Malpractice Essentials for NPs in Acute Care

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Disclosures

Dr. Blackwell maintains a for-profit malpractice consultation practice that focuses on negligent care allegations levied against nurse practitioners (NPs). This will have no bias effect on the presentation.

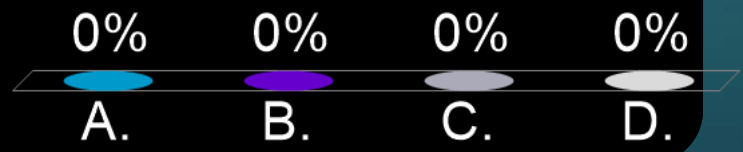
Objectives

1. Explain the structure of a malpractice lawsuit and key regulatory requirements.
2. Identify three strategies to reduce advanced practice registered nurse (APRN) malpractice risk in acute care.
3. Compare malpractice insurance policies and how coverage limits affect APRN protection.

Question!

Which best describes responsibility of causality in NP malpractice lawsuits?

A. The NP must deflect negligence to other care providers.
B. The NP must prove malpractice/negligence did not result in injury.
C. The plaintiff must deflect negligence from other care providers to the NP.
✓ D. The plaintiff must prove the NP's negligence resulted in injury.



Anatomy of an Advanced Practice Nursing Malpractice Suit

1. Breach in the standard of care
   a. **First and foremost essential aspect of a malpractice claim**
2. Plaintiff's responsibility to prove this breach occurred.

Anatomy of an Advanced Practice Nursing Malpractice Suit

3. Patients and/or family members reach out to attorneys:
   a. During the actual hospitalization
      - Attorney or legal team could provide input and even assist in gathering data and building foundations for a case while the patient remains hospitalized.
   b. After care has been provided, and there is a perception of malpractice
   c. After a death
   d. Plaintiff's attorneys consult in-house and external experts to review medical documents to determine case validity
      - These documents usually extend beyond just care provided by the NP.
      - Include materials to support the NP's negligence resulted in physical (sometimes chronic) health and psychosocial (punitive) sequalae.

Anatomy of an Advanced Practice Nursing Malpractice Suit

4. Experts provide input to plaintiff's attorneys on whether they believe the situation represents true malpractice.
   a. Possible determinations:
      - No malpractice
      - NP didn't provide negligent care
      - Other providers, not the NPs, were negligent
      - NP was the only negligent provider (rare)
      - NP and other providers were all negligent

Anatomy of an Advanced Practice Nursing Malpractice Suit

5. If experts support a claim of malpractice, they join the case as an expert witness and assist the legal team in preparation of a charging document against the plaintiff.
   a. Charging document provides **explicit** details regarding how the NP committed negligence and how that negligence contributed to the adverse outcome(s) or death of the patient

Anatomy of an Advanced Practice Nursing Malpractice Suit

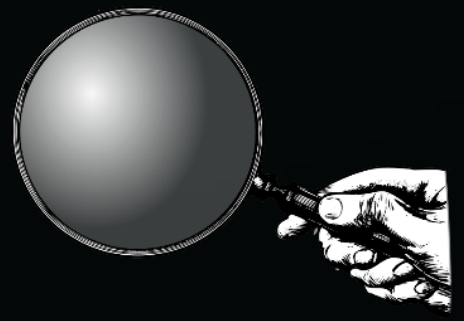
6. After receiving the charging document (delivered to home or office), the NP reaches out to his or her insurance provider, which:
   a. Aligns the NP with a defense attorney
   b. Provides guidance regarding his or her immediate actions
      - **AT THIS POINT, YOU DO NOTHING! DO NOT PROVIDE ANY DOCUMENTS TO PLAINTIFF'S ATTORNEY!**

Anatomy of an Advanced Practice Nursing Malpractice Suit

7. NPs and their practices will notify hospital legal department of the allegations, and/or vice versa
8. NP's legal team will initiate collaboration with their experts who determine the NP did not commit negligence
   a. Often these experts prepare their own response affidavit to the charging affidavit, refuting each and every claim of the plaintiff's legal team and experts.
   b. This document is then delivered to the plaintiff's legal team.

