

## 6 Things All NP Preceptors Need to Know

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## Disclosure

The speaker has no financial relationships to disclose

## Objectives

1. Analyze the preceptor clinician's risks and responsibilities when precepting
2. Analyze how to balance a student's need for information about a patient and the patient's need for privacy under HIPAA
3. Describe how FERPA controls a preceptor's discussion of a student's performance

## Six things all preceptors need to know

1. Preceptor is responsible/liable for overseeing student work at the practice site
  - to the extent needed to ascertain competency
2. The danger areas:
  - Failure to diagnose, failure to order indicated test, failure to obtain consent to treat, failure to monitor
3. The difference between faculty responsibilities and preceptor responsibilities

## Six things all preceptors need to know

4. How to protect patient privacy
5. What not to communicate about students
6. Payer rules about billing for students' work

## Elements of malpractice

1. Duty of care
2. Breach of the standard of care
  - What a reasonably prudent clinician of similar education would have done in similar situation
3. Injury
4. Injury was caused by the breach of standard of care

### Cases involving students and preceptors

- NP student missed a diagnosis, hadn't ordered appropriate testing. Preceptor had not overseen the student's work. Student and preceptor found liable.
- Medical student placed feeding tube but didn't get x-ray to verify placement. Feedings began and patient aspirated. Patient sued hospital, successfully.
- RN student gave IM injection in wrong part of gluteus. Faculty and student held liable.

### What preceptors can learn from these cases

- Identify the skills the student will need to perform each day
- Assess the student's ability to perform those skills
- Decide if and when the student may perform procedures without the preceptor present
  - Should diagnosis ever be left to a student, without the preceptor's participation?
  - Should students ever perform procedures without the preceptor present? If so, which ones?

### Regarding diagnoses

- Visit the patient after student has performed his/her assessment
- Review H&P, confirm pertinent parts
- Go over student's documentation before patient leaves; determine whether additional testing is necessary
- Approve student's differential diagnoses
- Review and approve student's plan of care

### Case: Availability/communication

- Pregnant woman seen in clinic by student nurse midwife and RN
- Signs of fetal distress
- Student called preceptor CRNM
- Preceptor declined to come in, as the attending MD was there

- Obstetrician/attending claimed he was unaware that the "midwife" with the patient was a student, and that in any event, it was not his responsibility to supervise
- Baby delivered 5.5 hours after RN and student noted fetal distress
- Baby with devastating injuries
- Settlement: \$3.5 million

### What preceptors can learn from this case

- It must be clear, within the organization, who is responsible for overseeing the student
- If a student calls for help, preceptor must respond

### Standard of care for preceptors

- Assess student's competency or lack thereof to perform a visit or procedure
- Provide direction based on competency assessment
- Be available

### Precepting organization and teaching institution must agree on

- Who is responsible for vetting student
- Who will orient student to the preceptor site
- Who will provide HIPAA training
- Protection of students' FERPA rights
- Procedure for reporting sexual harassment
- How student injury at the site would be handled

### School should be responsible for

- Background check: Crimes, exclusion from federal programs, listing as offender
- Checking student's license status if already an RN
- Checking preceptor's license status
- Assuring student is vaccinated, had TB test, consistent with preceptor site policy
- Basic nursing or ARNP skills and knowledge

### Preceptor should be responsible for

- Orienting student to the site and site's policies
- Assessing student competency at outset and during the term
- Being available to student and student's patients
- Providing faculty with student evaluation in a timely manner
- Notifying faculty if student is a threat to patient safety

### Negotiate who is responsible for training

- HIPAA
  - Infection control
  - APRN basics – How to present a case, how to structure an H&P and progress note
  - Diversity
- School may agree to provide basic training and site may agree to provide site-specific training

### Protecting patient privacy: HIPAA

#### Issues

- What information can clinicians share?
- With whom?
- What can't clinicians share?
- What information must clinicians share?
- What records are patients entitled to?
- What policies need to be in place?

### HIPAA basis

- Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides federal protections for personal health information
- States may have privacy laws
- If federal and state laws conflict, the controlling law is the one that most protects the patient's privacy

### HIPAA basics

- Communicate protected patient information (PHI) only for the purposes of treatment, payment or operations
  - PHI includes name, address, individually identifiable history, exam data, diagnosis, treatments, tests
- Disclose only the minimum amount of necessary information
- Disclose only to individuals who need to know the information for treatment, payment or operations
- Give patients their records when they request

### Case

- Student NP disciplined by BON for accessing the record of someone she knew but was not assigned to
- Student's RN license was disciplined
- Preceptor not involved, not disciplined

### Penalties for a HIPAA violation

- Federal
- Scalable penalties from \$100 - \$50,000 per violation, depending on the level of knowledge and intent associated with a violation
- State
- State HIPAA laws vary: One state calls for actual damages and attorneys' fees

### Protecting patient confidentiality when students are involved

- Students must comply with HIPAA just like any other clinician
- First, ask: Is the student treating patients? If not, need patient consent for student to access and discuss patient info

### Patient consent

- Patients must be informed of and agree to clinicians divulging patient information for treatment, payment and health care operations
  - Usually this general consent is obtained at registration at a clinic or admission to a hospital
- Patient must consent to disclosure for reasons other than treatment, payment and operations
  - Student learning is a reason other than treatment, payment and operations
  - This should be handled at registration/admission

