

Risk Management for the Nurse Practitioner

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Disclosure

- ▶ Laura Wassmuth, JD has no financial relationships with commercial interests to disclose

Learning Objectives

- ▶ Identify components of employment or affiliation agreements that should be considered with respect to potential claims.
- ▶ Analyze insurance coverage for claims, board complaints and credentialing matters.
- ▶ Identify most common types of claims and highest areas of exposure.

Risk Management

Contracts

Insurance

Managing
Claims/Mitigating Risk

Contracts

What type?

- Compensation/Employment
- Independent Contractor or Employee
- Exclusive
- Credentialing/Medical Staff Membership
- Credentialing with Payors



Contracts

Negotiations

- Most contracts are enforceable!
- Non-negotiables
- Non-competes

What are your obligations?

- Exclusive
 - Can you see patients outside the practice?
 - Volunteer? Are you covered by insurance if you volunteer?
- Behavior or Social Restrictions
 - Drug testing
- Supplemental or Primary Insurance
- Reporting Financial Transactions/Boards/Business Interests
 - Conflicts of interest
- License/Medicaid Participation/CMS/DEA
- Billing Practices

Termination Provisions

- ▶ Qualifications
- ▶ Criminal conviction (may be limited)
- ▶ Cancellation of insurance
- ▶ Drug/alcohol use/abuse - policies
- ▶ Privileges
- ▶ Suspension/automatic termination
- ▶ Opportunity to cure

Non-compete Provisions

- Depends on state law
- If not allowed in your state - ask to remove
- Negotiate:
 - Distance
 - Duration
 - Liquidated damages - calculation
- Client/patient lists or contacts



Insurance

Insurance Coverage

- Malpractice Claims
- Board Complaints
- Peer Review Fair Hearing
- Data Breach
- Civil Rights Claims
- Employment Claims
- Property Claims

Limitations/Concerns

- Provide Notice to Carrier
- Defense vs. Liability (include both)
- Choice of Counsel
- Conflicts

Supplemental/Personal Insurance

- Insurer/Insured
- Umbrella Policies
- Exposure - may make you a target
- Notice
- Choice of Counsel
- Cost of coverage/cost of defense

Patient Complaints / Concerns

Patient Complaints

Likelihood of a Malpractice Lawsuit Over the
Course of a Provider's Career

Low Risk Practice 75%

High Risk Practice 99%

Source of Patient Complaints

Bad Outcomes - Not Necessarily

Surprise, Disappointment and Anger -
More Likely

What Can You Do To Avoid Complaints and Claims?

- Firmly Establish a Relationship with the Patient
- Meaningful Informed Consent
- Documentation

Establish the Relationship

Provider Introduction

Patient As Health Team Member

Confidentiality - Colorado Statutes

Patient as Healthcare Team Member

Ask Questions

Choose Chaperone

Be Clear About Modesty Needs

Provide History

Informed Consent

- ▶ Eliminate Surprise
- ▶ Mitigate Disappointment
- ▶ Provide Information

Written Informed Consent

“I hereby request and consent to the provision of health services by the practice”

“I understand that services provided may include examinations, diagnostic tests, x-ray examination, therapies and other procedures, which are determined to be advisable by, and are rendered under, the general or special supervision of a physician or nurse practitioner”

“I understand that I can ask for another member of the health care team to be present at any time during my appointment.”

Provide Information About the Exam

Scope of Appointment
Type of Exam

Narrative for Exams

Clinical Breast Exam (CBE)

A clinical breast exam is usually performed if you have a breast issue or concern, such as pain or lumps. Your provider may also offer you a screening CBE beginning at age 25, based on your personal and family risk assessment.

Visual Examination. During a clinical breast exam, your health care provider checks your breasts' appearance. This is usually conducted with the patient lying on an exam table, opening the front of the dressing gown. You may be asked to raise your arms over your head to allow your provider to look for differences in size or shape between your breasts. The skin covering your breasts is checked for any rash, dimpling, or other abnormal signs.

Manual Examination. Using the pads of the fingers, your provider palpates (pressing with the hands) your entire breast, underarm and collarbone area for any lumps or abnormalities. The manual exam is done on one side and then the other. Your provider will also check the lymph nodes under the armpit to see if they are enlarged. Your nipples may be checked to see if fluid is expressed when lightly squeezed.

Consent - a Conversation

Review Consent with Patient

Legal Requirements for Informed Consent

Consent - state law controls

Action Based on No Consent (Battery)

- Unless the patient **consents**, any procedure involving **contact** with a patient's body is a battery, even when appropriate skill is used
- If the patient **consents to a certain procedure/treatment**, and the physician **performs a different procedure** without the patient's consent, the physician commits a battery.

Colo. Jury Instr. 15:7

Colorado Jury Instructions 4th - Civil, July 2018

Consent

Action Based on Lack of Informed Consent

- Negligently failed to obtain informed consent
- Reasonable person would not have consented

Information Required

- Nature of the medical condition
- Nature of the procedure/treatment/exam
- Alternative treatments
- Substantial risks of the procedure and substantial risks of alternatives

Colo. Jury Instr. 15:10-11, paraphrased

Colorado Jury Instructions 4th - Civil, July 2018

Consent Documentation

Informed Consent

Form of Communication with Provider

Patient Participation in Follow Up Care

Opportunity for Questions

DATA SECURITY

- **HIPAA violations**

- Minor incidents can result in expensive regulatory investigations
- Minor/single patient violations require notice and reporting
- Policies, training, prevention

- **State law violations**

- May not apply to individual practice
- Personal information - even if not protected health information - may cause a violation

Questions?

Thank You

