

6 Things All NP Preceptors Need to Know

Carolyn Buppert, MSN, JD
Law Office of Carolyn Buppert
www.buppert.com
buppertcarolyn@gmail.com
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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

. 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
- 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
- Buppert, C. (2017) *Avoiding Malpractice* from www.buppert.com
- NSO, Legal case studies at www.nso.com
- NSO, NP 2017 Liability update at www.nso.com
- Snyder, K. *Legal Eagle Eye Newsletter for the Nursing Profession* from 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!