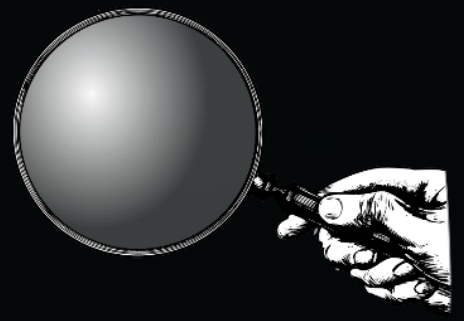
Anatomy of an Advanced Practice Nursing Malpractice Suit

9. Next, the discovery stages occur.
   a. Both plaintiff and defense attorneys procure additional documents, which will include all relevant patient charts, diagnostic tests, and possibly other records:
      - NP scheduling documents
      - Hospital credentialing records (used often to show scope of practice violations)
      - Physician-NP collaboration agreements (used often to show scope of practice violations)
      - Hospital policies and procedures manuals and documents (to show deviance from expectations)— **NOT ALWAYS PROOF** of negligence
      - Cell phone records and data (determines a timeline and log of relevant calls and text messages)



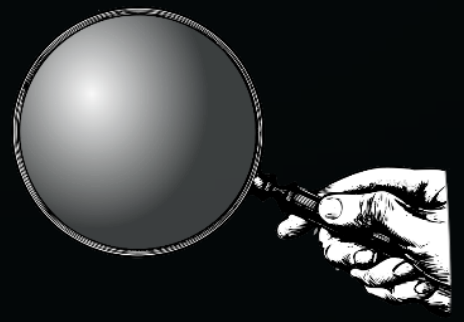
Anatomy of an Advanced Practice Nursing Malpractice Suit

10. Next, the discovery stages occur.
    a. Expert-witness prepared documents:
        - Technical reports or summations
        - Socioeconomic reports prepared by economists and other specialists that estimate past, current, and financial losses consequential to the injury
            a. This includes not only medical and supportive care, but also includes loss of salary, loss of benefits, consequential need for future care, potential diminished life expectancy issues (e.g., future loss of income or benefits for partner or spouse and/or children).



Anatomy of an Advanced Practice Nursing Malpractice Suit

11. Next, the discovery stages occur
    a. Expert-witness prepared documents:
        - Qualifications of all expert witnesses involved (CVs, past history of working on plaintiff and defense teams in malpractice claims), income derived from expert witness consultation, etc.
        - Any other documents either the defense or plaintiff's team believes is significant to the case can be subpoenaed.

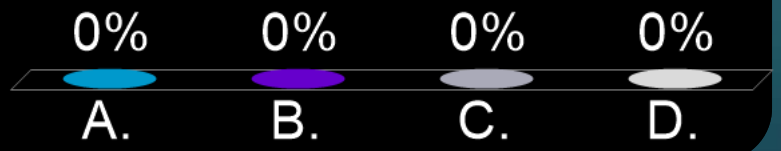


ALL VERY TIME CONSUMING! May take a year or more!

Question!

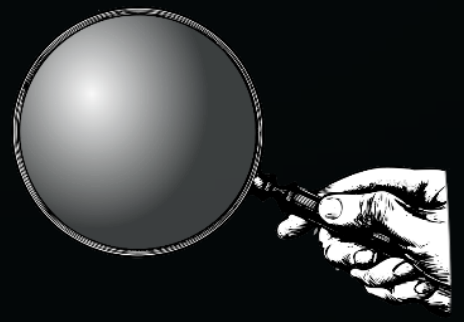
An NP is served a malpractice charging document. The plaintiff's attorney is also demanding a copy of the NP's malpractice policy. The nurse practitioner should:

A. Comply with the order and provide the requested policy documents.
✓ B. Ignore the request for policy documents and contact the malpractice insurance carrier.
C. Notify the hospital's risk management department of the charging document.
D. Provide the requested policy documents and seek legal counsel for representation.



