/sepsis** involve allegations of **failure to identify** the development of a **pressure injury** or failure to **timely notify the provider** of a patient's change in condition.

16 Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Injury

Closed Claims with Paid Indemnity of ≥ $10,000



17 Average Total Incurred of Closed Claims by Identified Cause of Death

Closed Claims with Paid Indemnity of ≥ $10,000

Death Loss Type	Average Total Incurred
Bleeding/hemorrhage	$304,181
Infection/abscess/sepsis	$280,987
Brain injury other than birth-related brain injury	$247,205
Cardiopulmonary injury/arrest	$193,170
Pressure injury	$140,479
Overall Average Total Incurred	$210,513

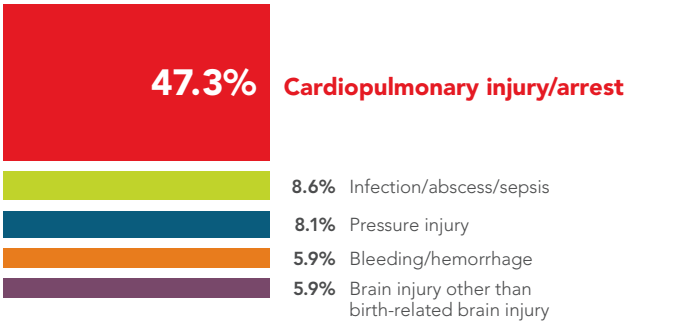
Figure 18 displays the causes of death with the highest distribution of closed claims. The injuries with the highest distribution of closed claims, consisting of **75.8 percent** of all closed claims, are **cardiopulmonary arrest, infection/abscess/sepsis, pressure injury, bleeding/hemorrhage** and **brain injury other than birth-related brain injury.**

Cardiopulmonary injury/arrest is the most common cause of death, accounting for **47.3 percent** of the closed claims.

18 Distribution of Top 5 Closed Claims by Cause of Death

Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those identified causes of death with the highest distribution.



Nurses in leadership roles were personally **named in** professional **liability lawsuits** due to management or administrative responsibilities, such as **hiring** and **educating staff** as well as **making patient care assignments**.

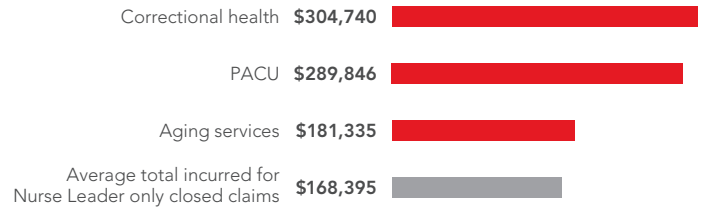
Analysis of Claims by Nurses in Leadership Roles

- The majority of professional liability closed claims in the 2011 claim report, the 2015 claim report, and the 2020 claim report involve nurses who provided direct patient care. However, in each of the datasets there were also professional liability closed claims that involved nurses in leadership roles. In this analysis, the claims brought against **nurses in leadership roles** were due to management or administrative responsibilities, such as hiring and educating staff, as well as making patient care assignments. For this analysis, nurses in leadership roles include charge nurses, nurse managers, directors of nursing and chief nursing officers.
- Closed claims against nurse leaders where the injuries were alleged to have occurred as a result of direct patient care services provided by the nurse leader were managed as traditional nurse professional liability claims.
- While not as frequent as individually insured nurses providing direct patient care, there were professional liability closed claims identified where the nurse in a leadership role was personally named in the lawsuit, despite not having provided direct patient care or services to the patient. These claims are based upon the assumption that the nurse leader was personally responsible for the actions of the members of the nursing care staff and for the care of each patient within the organization.
- **Figure 19** displays that the average total incurred of closed claims against nurses in leadership roles is **$168,395**. This average total incurred is lower than the 2020 dataset's overall average total incurred of **$210,513**.
- These claims occurred in a variety of locations but the majority occurred at either an **aging services** facility or a **patient's home** as displayed in **Figure 20**.

