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Nurses Service Organization

Risk Advisor for Advanced Practice Nurses

How to protect your license

As a nurse practitioner (NP), you likely understand the need for professional liability insurance to protect yourself against malpractice claims related to patient care. But did you know you also need insurance to protect your license against action taken by a board of nursing (BON)? In this situation, the event might not even be related to patient care. For example, a state's nurse practice act (NPA) may include a "moral character" component, which means a BON can take action in cases such as driving under the influence, use of illicit drugs (both on and off the job), or failure to pay child support.

The BON's view is that licensure is a privilege, not a right. What many NPs fail to understand is that the BON is tasked to protect the public, not the NP.

While many articles have been written on how NPs can protect themselves from malpractice, far fewer have focused on how they can protect their license. Yet without a license, NPs can't provide patient care. Revoking a license isn't the only possible outcome of allegations. The BON may be required to report disciplinary action to other agencies, which could, for example, lead to exclusion of the NP from participating in the Medicare program. In this case, he or she might be unable to work for any employer who receives Medicare or Medicaid reimbursement, significantly affecting the NP's livelihood.

Allegations against a license

License-related actions typically begin with a complaint to the BON in the state where the NP

Avoiding board complaints

Here are some steps you can take to protect yourself against board complaints:

- Follow established procedures and protocols.
- Provide clear, timely communication to patients and families.
- Recognize stressors that can lead to substance abuse and allegations of unprofessional support; be proactive in seeking support.
- Document consistently and in detail. Include discussions with patients regarding their treatment.
- Keep current. Complete education requirements, maintain physician agreement documents, and ensure access to up-to-date medication and other reference material.
- Be sure your patient understands and is comfortable with the assessment process before you begin. If appropriate or requested by the patient, include another staff member during the assessment.
- Submit updates to credentials on time.

Source: *Nurse Practitioner 2012 Liability Update: A Three-part Approach*.

practices. Sources of complaints include patients, patient families, colleagues, or employers. Many BONs require an NP to self-report certain violations, including misdemeanors. Finally, one state's BON may be notified by another state's BON, another agency, or law enforcement of action taken against an NP.

Types of allegations include unprofessional conduct (e.g., privacy violations, lapses in moral character) to billing practices to breach of confidentiality and substance abuse. A BON may also take action related to disciplinary action taken in another state.

Incidents and payments

According to *Nurse Practitioner 2012 Liability: A Three-part Approach*, a claims analysis from CNA and NSO, from January 2007 through December

2011, 504 incidents related to license protection were reported by NPs insured by CNA/NSO. Of these incidents, 26.4 percent resulted in payment, with an average amount of \$4,441. Payments reflect the costs of reimbursing an insured for legal representation in defending these actions to the BON.

Most NPs involved in paid claims worked in an office (69.2 percent), followed by a hospital (19.5 percent). The three allegation classes with the highest percentage of paid claims were improper care and treatment (25.6 percent) such as improper or untimely management of the patient; unprofessional conduct (23.3 percent) such as substance abuse; and medication error (20.3 percent) such as wrong medication or failure to recognize contraindications or adverse interactions. So how can you protect your license against similar allegations?

Improve communication

Developing effective communication skills is the most important step you can take to protect your license. Patients and families who feel they have a personal connection with an NP are less likely to file a complaint. Listen, act with empathy, and don't lose your temper.

Part of good communication is being able to resolve conflicts. If a serious conflict occurs, consider involving a mediator to help you and your patient work through the situation.

Be professional

Maintain a professional profile—complaints are less likely to occur if you are perceived as a professional practitioner. Professional NPs stay current in their knowledge and function within their scope of practice. If a job description or common practice at your place of employment differs from your state's NPA, follow the NPA. If you are unclear whether something falls in your scope of practice, ask for a written opinion from your state's BON.

You can also demonstrate your professionalism by belonging to professional associations. Ideally, one should be a general organization and the other should relate to your area of clinical practice. Subscribing to professional journals serves a dual function: providing evidence of professional practice and ensuring that you are current in your clinical knowledge.

Maintain professional boundaries. Do not have a relationship with a patient outside of a professional context—even if your professional relationship has ended.

Social media can be filled with perils such as boundary crossing and unintentionally revealing confidential information. Don't engage in social media with patients and take care in what you post or text. Follow the guidelines outlined in the 2011 white paper from the National Council of State Boards of Nursing, available online at www.ncsbn.org/Social_Media.pdf. Should a complaint be filed, your reputation as a professional will stand you in good stead when mounting a defense.

Keep a record

Back up your reputation with documentation. Maintain a file with documents that show your efforts to ensure your competency, such as continuing education classes completed and specialty certifications. Include general materials that provide evidence of your professionalism such as letters of recommendation, thank-you letters from patients and families, performance appraisals, awards, and certificates of accomplishment. Documents that show how you have served the public, such as participation in health fairs, should be part of your professional record, too.

Understand your state's NPA

As an NP in practice, you are responsible for understanding what is contained in your state's NPA. In some cases, the legal writing style may make NPAs difficult to understand, but with perseverance, it's possible to grasp the information. Many state BONs have created education programs to help NPs understand their NPA. The NPA will outline your responsibilities, from patient care to basics such as requirements for notifying the board of address or name changes.

It's also wise to periodically visit your state BON's website, where you can read board news and access information about disciplinary action. Reading past cases can help you identify areas of vulnerability in your own practice. You might also consider occasionally attending BON meetings, which are open to the public, to gain greater insight into how the BON functions.

License protection insurance

NPs should not rely on employers for their license protection coverage. Usually, employer coverage only applies to malpractice charges that occur in the workplace. In addition, employers will focus on defending the organization, not defending an individual employee. Check to ensure that you have coverage—both malpractice and license protection.

When a board takes action

If you are notified by your state's BON that an investigation will be started, immediately contact NSO, your professional liability insurance provider, and retain an attorney immediately. Your attorney will assist you in responding promptly to any requests from the BON during the investigation. At the end of the investigation, the BON will decide whether to take further action. If disciplinary action is chosen, possible outcomes include a consent agreement, settlement, or stipulation; an informal settlement conference; or a formal hearing. Often, notice of the final disciplinary action, including the name of the NP involved, will be posted on the BON's website and printed in its newsletter. The information may also be reported to databases such as the National Practitioner Data Bank, which means additional action can be taken by BONs in other states where the NP is licensed.

NPs can take some comfort in the fact that according to the CNA/NSO report, most claims (61.7 percent) were closed without any BON action. Examples of BON actions taken include monitoring, education, or some type of caution issued.

Protect yourself

You can take many steps inside and outside the workplace to protect your professional license. Taking these steps and maintaining professional liability insurance that includes license protection will help ensure you can practice as an NP for a long time to come.

Editor's note: This article is based on a three-part series on professional licensure by Edie Brous, JD, MS, MPH, RN, originally published in the *American Journal of Nursing*, 2012.

RESOURCES

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