Avoiding Malpractice

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Objectives

- Describe 3 situations where NPs were sued
- Identify the elements of malpractice
- Discuss 3 ways to decrease the risk of malpractice
- Discuss the considerations surrounding purchase of a malpractice insurance policy

Elements of malpractice

- Duty of care
- Breach of the standard of care
  - What a reasonably prudent clinician of similar education would have done in similar situation
- Injury
- Injury was caused by the breach of standard of care
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Top 7 conditions that lead to malpractice claims
- Breast cancer
- Pregnancy
- Acute MI
- Displacement of intervertebral disc
- Cancer of bronchus or lung
- Appendicitis
- Colon and rectal cancer

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Red flag chief complaints
- Abdominal pain
- Back pain with neurologic symptoms
- Breast mass
- Chest pain
- Pregnancy

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NPs working in Gyn should know
- Abnormal Pap smears, not followed up, are a major risk
Why NPs are sued

- Missed diagnosis
- Lapsed follow-up (leading to missed diagnosis)

These are the same top 2 reasons why MDs are sued

86% of errors in primary care are "process" errors

- Process errors 86%
  - administrative mistakes, failures in lab or diagnostic process, miscommunication
- Knowledge and skills errors 14%
  - errors arising during execution of clinical tasks
  - wrong treatment decisions
  - missed diagnosis based on lack of knowledge
    - *Family Practice Management, October 2002, p. 28*

Case #1: Missed cervical cancer

- NP did Pap on young woman
  - ASCUS
  - NP discussed need for follow-up
- Woman "moving out of town"
  - Said she would get follow-up in new town
- Woman returned to town 18 months later
  - Said she had Pap out of town
  - NP did not repeat pending results from out of town
- Advanced cervical cancer eventually diagnosed
  - Patient lost ability to bear children
Case #2: Missed lung cancer

- 49 year-old woman smoker falls in bathtub, goes to ER
- Chest x-ray: fractured ribs, small infiltrate RUL
- NP sees patient in office, treats for pneumonia, gets f/u x-ray
- Chest x-ray: "almost clear"
- 1 year later, patient diagnosed with lung cancer

Case #3: A forgotten symptom

- CC: Breast rash
- NP diagnoses mastitis, Rx's antibx, "See derm if not resolved in 2 weeks"
- Pt. does not see derm, returns to NP re other complaints
- 1 year later, patient has breast masses, dx is Paget's disease

Case #4: Missed tendon rupture

- 47-year-old man injured self at gym
- Saw NP for 7 months
- NP failed to diagnose tendon rupture
- Too late to re-attach
- Settlement $970,000
Case of missed _______

- 15 y.o. female leaves school early with severe HA
- Mother brings her to NP. States she had to assist daughter to exam room
- Associated symptoms: stiff joints, aches, fever

Case of missed _______

- No cough
- No chest congestion
- No rhinitis
- No abdominal complaints

Case of missed _______

- T 103.7
- NP’s exam for meningeal irritation negative
- WBC 16,600
- Later that day, mother calls and reports daughter vomited 3 times
Case of missed meningitis

- Kernig's sign only 5% sensitive
- Brudzinski's sign only 5% sensitive
- Jolt maneuver is more sensitive
- Lumbar puncture is the only way to diagnose or rule out

NP's responsibilities

- Explain that meningitis is a possibility
- I.D. the symptoms, signs that suggest it
- Focus on equivocal findings
- Describe risks of LP
- "If you have meningitis, it can be fatal if we don't get you on antibiotics right away."

Average expense of claims

- For closed claims, about $43,000
  » www.nso.com 2008 data
Average indemnity payout for NPs insured with NSO

- $189,300
  - 1998-2008, Nurse Practitioner Claims Study
    - [www.nso.com](http://www.nso.com) 2008 data

NSO NP Claims Study

- Payouts were highest for pediatric/neonatal ($318,150 on average, but percentage of suits against PNPs was only 4.7% of total)
- Highest payouts were seen for lawsuits involving urgent care
- Most common site of care delivery was medical offices

NP Claims Study

Most common injury was wrongful death (42%)

Most common mistakes were in diagnosis and treatment
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Treatment

• Failure to properly treat an established illness 26.5%
• Improper technique or negligent performance of treatment 19.5%
• Improper management of medical patient 13%
• Failure to obtain referral or consultation 9.5%

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CNA/NSO recommends

• Comply with state nurse practice act
• Maintain effective collaboration, based on state regulations
• Review annually and comply with protocols and/or guidelines
• Ensure that collaborating professionals and facilities maintain appropriate insurance

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CNA/NSO recommends

• Maintain patient records
  – up-to-date problem list and medication list
  – test results
  – telephone communications
  – consultations and referrals
• Release information in accordance with HIPAA regulations and Federal rules on HIV, substance abuse, and mental health
• Identify late entries as such, avoid subjective comments, appropriately correct documentation errors
NSO/CNA data doesn’t include NPs insured through employers

- NPs recently have been involved in cases where damages have run $2 – 8 M

Test your knowledge

Case #5: Telephone triage

- NP working in a clinic
- Telephone call from patient: "I have a bellyache"
What would you do next?