19 Average Total Incurred of Nurses in Leadership Roles Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

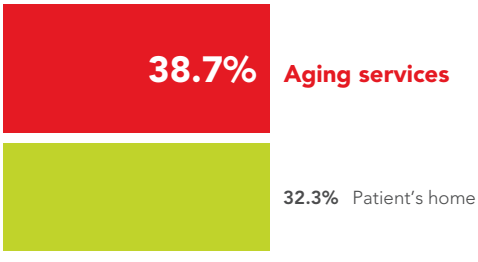
This figure highlights only those nurse leader closed claims by speciality with the highest average total incurred.



20 Distribution of Nurses in Leadership Roles Closed Claims by Location

Closed Claims with Paid Indemnity of ≥ $10,000

This figure highlights only those nurse leader closed claims by location with the highest distribution.



Comparison of Registered Nurses and License Practical/Vocational Nurses Closed Claims

The previous charts in the report combine RN and LPN/LVN closed claims data. To help LPNs/LVNs better understand their unique risk exposures, this section compares the closed claims where the defendant was an LPN or LVN with the RN closed claims. The top three highest claim count results for each of the claim categories analyzed are presented in **Figure 21**, below.

- LPNs/LVNs are defendants in 12.8 percent of the closed nurse claims. The distribution of CNA/NSO-insured nurses, while fluid, is approximately 11 percent LPNs/LVNs and 89 percent RNs.
- The average total incurred for LPN/LVN closed claims of **$219,871** is higher in comparison to RN closed claims of **$208,636.**
- **Treatment/care** and **patients' rights/patient abuse/professional conduct** allegations experienced the highest claim count for both LPNs/LVNs and RNs.

The **average total incurred** for **LPN/LVN** closed claims of **$219,871** is **higher in comparison** to **RN** closed claims of **$208,636**.

21 Top Three Highest Claim Counts for RNs and LPN/LVNs

Closed Claims with Paid Indemnity ≥ $10,000

* Loss type represents less than 2% of total claims

Professional Designation	RN	LPN/LVN
Percent of closed claims	86.6%	12.8%
Average total incurred	$208,636	$219,871
Specialties	• Adult medical/surgical • Home care (includes Home health, Hospice, and Palliative care) • Emergency/urgent care	• Home care (includes Home health, Hospice, and Palliative care) • Gerontology - in aging service facility • Correctional health*
Locations	• Patient's home • Hospital - inpatient surgical service • Emergency department/Urgent care	• Patient's home • Aging services • Correctional health - inpatient or outpatient*
Allegations	• Treatment/care/management • Abuse/patient's rights/professional conduct • Medication administration	• Treatment/care/management • Abuse/patient's rights/professional conduct • Monitoring*
Injuries	• Death • Pressure injury • Infection/abscess/sepsis	• Death • Fracture* • Pressure injury*
Causes of death	• Cardiopulmonary arrest/injury • Infection/abscess/sepsis • Pressure injury	• Cardiopulmonary arrest/injury • Aspiration* • Medication-related injury not otherwise classified*
Disability	• Death • Permanent Partial • Temporary Partial	• Death • Temporary Partial • Permanent Partial

Part 2: Analysis of License Protection Matters with Defense Expense Payment

Introduction

License protection matters involve the defense of the insured nurse before a regulatory agency or State Board of Nursing (SBON). License protection matters include the cost of providing legal representation to defend the nurse during the investigation, whereas professional liability claims may include an indemnity or settlement payment to a patient or family. Therefore, the average defense expense displayed within this section of the report is not necessarily indicative of the severity of the matter before the SBON. In addition, a regulatory or licensing board action against a nurse's license to practice differs from a professional liability claim in that it may or may not involve allegations related to patient care and treatment. For example, license protection matters may include instances where a nurse allegedly engaged in unprofessional conduct, was charged with a DUI or other crime, or failed to disclose certain information in a license renewal application. For more information about license protection and SBON matters, see the Nurse Spotlight: Defending Your License.