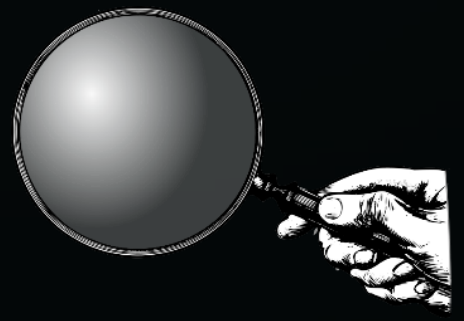
Anatomy of an Advanced Practice Nursing Malpractice Suit

12. Next, deposition testimony is obtained for all witnesses:
    a. Nurses (could be co-defendants or witnesses)
    b. Physicians (could be co-defendants or witnesses)
    c. Respiratory therapists (could be co-defendants or witnesses)
    d. Unlicensed assistive personnel (certified nursing assistants, techs, etc.)
    e. Office managers and assistants



Anatomy of an Advanced Practice Nursing Malpractice Suit

13. Next, deposition testimony is obtained for all witnesses:
    a. Hospital administration
    b. Plaintiff
    c. Plaintiff's family members
    d. Expert witnesses for plaintiff and defense
    e. ANYONE else the plaintiff or defense team believes will be helpful to their case



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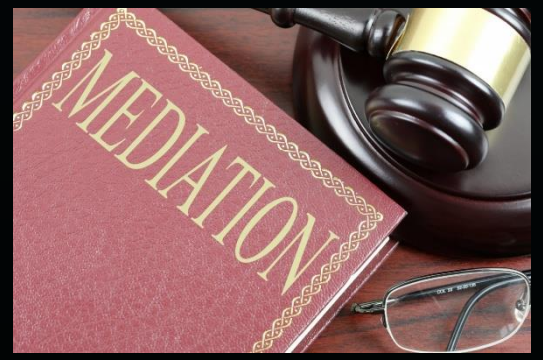
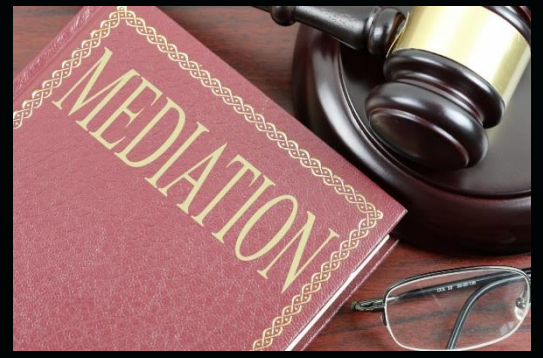
Anatomy of an Advanced Practice Nursing Malpractice Suit

14. After all depositions are obtained for a case, the case can go to mediation/arbitration:
    a. Some states REQUIRE this (e.g., Florida).
    b. Malpractice insurance company and plaintiff's legal team perform a cost/benefit analysis to determine a ratio of settlement: cost for trial to determine if going to trial is wise
        - Going to trial is VERY expensive and risky for BOTH sides.
        - A settlement offer might be offered to stave the case from going to trial.



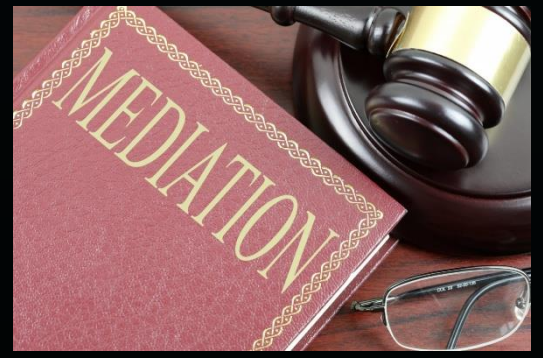
Anatomy of an Advanced Practice Nursing Malpractice Suit

15. After all depositions are obtained for a case, the case can go to mediation/arbitration:
    a. Malpractice insurance company and plaintiff's legal team perform a cost/benefit analysis to determine a ratio of settlement to cost for trial to determine if going to trial is wise



Anatomy of an Advanced Practice Nursing Malpractice Suit

- Plaintiff's attorneys might settle with various co-defendants in a case, but continue to pursue others
- Multiple mediation/arbitration meetings may occur before a settlement is reached.
- If a settlement is reached, the case effectively ENDS.
- If a settlement is not reached, the case goes to trial.
- Average time from claim → closure
  a. > $10,000 payout = 4.5 years
  b. < $10,000 payout = 3.1 years
  c. Close claim with expense only = 4.1 years



