LIONS, TIGERS AND BEARS: THE LEGAL ISSUES AND BARRIERS THAT PNPS FACE TODAY

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Speaker Introduction
Melanie Balestra is a PNP and an attorney in Irvine, Calif. focusing on legal and business issues that affect healthcare providers and representing them before their boards. She advises on the legal aspects of starting a practice. Ms. Balestra has imitated over 400 practices and lectures nationally on this subject and liability issues. She is published in Journal for Nurse Practitioners, The Nurse Practitioner and Medscape. Ms. Balestra is counsel for the California Association for Nurse Practitioners and writes in their newsletter. She is past president of the American Association of Nurse Attorneys, the American College of Nurse Practitioners, and the California Coalition of Nurse Practitioners. Ms. Balestra received Outstanding Section Member Award for Health Law, Legislations and Compliance from the American Association of Nurse Attorneys. She is a member of NSO Advisory Board and continues practicing as a PNP at the Laguna Beach Community Clinic.

Disclosures and Waiver
I disclose that I have no relevant financial relationships with commercial interests.
This presentation is for educational purposes only. It is not meant to give specific legal advice.

Learning Objectives
• Name three issues that could cause a complaint to the Board of Nurse
• Name three issues with electronic health records
• List three risk management strategies to prevent legal problems
• Identify three legal issues that apply to all PNP specialty areas

THE PROCESS OF A COMPLAINT
• Malpractice lawsuit
  • Duty
  • Breach
  • Causation
  • Damages
• Report to the BON
  • Settlement or found guilty
  • Patient
  • Employer
  • Employee
  • Family or friend or any living or dead person
  • Scheduled drug error

THE PROCESS OF A COMPLAINT
Decree of Censure/Public Reproval
Stayed Revocation/Probation
Voluntary Surrender
Suspension
Revocation
Hearing
MOST COMMON COMPLAINTS

• Unprofessional conduct
• Negligence
• Gross negligence
• Complaints from
  • Patients
  • Family
  • Employers
  • Co-workers
  • Boyfriend/girlfriend
  • Spouse
  • Friends
  • Local or state government

MOST COMMON COMPLAINTS

• Failure to abide by the Nurse Practice Act or Standard of Care;
• Failure to adhere to policy, protocol, or procedure
• Failure to document, including lack of documentation, altered documentation, missing or "lost" documentation, or incomplete documentation
• Failure to recognize or appreciate change in patient condition
• Failure to communicate across the healthcare provider spectrum
• Failure to monitor
• Failure to act as patient advocate
• Failure to provide a safe environment

BRN ACTIONS

• Investigation
• Dismissed or goes to Accusation
• Settle or goes to Hearing
• Types of settlement
  • Public Reproof/Reprimand
  • Consents
  • Probation
  • Revocation
  • Suspension
  • Surrender

ELECTRONIC HEALTH RECORDS—FRIEND OR FOE

• Struggling with handwriting and mission information and now struggle with lack of visual cues to know we’re writing and ordering on the correct patient.
• Study from 2012 to 2017 in the Journal of Health Affairs, Ratwani and colleagues studied medication errors at three pediatric hospital. Discovered that 3,243 of them related to us ability issues and 1 in 5 could have resulted in patient harm
• Medication errors—standard orders in Pediatrics, not by weight
• Critical or time-sensitive information routinely gets buried in an endless scroll of data, where in a rush of medical decision-making—and amid the maze of pulldown menus—it can be missed

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ELECTRONIC HEALTH RECORDS—FRIEND OR FOE

• Under Obama administration after stock market crash—rushed—admittedly not fulfilled their potential
• Unknowingly created patient safety risks
• EHR systems have "gag" orders on safety issues
• Billions of dollars spent on software that does not share data—an electronic bridge to nowhere
• Within 11 minutes see patient, be empathetic, make eye contact, enter about 100 pieces data, and never commit malpractice
• Did not take paper charting home, now take EHRs home, increases change of hacking