Database and Methodology

As noted in the introduction, three datasets are used in this report. The 2020 claim report dataset discussed in this section consists of license protection matters that closed between January 1, 2015 and December 31, 2019 and resulted in a defense expense/payment of at least $1.00. These criteria, applied to the total number of reported nurse license protection matters create a 2020 dataset consisting of 1,377 closed matters. Similar criteria produced a 2015 dataset comprised of 1,301 closed matters and a 2011 dataset of 1,127 closed matters.

Defense payments for license protection matters **reflect legal expenses** and associated travel, food, lodging and **wage loss costs** reimbursable under the policy.

Nurse Spotlight

For risk control strategies related to:

- Defending Your License
- Documentation
- Communication
- Home Care
- Depositions
- Medication Administration
- Liability for Nurse Managers

Visit nso.com/nurseclaimreport

Data Analysis

As shown in **Figure 22**, while the number of license protection matters with a payment of at least $1.00 per five-year claim report period has increased 22.2 percent since the 2011 claim report, the average payment per license defense matter has increased more dramatically.

KEY FINDING

The average cost **($5,330)** of defending allegations against a nurse's license in the 2020 dataset **increased 33.7 percent** compared to the 2015 dataset and **58.9 percent** compared to the 2011 dataset.

Defense payments for license protection matters reflect legal expenses and associated travel, food, lodging and wage loss costs reimbursable under the policy. The reasons for the rise of SBON defense payments include the escalating costs of defense counsel, inflation, and the individual nature of each SBON disciplinary investigation, which may take years to resolve.

Figure 23 displays license protection matters by licensure type, comparing the matters in the 2011 claim report, 2015 claim report and 2020 claim report datasets. Over the course of the three reports, the percentage of license protection matters with defense payments correlates to the proportion of RNs and LPNs/LVNs within the overall CNA/NSO-insured nurse population.

License Protection vs. Professional Liability. What's the difference?

License Protection

Inquiry by the State Board of Nursing, arising from a complaint.

Allegation can be directly related to a nurse's clinical responsibilities and professional services, and/or they may be of a nonclinical nature (i.e., substance abuse, unprofessional behavior, or billing fraud).

The State Board of Nursing can suspend or revoke a license. Its primary mission is to protect the public from unsafe practice of the professional.

Professional Liability

Civil lawsuit arising from a patient's malpractice claim.

Allegations are related to clinical practice and professional responsibilities.

The civil justice system cannot suspend or revoke your license to practice. Rather, professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.

22 License Protection Data Comparison, 2011, 2015 and 2020 Claim Reports

	2011	2015	2020
License protection paid matters	1,127	1,301	1,377
Total paid	$3,779,129	$5,188,984	$7,339,111
Average payments	$3,353	$3,988	$5,330

23 License Protection Matters by Licensure Type Comparison, 2011, 2015 and 2020 Claim Reports

	RN			LPN/LVN		
	2011	2015	2020	2011	2015	2020
License protection paid matters	962	1,127	1,220	165	174	157
Percentage of license protection paid matters	84.5%	86.6%	88.6%	15.5%	13.4%	11.4%
Average payments	$3,410	$4,041	$5,348	$3,022	$3,646	$5,186

Analysis of Matters by Allegation Class

This section of the report highlights the most common licensing board allegations against nurses. The primary allegation categories identified in this report extend beyond the classification system of many state and regulatory bodies that oversee nurses. Often, these classification systems do not provide sufficient insight into the specific circumstances that led to the allegations and complaint. Therefore, while complaints against a nurse's license or certification to practice often involve multiple allegations, this analysis classified matters based upon the primary reason for the complaint.

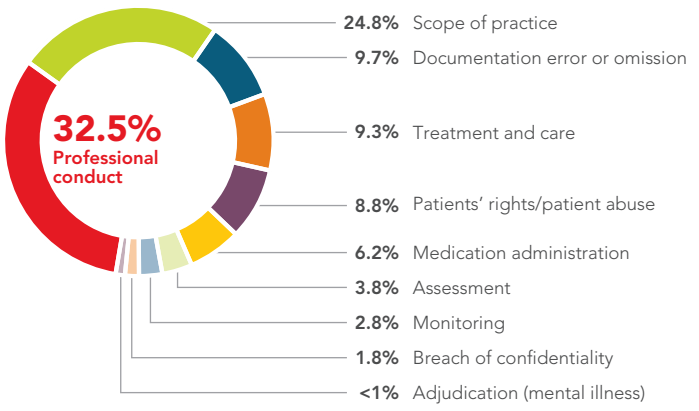
KEY FINDING

Professional conduct, scope of practice and **documentation allegations** have the highest distribution of license protection board matters.