Consequences of Malpractice Lawsuits on NPs

1. Stress
2. Financial strain
   a. Preparing responses to accusations made in malpractice suits is incredibly time consuming and requires a major time commitment from the NPs involved.
   b. If a financial settlement is made that exceeds an NP's insurance caps, the NP is financially responsible for the remaining balance.
   c. Future malpractice policy costs will increase.
      - Car accident? DUI? Ticket? Car insurance prices go *UP!*

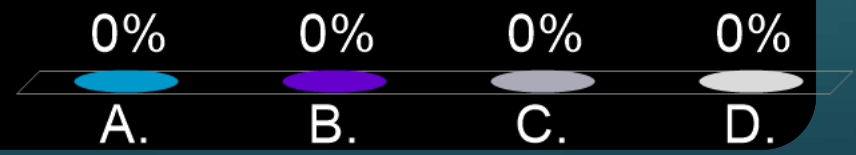
Consequences of Malpractice Lawsuits on NPs

3. Future credentialing issues
   a. Healthcare organizations don't want to employ/credential NPs with significant malpractice histories.
4. Professional reputation issues
5. Possible board of nursing or department of health (DOH) ramifications
6. Psychological impacts
7. Self-doubt

Question!

Which best describes the national trend in incidence of malpractice lawsuits naming NP as defendants over the last Nurses Service Organization (NSO) reporting period? Malpractice lawsuits naming NPs have:

A. Decreased
✓ B. Increased
C. Stabilized since the prior reporting period
D. Started to outnumber malpractice lawsuits against physicians



Epidemiology of Advanced Practice Nurse (APN) Malpractice

1. Malpractice claims against nurse practitioners increased by 10.5% between 2017-2022.
   a. The average total incurred also increased ($300,506 → $332,137).
   b. Neonatal specialty has the highest claim payout ($627,333)
   c. Gerontology specialty has the lowest payout ($332,137)
   d. Adult-Gerontology ranks fourth ($328,871).
   e. This includes primary and acute care services.

Epidemiology of APN Malpractice

2. Diagnosis-related claims are highest represented claims (37.1%) with an average total incurred of $385,947
3. Death and cancer are the two most common injuries, accounting for > 50% of claims.
4. The average cost to defend an NP rose 19.5% from 2017 → 2022; and 61.1% from 2012 → 2022.

Epidemiology of APN Malpractice

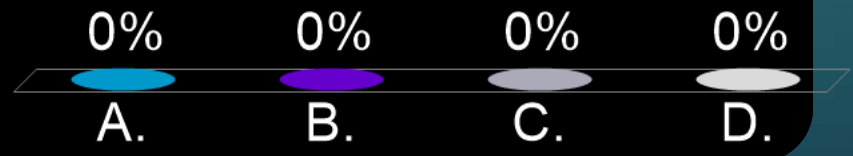
5. Professional conduct, medication prescribing, and scope of practice allegations reflect the highest distribution of DOH/license investigations.

6. Major takeaway points:
   a. The number of malpractice claims against NPs is increasing.
   b. The cost to defend an NP named in a malpractice suit is increasing.
   c. The amount being paid out for NPs named in a malpractice suit is increasing.

Question!

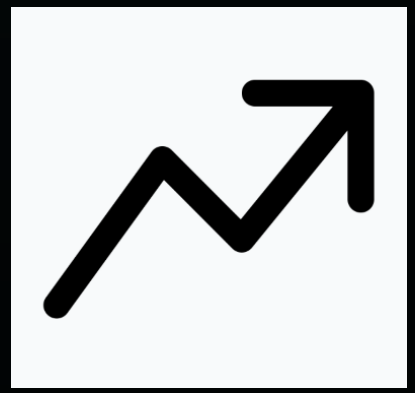
Which area of negligence carries the largest payout in NP malpractice lawsuits?