A. Take a bit more history.
B. Get the chart.
C. Take a message and call her back.
D. Tell her to come in for evaluation.

Case of the telephone triage

- RN said "Call back if it doesn't go away in few days."
- 2 days later, patient called back
- Spoke with NP
- NP said "Call back if it doesn't go away in few days."

Case of telephone triage

- No one retrieved the patient's chart
- If they had, they might have noted this patient had an IUD
- Patient had advanced PID, necessitating hysterectomy
Case of telephone triage

- Outcome: Clinic, RN, NP all liable for patient's damages

Case #6: Nurse at the beach

- Young woman injures her ankle at the beach
- You are there, sunbathing
- "You're a nurse. Do you think it is broken?"

What would you do?
You could

1. Recommend the most conservative course
   Remember WIT-D:
   What is the worst thing?
   What info do I need?
   Whom do I tell?
   Document

Options

2. Never announce that you are a nurse
3. Decline to give an opinion
4. Give your honest opinion, but have insurance

Case #7: Belly pain

You examine a 4-year-old with abdominal pain. His parents report no fever, nausea or vomiting. He has no rebound tenderness or guarding. WBCs are normal. The parents want a referral to a surgeon. You recommend that they monitor his symptoms, and tell them to call you if he gets worse.
Later that night...

The parents call to report severe pain. You meet them in the ED and call in a surgeon. The appendix has ruptured, and the child has a difficult recovery. The parents sue you.

How should you have managed this case?

A. Refer the patient as the patient requested
B. Rely as you did on your judgment

Answer

A. Whenever a patient expresses reservations about your decision, diagnosis or treatment, make a prompt referral
Rules for preventing mistakes

1. Know the red flag complaints
2. Rule out the worst diagnosis first
3. Know the risk factors that call for screening tests

4. Follow up diagnostic tests and referrals
   - What it done?
   - Are results on record?
   - If abnormal, was the condition followed up to a diagnosis or rule out?
5. Revisit an unresolved problem until it is resolved

6. With every Rx, go through a SCRIPT analysis:
   - side effects?
   - contraindications?
   - right medication?
   - interactions?
   - precautions?
   - transmitted clearly?
7. Adopt systems and policies for assuring follow up
   - tiered communications (telephone call, letter, certified letter)
   - tickler systems
   - designated follow-up person vs. policy that all clinicians responsible for own F/U
Systems for preventing malpractice

2. Practice adopts policies on:
   - Safe prescribing (SCRIPT)
   - Regular continuing education
   - Documentation standards
   - Patient failure to show

Policy: No shows

- If a return visit or other follow-up is important; i.e. the patient has a red flag complaint, the nurse practitioner or physician will call the patient and
  - Advise the patient of the urgency of follow-up, and the worst-case scenario. Document the advice given.

Systems for preventing malpractice

3. Conditions of treatment:
   a. The individual has registered with the practice
   b. No treatment without chart.
   c. If violate b., treat patient like a new patient; i.e., redo initial history
   d. No treatment without opportunity for follow-up
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What to do if notified you are being sued

• Call malpractice carrier
• Get an attorney
• The carrier may send you to a specific attorney

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Are my bases covered?

• Am I minimizing my risk?
  – Follow-up of red flag chief complaints
    – Top 3 red flags:
      – Chest pain
      – Abdominal pain
      – Breast complaint
    – Follow-up of abnormal diagnostic results
    – Follow up on patient, any time you provide advice

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Are my bases covered?

• Have I answered the questions on the application honestly?
  – FNP insurance is more expensive than ANP insurance
  – Can an FNP working only with adults get ANP insurance? No.
• Do I have adequate insurance coverage?
  – Do I need my own policy? Limits?
  – Occurrence policy? Or, a tail?
  – Named as an insured, if covered by employer's policy
Are my bases covered?

Am I qualified in the Board of Nursing’s view to do what I do?

Scope of practice: Need to be a

• FNP or PNP to see children
• Acute care NP to work in ICU
• Psych NP to perform psychotherapy
• Adult NP to see patients 18-55 (not a GNP, not a PNP)

Cover your bases

• You can lower your risk for malpractice by
  – implementing practice systems, policies on follow-up
  – refusing to work in a sloppy practice/facility
  – declining to take on patient care unless you can provide all aspects of that care; i.e. full assessment, follow-up
  – knowing the risks inherent in your population and dealing
    • Hantavirus?
    • Itinerant patients?

Cover your bases

• Carry adequate insurance
  – Generally, purchase $1 million, at minimum
  – Occurrence policy (or a tail)
  – Named on employer’s policy as an insured
**Malpractice insurance**

- Consider buying it, even if the employer offers coverage
- Get an "occurrence" policy
  - covers acts occurring while policy was active
- If purchasing a "claims made" policy, understand that you will need a "tail" policy after you leave nursing or retire
  - covers past acts only if policy is still active

**References**