Figure 24 displays the distribution of the primary allegation categories. **Professional conduct** complaints have the highest distribution of all license protection closed matters in the 2020 dataset, at 32.5 percent. Collectively, **professional conduct, scope of practice** and **documentation error or omission** account for 67.0 percent of all license protection closed matters. Discussion of primary allegation categories does not appear in the same order as **Figure 24**; each of these top allegation categories will be discussed in greater depth in this section of the report.

- **Patients' rights or patient abuse** allegations constitute 8.8 percent of all license protection closed matters with payment, comparable to findings from the 2015 and 2011 claim reports. This category includes allegations of physical, verbal, sexual and emotional abuse and other violations of patients' rights. Many of these allegations involve nurses who were trying to contend with patients who were violent or aggressive, and either the nurse retaliated against the patient, or responded to the patient's aggression in an inappropriate or unprofessional manner. Workplace violence remains a pervasive, insidious problem that healthcare workers must contend with on a daily basis. These matters highlight the importance of workplace violence and de-escalation training to help equip nurses to respond to violent and aggressive patients in a way that protects the health and safety of both the professional and the patient. In addition, healthcare settings organizational leaders have a duty to implement a combination of engineering, administrative, and work practice controls to mitigate the threat of workplace violence. The Occupational Safety and Health Administration (OSHA) offers tools and resources for preventing workplace violence in healthcare.
- **Treatment and care** (9.3 percent of all license protection closed matters with payment) include(s) allegations of **failure to adhere to facility policy** (39.8 percent of treatment and care allegations), **failure to carry out practitioner orders** (25.8 percent of treatment and care allegations) and **patient abandonment** (10.2 percent of treatment and care allegations). Regularly reviewing facility policies and protocols, especially related to incident reporting, can help to minimize the likelihood of these matters. Allegations related to treatment and care may also result from miscommunication or lack of communication between practitioners. Careful documentation of information shared with other members of the patient's care team and/or the patient, can help to mitigate communication-related risks.
- While not one of the most frequent complaints made against nurses, allegations of **breach of confidentiality** (1.8 percent of all license protection closed matters with payment) can seriously affect the nurse's personal and professional reputation. These complaints represent a nurse's alleged failure to respect patients' rights to privacy and confidentiality. An example of a breach of confidentiality issue can be seen in the following scenario:
  - The insured RN accessed a patient's medical records as well as the records of the patient's newborn son because she believed the child was her biological grandchild. Although the nurse accessed each chart for less than five seconds, the access was unauthorized as the nurse was not assigned to the patients' care. Data from the electronic health record confirmed that the nurse accessed the records without authorization. The nurse was publicly reprimanded by the SBON, and her multi-state licensure privileges were revoked. The matter took more than two years to resolve, and expenses paid to defend the nurse exceeded $2,800.

24 License Defense Matters by Primary Allegation Class



Analysis of Allegation Class Sub-Categories

Figures 25 through **27** provide additional information regarding the most frequent and severe allegation sub-categories. Note that percentages are calculated based upon the total matters with defense expense payments for all Registered Nurses (RNs) and License Practical Nurses (LPNs)/License Vocational Nurses (LVNs).

Allegations Related to Professional Conduct

Allegations related to nurses' professional conduct comprise 32.5 percent of all license protection closed matters with payment in the 2020 dataset. As in the 2015 dataset, allegations related to **drug diversion and/or substance abuse** remained the top allegations for both RNs and LPNs/LVNs, representing 42.3 percent of professional conduct matters (**Figure 25**). Examples include diverting medications for oneself or others, and apparent intoxication from alcohol or drugs while on duty. Many nurses will confront the problem of substance abuse disorders firsthand during their career, either through their own experience or that of a colleague. Nurses with unaddressed substance abuse issues can place both their patients and their livelihood in danger.