A. Abuse, patient rights, and professional conduct
✓ B. Assessment
C. Diagnosis
D. Treatment and care management



Epidemiology of APN Malpractice

7. Payout numbers by allegation (ranking):
   a. Errors in:
      - Assessment = 3.9% ($484,680)
      - Diagnosis = 37.1% ($385,947)
      - Medication prescribing = 17.7% ($356,892)
      - Treatment and care management = 35.3% ($258,229)
      - Abuse, patient rights, professional conduct = 2.6% ($203,264)



Epidemiology of APN Malpractice

8. Assessment = 3.9% ($484,680)
    a. Diagnostics/Lab tests:
        - Failure to order appropriate diagnostic tests
        - Failure to follow up regarding lab/diagnostic
            a. Delaying a diagnosis
            b. Delay in addressing abnormal lab results

Epidemiology of APN Malpractice

8. Assessment = 3.9% ($484,680)
    b. History and physical:
        - Lack of complete patient and family history
        - Incomplete physical assessment
        - Failure to list current medications/ and/or complaints
        - Failure to document patient noncompliance with:
            a. Appointments
            b. Ordered diagnostic tests
            c. Prescribed medications
        - Failure to notify of diagnostic test results and recommendations for further treatment of workup

Epidemiology of APN Malpractice

9. Diagnosis = 37.1% ($385,947)
   a. Cancer (33.7%)
   b. Infection (19.8%)
   c. Cardiac/Vascular (16.3%)
   d. Neurological (12.8%)

Epidemiology of APN Malpractice

10. Injuries that lead to most claims:
    a. Death (45.7%)
    b. Cancer (8.2%)
    c. Organ failure or loss of organ function (7.8%)
    d. Neurological injury/damage (6%)
    e. Amputation (3.4%)

Epidemiology of APN Malpractice

10. Injuries that lead to most claims:
    f. Death (45.7%)
        - Infections, abscesses, sepsis (18.9%)
        - Cardiac/pulmonary arrest (14.2%)
        - Cancer (10.4%)
        - Non-infarct cardiac condition (10.4%)
        - Suicide (9.4%)

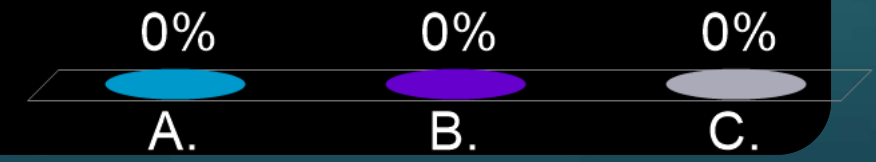
Question!

The top three state DOH investigations against nurse practitioners (ranked in incidence) are related to:

A. Medication prescribing, scope of practice, and professional misconduct

✓ B. Professional misconduct, medication prescribing, and scope of practice

C. Scope of practice, medication prescribing, and professional misconduct



Epidemiology of APN Malpractice

11. State board of nursing or DOH investigations:
    a. Average cost of $7,155
    b. Top investigations:
        - Professional misconduct (27.2%)
        - Medication prescribing (16.8%)
        - Scope of practice (14.4%)

Epidemiology of APN Malpractice

11. State board of nursing or DOH investigations:
    c. Penalties levied:
        - Closed case without action: 56.8%
        - Probation: 12%
        - Letter of reprimand: 11.2%
        - Stipulation: 6.4%
        - Fine: 3.6%
        - Continuing education: 2.8%
        - Suspension: 2.8%
        - Revocation: 2.4%
        - Surrender: 2%

Strategies to Avoid Malpractice

1. Actively participate with the patient
   a. Patients and families rarely sue providers they like.
   b. Maintain communication and discuss your care plan
   c. Avoid distractions.
2. Review other clinicians' documentation
   a. This can help decrease opportunities to miss data.
   b. Look particularly for contradictions and differences.
   c. NEVER retrospectively alter documentation in the belief it will help prevent malpractice.

Strategies to Avoid Malpractice

3. Address abnormal findings.
   a. Document explanations regarding abnormal vital signs, physical exam findings, or diagnostics.
   b. If you are not addressing an abnormal finding, document why.