ELECTRONIC HEALTH RECORDS—FRIEND OR FOE

• 13 year old patient allergic to dairy was given probiotic containing milk. Two doses sent her into complete respiratory distress resulting in a collapsed lung.
• 12 year old patient scraped his arm in gym class and then died of sepsis after ER discharged the boy on basis of lab results that were not complete.
• Toddler who had been in a country where TB was prevalent presented to PNP with fever, rash and fussiness. Considering a bug bite or influenza, the PNP treated the child with fluids, antibiotics and flu medication. The EHR note incorrectly indicated patient had not been exposed to TB. Note was copied and pasted during subsequent visits for the problem. Two weeks later, toddler diagnosed in ER with TB meningitis resulting in permanent and severe cognitive defects.
RISK MANAGEMENT STRATEGIES

• Every practice needs:
  • Written policy re: documentation
  • Training in proper documentation practices
  • Content
  • Confidentiality
  • Release and retention of healthcare information
  • General documentation guidelines
  • Vigilance in preventing unauthorized access to patient information
  • Copying and pasting notes (cloning)
    • Data could be outdated or inaccurate
    • Vital signs that never change or repeated information
    • Use of templates
      • Narrow in scope or do not allow entry of data or impressions suggesting alternative diagnoses can expose user to
    • Ignoring clinical decision support—continuous alerts
      • Time limited and something happens to patients, PNP is at risk

• Late entries and changes
  • Challenge to capture all pertinent information in real time
  • Amendments and changes to EHR double-edged sword in adding information after patient visit knowing that post-visit addendums, corrections, retractions, deletions or other late entries can expose NP to liability and/or BON

• Failure to document/complete/inaccurate documentation
  • Leads to patient injury and malpractice litigations and/or licensing issues from the BON
  • Ranges from failure to transfer all information from paper chart to EHR, failure of the PNP to sign notes, or checking boxes indicating that service were performed without providing supporting documentation
  • Autofill functions can inaccurately complete fields; drop down incomplete or limit ability to chart information

TELEHEALTH

• Threat to quality of patients’ care and practices
  • Uncertainty over liability
  • Credentialing
  • Licensing procedures
  • Reimburse
  • Lack of rigorous research on quality and value of pediatric telehealth when compared with in-person care
  • Growth has been individual rather than in cohesive fashion
  • Supporting Pediatric Research on Outcomes and Utilization of Telehealth (SPROUT)

• Malpractice coverage and liability jurisdiction
  • Inter/intra state malpractice and disciplinary coverage.
  • Hospital privileges
  • HIPPA
  • Protection of patient privacy
  • Secure system
  • Reimbursement
    • What insurances reimburse and under what circumstances
    • Cost savings

• Technology
  • Maintaining equipment
  • Using patients’ home equipment
  • Supervising remote home-monitoring devices that transmit data
  • Software programs
  • Most commonly used services
    • Neurology
    • Psychiatry
    • Cardiology
    • Neonatology
    • Critical care

• Make sure PNP is licensed in every state doing telehealth
• Make sure malpractice and disciplinary insurance in every state
• Know and obey the regulations of each state practicing in
• Understand equipment being used by patients
• Be thorough and document well
ADDITIONAL PROBLEM AREAS

• Social Media
  • Violation of patient privacy
    • Intentional or inadvertent
    • Postings, photos, negative comments, details
  • Examples
    • Photos or comments about drug use
    • Profane or explicit
    • Racially derogatory
    • Comments about co-workers & employers
    • Threatening or harassing comments

• Texting
  • Not protected from discovery
  • Can be hacked in by others
  • Can violate HIPAA
  • Emails
    • Many states are not protected
    • Can violate HIPAA

LEGAL ISSUES APPLYING TO ALL PNP SPECIALTY AREAS

• Documentation
• Scope of Practice
• Nurse Practice Act
• Always care your own malpractice/disciplinary insurance
• Choose an insurance that allows you to choose your own attorney in disciplinary action
• Never speak to an investigator without an attorney
• Have a RN/NP attorney represent you if at all possible
• www.taana.org

CONCLUSION

• Be aware of the risks involved in your practice, practice safely to prevent malpractice or disciplinary complaints. Keep up-to-date on Nurse Practice act and current trends in care and treatment in the PNP patients and remember to DOCUMENT, DOCUMENT, DOCUMENT.

REFERENCES

• Laska, L. Malpractice Verdicts, Settlements and Experts (newsletter), http://medicalnegligencereporter.com