Similarly, neglecting to correctly perform accurate medication counts, or failure to document proper disposal of narcotics or other drugs with high potential for abuse can lead to allegations related to **wastage errors** (3.6 percent). These matters highlight the risk to nurses, including the risks posed to patient safety by work-arounds and failure to follow policies and procedures, as illustrated by the following example:

- While working on an adult inpatient behavioral health unit, the insured RN left two 15 mg tabs of Temazopam® unattended in an area accessible to patients. The medication went missing, apparently taken by a patient. The nurse admitted to documenting the Temazepam® as wastage, knowing the medication was actually missing. The SBON issued a $200 fine. Expenses to defend the nurse in this matter exceeded $7,200.

Nurse Spotlight

- The Substance Abuse and Mental Health Services Administration's (SAMHSA's) National Helpline, also known as the Treatment Referral Routing Service, a source of support for substance abuse issues is available to provide free, confidential assistance at 1-800-662-HELP (4357).
- For resources related to substance use in nursing, you can also visit the NCSBN website.

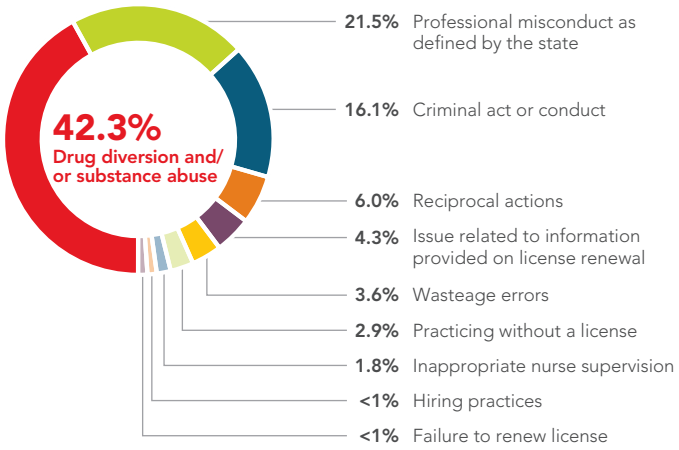
Professional misconduct as defined by the state, which accounts for 21.5 percent of all professional conduct allegations and is a broad allegation category that includes unprofessional conduct towards coworkers and/or patients, as well as allegations of falling asleep while on duty as in the following example:

- The insured home health RN was assigned to monitor an 11-month-old child from 7:00 pm to 7:00 am. The child was intubated and required constant monitoring to ensure that her tubing remained secure while in her crib. However, during her shift, the nurse fell asleep. The child's father discovered the nurse sleeping and found the child's tubing unsecured. The child did not suffer harm due to the incident, but the SBON determined that the nurse exhibited unprofessional conduct. The SBON publicly reprimanded the nurse and costs to defend the nurse exceeded $2,400.

Reciprocal actions taken against a nurse represented 6.0 percent of the matters related to professional conduct as noted in **Figure 25**. SBONs have the authority to take actions against a licensee based upon disciplinary action in another jurisdiction, as in the following example:

- A patient in an inpatient behavioral health facility became agitated, pulled a phone out of the wall and threw it. The insured nurse entered the room, and following a brief interaction an altercation between the patient and the nurse ensued. The nurse's conduct was investigated by the SBON and a consent order was issued. The nurse completed the terms and conditions outlined in the consent order. Then, in another state where the nurse also was licensed, the SBON opened its own investigation. Based upon the action against the insured nurse's license in the first state, the second SBON publicly reprimanded the nurse. Costs to defend the nurse during the SBON investigation in the first state exceeded $1,700 and defense costs exceeded $3,600 in the second state.