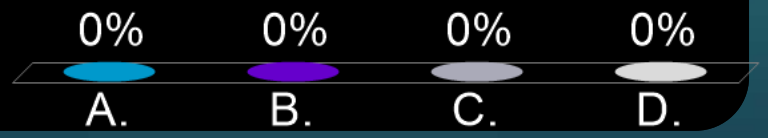
Strategies to Avoid Malpractice

4. E.g.: Pulmonary adult-gerontology acute care NP (AGACNP) presents to assess a patient with COPD exacerbation. During the visit, the patient informs the NP she is also having “severe new abdominal pain.”
   a. The AGACNP performs a physical exam (PE), orders a CT scan of the abdomen, contacts the hospitalist, and informs the hospitalist about the patient’s complaints and the pending CT scan.
   b. The AGACNP documents the PE findings in addition to the following in the plan of care:
      - Patient complains of new onset abdominal pain during today’s visit at 1600. Contacted Dr. Smith at 1605, informed her about the patient’s complaints, and immediately ordered a STAT CT scan of the abdominal contrast. Dr. Smith agreed to follow-up. RN will follow up with Dr. Smith for any acute changes.

Question!

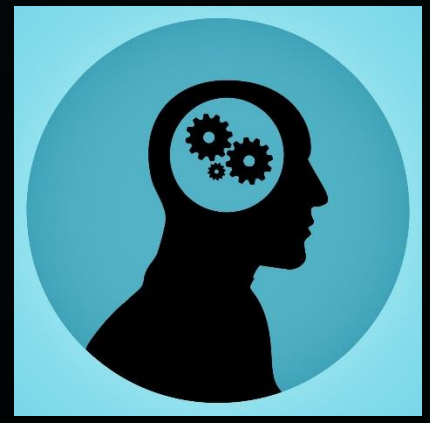
The ICU NP responds to a rapid response (RR) on a post-operative patient with hypotension. The patient quickly stabilizes, without requiring transfer to the ICU. However, the NP notes a significant drop in the patient's hemoglobin and hematocrit two hours prior to the RR event. The NP should contact the:

A. Nurse caring for the patient and request he or she report the RR event and drop in hemoglobin and hematocrit to the managing hospitalist, then document the order
B. Managing hospitalist to report the RR event and drop in hemoglobin and hematocrit
✓ C. Managing hospitalist to report the RR event and drop in hemoglobin and hematocrit, then document the discussion
D. Surgeon to report the RR event and drop in hemoglobin and hematocrit, then document the discussion



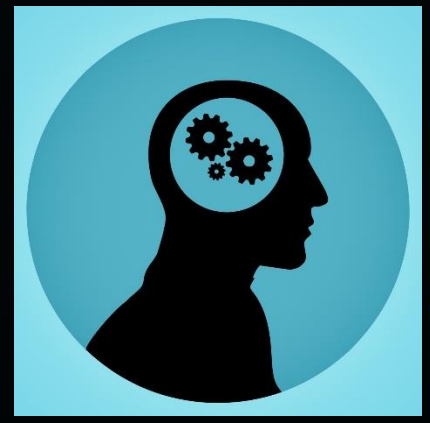
Strategies to Avoid Malpractice

5. Explain your thinking.
   a. MOST important aspect of charting
   b. Window into your brain
   c. Include a brief recap of the history, pertinent physical exam and diagnostic findings, and provide an explanation of the presentation.
   d. Elucidate regarding your differentials and provide rationales as to why differentials were counted and discounted based on history, physical exam, or diagnostics.



Strategies to Avoid Malpractice

5. Explain your thinking.
   e. Document pertinent discussions with the patient or family, including medical advice.
      - Also document any care that was refused and that you educated the patient and/or family regarding the risks of not getting that care (including death) and this was acknowledged by the patient/family.



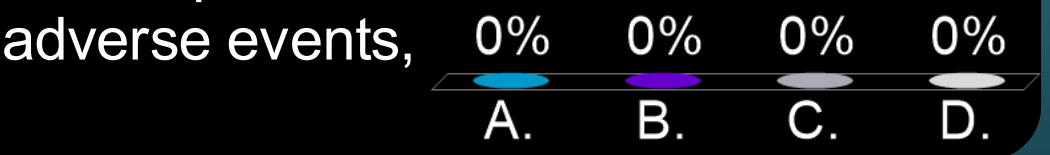
Strategies to Avoid Malpractice

6. If the patient is being discharged, document a reassessment of the patient's condition before discharge.
   a. Ensure you have a follow-up plan of care clearly documented.
      - Do NOT rely on the RN to do this!
   b. Document an acute follow-up plan:
      - E.g., patient was educated to call emergency medical services immediately for transfer to the ED for any worsening symptoms

Question!

