


## 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 4<sup>th</sup> - 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
- Date 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 4<sup>th</sup> - Civil, July 2018

## Consent Documentation

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Informed Consent

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Form of Communication with Provider

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Patient Participation in Follow Up Care

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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