25 Allegations Related to Professional Conduct



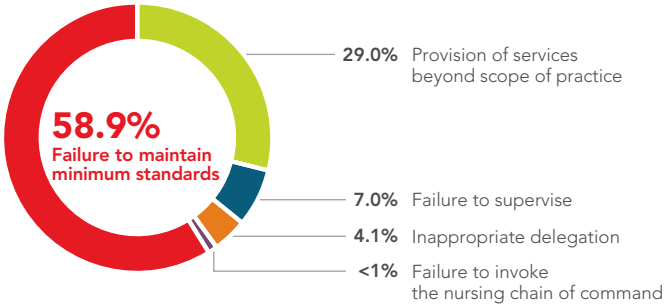
Allegations Related to Scope of Practice

Nurses are required to know and comply with the professional standards and scope of practice set forth in their respective state practice acts and professional ethical guidelines. Allegations related to **scope of practice** accounted for 24.8 percent of all license protection closed matters with payment in the 2020 dataset. Details related to scope of practice allegations are displayed in **Figure 26**.

Allegations related to **failure to maintain minimum standard of nursing practice** comprised 58.9 percent of scope of practice license protection matters. These matters encompassed various scenarios, including allegations of breach of minimum professional standards, incompetence, and negligence, as illustrated by the following examples:

- An insured RN working at a medical center failed to follow facility policies and procedures related to proper patient identification of two patients and the review of relevant laboratory results. As a result of bypassing standard safety procedures, the nurse gave an extra unit of blood to one patient that was intended for the other, thereby depriving a patient of the extra unit of blood that was required based upon her laboratory results. Following an investigation into this incident, the SBON placed the nurse on probation for three years. However, the nurse did not comply with the terms of her probation by failing to report to the SBON when she applied for licensure in two other states. The nurse also failed to notify the SBON and obtain approval prior to commencing employment. Therefore, the nurse ultimately was required to surrender her license. This matter took over five years to resolve, and expenses to defend the nurse exceeded $4,700.

26 Allegations Related to Scope of Practice



- An insured RN working in home health failed to complete assessments on patients as well as omitted pertinent patient information in the healthcare record. This omission could have caused a disruption in the continuity of treatment and patient harm. The SBON determined that the nurse failed to exercise the degree of learning, skill, care and experience ordinarily possessed and exercised by a competent RN. The SBON placed the nurse on probation for three years. The expenses associated with defending the nurse exceeded $5,400.

Most matters alleging **provision of services beyond scope of practice** which comprised 29.0 percent of scope of practice allegations, involved nurses making changes to patients' prescribed treatment or administering medication that had not been prescribed. Many of these matters may have resulted as a genuine desire on the part of the nurse to provide expeditious, efficient patient care. Nevertheless, the existence of these matters highlights the risks that nurses encounter when they perform actions outside their scope of practice, regardless of their intent. The following are examples of provision of services beyond scope of practice:

- An insured RN working in the PACU, was caring for a patient who was experiencing extreme nausea. The nurse made several unsuccessful attempts to contact the treating provider to get an order for Zofran®. The nurse called the pharmacy and relayed her concern for the patient's nausea as well as her inability to reach the patient's provider. The nurse informed the pharmacist that she believed the patient's condition was urgent and that she would contact the provider for an order. The pharmacy dispensed Zofran® and the nurse administered the medication to the patient. Although the patient did not suffer adverse effects from the Zofran®, no order was ever received for the anti-nausea medication. Moreover, the nurse did not attempt to contact any other provider prior to ordering and administering the Zofran®. Upon finding that the nurse violated the Nurse Practice Act by practicing beyond the scope of practice for an RN, the SBON publicly reprimanded the nurse and ordered her to pay a fine of $600. Expenses paid to defend the insured nurse exceeded $6,100.
- An insured nurse made changes to a patient's ventilator without a physician's order. The nurse then requested that a resident-physician submit an order for the changes that the nurse had already made. The nurse intentionally documented that the orders had come from a different physician because he did not believe that first year resident-physicians could give an order for patients in the Critical Care Unit. When asked about the incident, the nurse gave a false account of the incident stating that it was an unintentional error. The SBON suspended the nurse's license for two years. The matter took over two and a half years to resolve, and expenses paid to defend the insured nurse exceeded $8,900.