The nurse practitioner prepares a patient for discharge from the ED. The patient will require self wound care at home. The NP should:

A. Delegate the discharge instructions to the registered nurse caring for the patient
B. Educate the patient about the proper technical skill involved with the wound care
C. Ensure the patient understands potential adverse events and need to return to the ED for worsening symptoms
✓D. Ensure the patient understands potential adverse events and need to return to the ED for worsening symptoms, educate the patient about the proper technical skill involved with the wound care, require return demonstration, and document the patient's correct skill and acknowledgement of potential adverse events, and possible need to return to ED



Strategies to Avoid Malpractice

6. If the patient is being discharged, document a reassessment of the patient's condition before discharge.
   c. Document that the patient (or caregiver) verbalized understanding of all discharge instructions and verbalized these instructions back to you accurately.
   d. If the patient requires a technical skill as an aspect of care, document the patient correctly demonstrated to you how to perform the skill and verbalized understanding of potential adverse events (e.g., fever, sweats, chills, excessive pain, suppuration, heat/erythema at site).

Question!

A nurse practitioner is named in a malpractice lawsuit related to care rendered in January of 2025. The NP is currently not working and doesn't have an active malpractice insurance policy. The NP was covered with a claims-based policy 1/1/25-12/31/25. Will the NPs malpractice insurance cover the malpractice claim?

✓ A. No
B. Yes

Malpractice Policy Essentials

1. Two major types of malpractice insurance policies:
   a. Claims-based:
      - Policy covers you only while it is active
        a. E.g.: Policy is written for 1/1/25-12/31/25 and a claim is filed against you on 6/26/25
   b. Occurrence-based:
      - Policy covers you during the policy coverage dates.
      - When the claim is filed doesn't matter
   c. Which type do you have?
   d. Do you know?

Malpractice Policy Essentials

1. Two major types of malpractice insurance policies:
    e. Example:
        - Stella is an AGACNP working for a hospitalist group on 1/5/25.
        - She is employed by the hospital, which provides her with a claims-based insurance policy active from 1/1/25-12/31/25.
        - Stella gets pregnant in March of 2025 and decides to take 2026 off from work so she can stay at home with her baby.
        - On 3/8/26, Stella receives a notification that a malpractice claim has been filed against her for care she provided in January 2025.
        - Because Stella had a claims-based policy, **she is NOT covered and will have to pay legal expenses and settlements/judgments out of her own pocket**.
            a. If Stella had an occurrence-based policy active in February 2025, the insurance company would cover her legal expenses, settlements, or judgments.
            b. A claims-based policy would only cover Stella if she renewed it on 1/1/26.

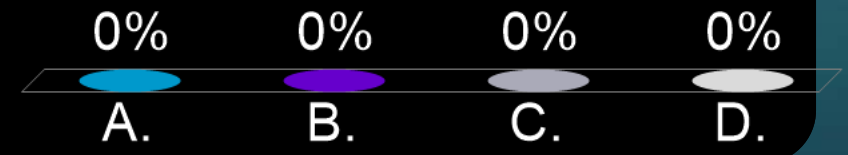
Malpractice Policy Essentials

1. Two major types of malpractice insurance policies:
   f. Takeaway point?: Get an OCCURRENCE-BASED POLICY!
      - If your employer won't provide an occurrence-based policy:
        a. Ask for a malpractice stipend and purchase your own occurrence-based policy.
        b. Ask if you can personally pay the difference between the claims-based policy provided by the employer and an occurrence-based policy.

Question!

Compared to higher malpractice insurance liability limits, lower liability limits:

A. Decrease chances of an NP being named in a malpractice lawsuit
B. Increase chances of an NP being named in a malpractice lawsuit
C. May increase the chance of other care providers being named with the NP in a malpractice lawsuit
✓ D. May not have an impact on an NP being named in a malpractice lawsuit



Malpractice Policy Essentials

2. Liability limits
   a. High versus low:
      - Higher limits = higher premiums
      - Higher limits = more protection
      - Higher limits = higher chance of being named as a defendant
      - Lower limits = lower premiums
      - Lower limits = less protection
      - Lower limits COULD = lower chance of being named as a defendant
   b. What is your worth?
   c. What is your practice's worth?
      - Answers to these questions will dictate how much liability limitation you should set on your policy
   d. If you leave a job, CANCEL your old policy!
      - Don't ever carry more than one active policy at a given coverage time period.