### HIPAA principles applicable to students

- Who can students divulge patient info to?
  - Those individuals who need the information to treat the patient, arrange for payment, or conduct health care operations
  - Does that include faculty who are not practicing at that site? No
- What can students disclose?
  - Only the information necessary to treat the patient, get reimbursed, or conduct health care operations

### For teaching purposes, patient info will need to be de-identified

- Student must de-identify patient information when communicating with faculty or other students
- How?
  - Omit/delete name, address, patient #, DOB
  - Omit/delete info which would enable someone to identify that person
    - Example: "350-pound 12-year-old" would enable someone to identify that child

### What to tell students

- Don't discuss patients in the hallway or elevator
- Don't take patient records or copies home
- Don't photograph patient records or patients
- Access only the records of patients assigned
- Don't discuss patients with other students, unless de-identifying
- Don't communicate with patients or about patients via social media
- De-identify your notes
  - Example: "XY is a 67-year-old man with CHF. H/o CABG 2012"

### Agency and school should have policies in place regarding

- Obtaining patient consent for student access to info
- Training students about patient privacy, before the student interacts with patients

### Preceptor and student self-assessment

- In my setting, can patients overhear what is being said to other patients?
- Do I discuss patients in the break room? On the elevator?
- Do I have patient information on my personal phone? Laptop? If so, how is it protected?
- Do I access patient files only when I need to do so for treatment, payment or operational reasons?

### Typical HIPAA dilemma

- "I work in an ICU. I cared for a patient who is a nurse who works at another facility. She OD'd. She was transferred, when stable, to a treatment center.
- I was told we cannot report her to the board due to HIPAA. I understand that when RNs renew licenses they must answer a question about treatment for use of alcohol or any other drug. But it's possible that she may not answer the question truthfully. Can I report her?" No.

### Another typical HIPAA dilemma

- "I gave a patient a prescription for pain medication and instructed him that once medicated he cannot drive, but he admits he has been driving. Can I call someone and divulge the situation?"
  - HIPAA exception: May disclose if
    - the disclosure is needed to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and
    - the recipient is able to lessen the threat.

### What must I disclose?

- Some states require health care providers to report to DMV any condition that may lead to lapse of consciousness. Some do not.
- Generally, providers must report abuse, neglect of vulnerable adult, child

### What can clinicians disclose regarding mental health?

- Information necessary for
  - treatment
  - payment
  - health care operations(But not psychotherapy notes)
- A health care provider may disclose information from mental health records, if necessary
  - to law enforcement,
  - family members of the patient, or
  - any other persons who may reasonably be able to prevent or lessen the risk of harm 45 CFR § 164.512(j)

### What communications methods can clinicians use?

- Text, only if you have an encrypted device with password protection
- Same for email
- But, if you get the patient's authorization/consent, you can use whatever method the patient agrees to

### Protecting student privacy: FERPA

#### Student rights

- To inspect and review their educational records
- To request the amendment of inaccurate or otherwise inappropriate records
- To consent to disclosure of their public records
- To file a complaint with the Compliance Office in the US Department of Education, concerning alleged failure by the School to comply with the requirements of FERPA

### FERPA provisions

- Student academic records are confidential
- Preceptor may discuss student's performance only with faculty
  - Don't discuss student performance with colleagues at the site
  - If someone wants to hire the student, preceptor cannot share specific academic information without the student's written consent
- Faculty must safeguard students' papers from view by others

### Billing: Who can bill a service?

- Medicare and Medicaid rules
  - To receive reimbursement, provider under whose name claim is submitted must be credentialed
- Commercial payers make their own rules
  - No commercial payers allow billing of services provided by students

### Documentation by students

Medicare rules, recent change

- Physician, PA, or APRN who furnishes and bills for their professional services may review and verify, rather than re-document, information included in the medical record by physicians, residents, nurses, students, or other members of the medical team.

Final Rule at <https://www.federalregister.gov/documents/2019/11/15/2019-24086/medicare-program-cv-2020-revisions-to-payment-policies-under-the-physician-fee-schedule-and-other>. See page 62682

### Setting up precepting to avoid legal problems

- Affiliation agreement between school and preceptor/agency
  - Who is responsible for what?
- Develop training
  - To be provided by school
  - To be provided by precepting agency
- Preceptor understands his/her responsibilities
  - Assessment of student capability
  - Appropriate assignments, based on assessment
  - Available

### HIPAA Resources

- U.S. Health and Human Services, Office of Civil Rights web site at [www.hhs.gov/ocr/privacy/index.html](http://www.hhs.gov/ocr/privacy/index.html)
- Toevs, CC and Toevs, B. "Text messages in the ICU: Are they secure?" *Society of Critical Care Medicine Critical Connections*, February/March 2014, p. 14

### Malpractice Resources

- Buppert, C. (2017) *The Nurse Practitioner's Business Practice and Legal Guide*. Sudbury, MA: Jones & Bartlett Publishers, [www.jblearning.com](http://www.jblearning.com)
- Buppert, C. (2017) *Avoiding Malpractice* from [www.buppert.com](http://www.buppert.com)
- NSO, Legal case studies at [www.nso.com](http://www.nso.com)
- NSO, NP 2017 Liability update at [www.nso.com](http://www.nso.com)
- Snyder, K. *Legal Eagle Eye Newsletter for the Nursing Profession* from [www.nursinglaw.com](http://www.nursinglaw.com)

### Resource on students/preceptors

- Buppert, C., Who is responsible for the actions of a student nurse?
  - Medscape(2012) at <https://www.medscape.com/viewarticle/763438>

Thank you for coming!