Allegations Related to Documentation

Maintaining consistent, timely documentation is one of the primary professional responsibilities of nurses. Documentation is a tool for the planning and provision of quality patient care, communication among providers, and demonstration of compliance with federal, state, third-party payer and other regulations. **Figure 27** displays license protection matters with expense payments that involved allegations related to **documentation,** which comprised 9.7 percent of all license protection closed matters with payment in the 2020 dataset. Documentation will be discussed further in the Nurse Spotlight: Documentation.

Almost half of the documentation matters in the 2020 dataset, 49.6 percent, involved an allegation related to **fraudulent or falsified patient care or billing records**. While missing documentation can impede the ability to defend a nurse in a professional liability lawsuit, forged, falsified, or fraudulent documentation also may lead to SBON complaints.

- In one matter, an LPN working in home health was alleged to have physically abused a patient in her care who suffered from cerebral palsy. The mother had video footage of the LPN caring for the patient, which the sheriff and district attorney reviewed. Based upon this review, the allegations were unfounded and were dropped. However, during this investigation, it was discovered that the nurse documented that the patient had eaten when in fact, she had not fed him. The patient aspirated easily, so despite the orders to feed the patient pureed food orally, the nurse would not feed the patient when he did not tolerate the oral feedings. The SBON suspended the nurse for three months. The expenses associated with defending the nurse exceeded $7,000.
- In another matter, a nursing student's preceptor instructed her to monitor vital signs for one patient every fifteen minutes for one hour, then every thirty minutes for two hours, then every hour for four hours. The student allegedly documented vital signs every fifteen minutes for one hour but did not record any vital signs thereafter. When confronted by her preceptor about the incomplete record, the student stated that she "forgot to do them." Approximately half an hour later, the preceptor discovered that the missing vital signs entries were documented in the patient's record. The preceptor asked the student about the entries and the student replied that she "made them up." The student later contended that she meant that she charted the vital signs accurately but made up the times the vital signs were taken to match the preceptor's requested instructions. The SBON considered that the student is still learning but viewed documentation as a basic nursing skill. Since the student's conduct involved such dishonesty, they imposed a penalty of a one-year suspension followed by one year of probation. The expenses associated with defending the student nurse exceeded $6,900.

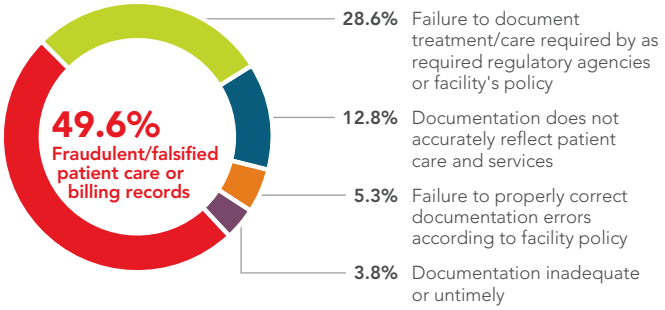
The Importance of Documentation

The healthcare record is a legal document. A well documented record can:

1. **Provide an accurate reflection** of nursing assessments, changes in clinical state, and care provided.
2. **Guard against miscommunication and misunderstanding** among the interdisciplinary patient care team.
3. **Demonstrate your competence as a provider** and help to bolster your credibility.
4. **May help guard** against a lengthy litigation process.

Nearly half of the **documentation matters** in the 2020 dataset, 49.6 percent, **involved an allegation** related to **fraudulent or falsified** patient care or billing **records**.

27 Allegations Related to Documentation



State Board of Nursing Actions

While the terminology used to describe the types of disciplinary actions SBONs impose may differ between states and jurisdictions, disciplinary action taken by a SBON can affect a nurse's licensure status and ability to practice nursing. SBON actions may include fines, public reprimands, continuing education (CE), monitoring, remediation, practice restrictions, or suspension, surrender, or revocation of the nurse's license.