Malpractice Risks With Artificial Intelligence (AI)

1. Accuracy and privacy are at the top of the list for malpractice concerns with AI.
2. Generative AI operates in a black box, predicting the correct answer based on information stored in a database.
3. With an incorrect diagnosis by generative AI, liability is with the APN.

Malpractice Risks With AI

1. Generative AI can provide ideas.
   a. E.g.:
      - An AGACNP is unable to remove an endotracheal tube after a procedure.
      - The AGACNP checked ChatGPT in the ICU, finding a similar case.
      - Epinephrine in the anesthetic restricted the blood vessels, causing the laryngeal cords to “stick together.”
      - Following the AI information, the AGACNP allowed more time for the anesthesia to diffuse.
      - As it wore off, the vocal cords separated, easing the removal of the breathing tube.

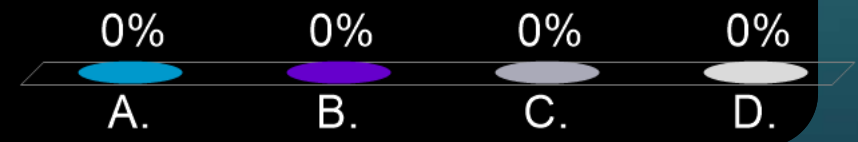
Malpractice Risks with AI

2. Currently, malpractice policies do not specify AI coverage.
3. Some legal experts believe AI will decrease, rather than increase, malpractice risk.
    a. Having more data points to consider can make AGACNPs' jobs faster, easier, and more accurate

Question!

A nurse practitioner treats a patient on the medical/surgical for endocarditis. The NP orders vancomycin and ceftriaxone. The patient becomes anaphylactic and dies. The electronic medical record indicated the patient had, “no known allergies.” Is the NP negligent?

A. No. The chart clearly indicated the patient wasn’t allergic to anything.
✓ B. Maybe. Proof the NP asked the patient about allergies may be necessary.
C. Maybe. Vancomycin and ceftriaxone can carry cross-sensitivities.
D. Yes. The NP ordered the antibiotics and is ultimately responsible.



Case Examples

1. 60-year-old died after going septic after an intestinal perforation during abdominal surgery
   a. NP was accused of malpractice in directing code in ICU
   b. ICU RN provided impeccable documentation of interventions during code
   c. Dr. Blackwell provided affidavit, indicating NP met standard of care for directing code via advanced cardiac life support protocols
   d. NP was dropped from suit.

Case Examples

2. 55-year-old had multiple amputations to lower extremities from pressor treatment after going septic after intestinal perforation during uterine mass removal
   a. Family NP (FNP) was accused of malpractice for multiple reasons:
      - **Working outside of scope of practice in hospital setting**
        a. FNP didn't understand proper scope of practice for family NP
        b. Hospital had own policy against allowing FNPs to work in hospital yet still credentialed the FNP
      - FNP failed to recognize septic condition in timely manner
      - FNP failed to communicate with surgeon on-call to get the patient emergent surgical care
        a. FNP kept postponing need for surgical intervention and downplayed the severity of the patient's condition
   b. Dr. Blackwell testified to the breaches in the standard of care through deposition.
   c. Case settled for MILLIONS of dollars

Case Examples

3. FNP accused of practicing medicine without a license
   a. FNP was running a “wellness clinic” and was administering platelet-rich plasma (PRP) to patients with a multitude of conditions
   b. Patient with chronic lumbago had multiple injections of PRP without relief
      - He filed a complaint with the Florida Department of Health (FDOH) accusing the FNP of operating a scam clinic.
   c. FDOH completed investigation and charged FNP with practicing medicine without a license
   d. Dr. Blackwell reviewed all of the FNP’s patient education literature, consent documents, and other documentation and provided an affidavit to FDOH defending the NP.
   e. FDOH reversed action and dropped case against FNP

The End

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