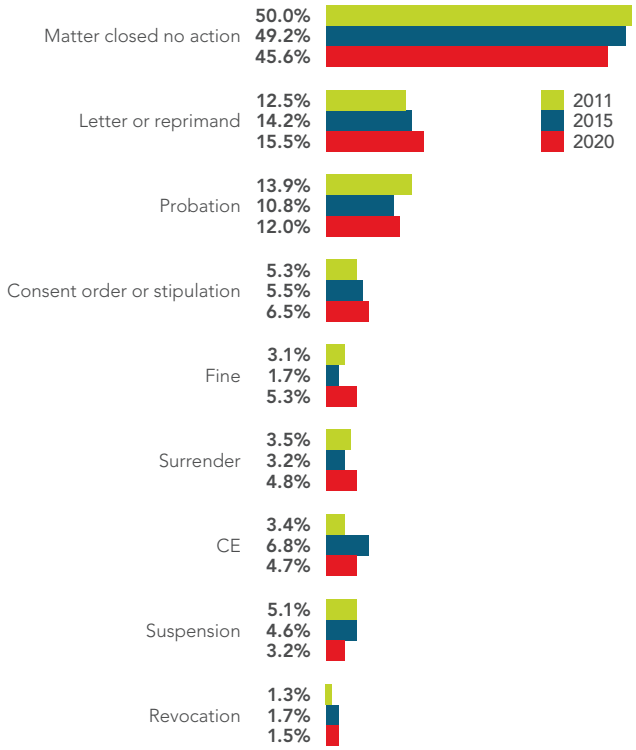
Figure 28 compares the distribution of SBON licensing actions between the 2011, 2015, and 2020 datasets. In the 2020 dataset, the largest percentage of license protection matters, 45.6 percent, closed with no action taken by the SBON, similar to the results seen in the 2011 claim report and 2015 claim report. A SBON decision not to impose disciplinary action represents a successful defense of the insured nurse.

KEY FINDING

Approximately **55 percent** of license board matters led to some type of board action against a nurse's license.

28 Comparison of 2011, 2015 and 2020 Distribution of State Board of Nursing Actions for RNs and LPNs/LVNs

Figure displays actions representing >1% of license defense matters; therefore, percentages may not total 100%.



Other SBON decisions, such as **surrender of license** (4.8 percent), **revocation** (1.5 percent) and **suspension** (3.2 percent), are less common, but can effectively end the nurse's career. The distribution of SBON matters that resulted in **revocation** and **suspension** decreased in the 2020 claim report from the 2015 claim report. However, **surrender of license** increased from 3.2 percent of matters in the 2015 claim report to 4.8 percent of matters in the 2020 claim report.

Even complaints resulting in less serious decisions by the SBON, such as **probation, consent agreements or stipulations, fines, mandated continuing education, or even letters or reprimands** may pose significant emotional and professional impact upon the nurse. SBONs often maintain lists of disciplinary actions on state databases, newsletters, or websites as they are considered public information. SBONs also report disciplinary action to NURSYS® and the National Practitioner Data Bank (NPDB). SBON investigations are serious matters, requiring legal assistance as well as significant investment of time and effort by the nurse until they are resolved.

Risk Management Recommendations for Everyday Practice

- ☐ **Practice within the requirements of your state nurse practice act, in compliance with organizational policies and procedures, and within the national standard of care.**
- ☐ **Maintain basic clinical and specialty competencies by proactively obtaining the professional information, education, and training needed to remain current regarding nursing techniques, clinical practice, biologics, and equipment.**
- ☐ **Document your patient care assessments, observations, communications, and actions in an objective, timely, accurate, complete, and appropriate manner.**
- ☐ **If necessary, utilize the chain of command or the risk management or legal department regarding patient care or practice issues.**
- ☐ **Maintain files that can be helpful with respect to your character, such as letters of recommendation, performance evaluations, and continuing education certificates.**

151 North Franklin Street
Chicago, IL 60606
1.866.262.0540
www.cna.com

1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.247.1500
www.nso.com

In addition to this publication, CNA and Nurses Service Organization (NSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to nurses, as well as information relating to nurse professional liability insurance, at www.nso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com.

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