Malpractice Claims and Data

The American Association of Nurse Attorneys

NSO CNA

Today's Speakers

Jennifer Flynn, CPHRM
Risk Manager
Nurses Service Organization (NSO)

Lynn Pierce, MSN, RN, APRN, FNP-C, CPHRM
Risk Control Consulting Director
CNA

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Objectives

List	Define	Identify
List the leading allegations made against nurses in malpractice lawsuits.	List the leading allegations made against nurses in Board of Nursing complaints.	Identify key risk management tools that nurses can incorporate into their practice.

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Professional Liability Data as a Risk Management Resource

- Analyzing incidents that led to adverse outcomes is the foundation for identifying vulnerabilities in our healthcare systems and reducing risk.
- Understanding the underlying human and systemic factors that can lead to patient harm helps nurses prevent errors through education, training, and practice improvement approaches.
- Professional liability data:
  - Provides insight into the underlying causes in cases: what failed and why?
  - Can reveal specific missteps, clinical errors, patterns of communication, and judgment failures that contribute to adverse events.
  - Helps nurses learn from peers' experiences and proactively identify areas for improvement.

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Case Study

Registered Nurse

Case Study: Registered Nurse

- Our insured was a registered nurse (RN) working in an emergency department in an acute care hospital setting.
- A 23 year-old female with a long history of hypertension and type 1 diabetes presented to the emergency department (ED) with complaints of a headache and not feeling well for at least one month.
- The patient stated that she had not been taking prescribed medications for her hypertension and diabetes for approximately one month.
- The patient had a history of utilizing the ED to obtain prescriptions for medication refills.
- Her vitals at triage were 94% O2, RR 24, temp 99.1, BP 220/140, and finger stick blood glucose 325. .

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Case Study: Registered Nurse

- While in the ED, the patient was being cared for by the insured registered nurse (RN).
- During her 10 hour stay in the ED, the patient was given intravenous fluids and hypertensive and glucose lowering medications.
- Due to the limited availability of inpatient beds, and because her condition had improved, a decision was made to discharge her.
- The patient's discharge diagnoses were listed as hypertension and hyperglycemia. She was given prescriptions for hypertensive and glucose lowering medications.

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Case Study: Registered Nurse

- The discharge instructions specifically directed her to follow-up with her primary care, cardiologist and endocrinologist providers.
- She was stable at discharge, and her vital signs were 96% O2, RR 20, temp 98.1, BP 150/84, and finger stick blood glucose 130.
- Following discharge, the patient's blood pressure and blood glucose remained unmanaged and unmonitored.
- Her condition worsened and eight days following discharge, she was found unresponsive by her mother.

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Case Study: Registered Nurse

- The mother called 911, and the patient was transported to the ED via ambulance.
- The patient was pronounced dead shortly after arrival at the ED. The cause of death was listed as cerebral edema and cardiac arrest due to diabetic ketoacidosis.
- It was determined that the patient did not fill the prescriptions received upon discharge from the ED, nor did she follow-up with her primary care provider.

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Risk Management Comments

- The patient was from a large family and lived with her grandmother, sisters and several nieces and nephews.
- Her mother died when the patient was 12 years old, and she did not have a close relationship with her father – having seen him only three times since her mother's death.
- Two years after the patient's death, the father (plaintiff) filed a wrongful death claim against the hospital, the ED provider and the insured RN.

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Do you think the nurse was negligent?

Do you believe that the nurse was negligent?

Do you believe that any other practitioners or parties were negligent?

Do you believe that an indemnity and/or expense payment was made on behalf of the nurse?

If yes, how much?

Risk Management Comments

- The plaintiff (father) asserted that our insured RN failed to follow the chain of command to ensure that the patient would be admitted to the hospital due to her hypertension and hyperglycemia, which eventually led to the patient's death eight days later.
- The plaintiff sought damages totaling $1,500,000. He testified that his daughter was making plans to attend college and become a computer programmer, despite a lack of evidence regarding any submission of college applications. The patient had a high school education and worked part-time on an intermittent basis while earning a minimum wage income.
- Defense counsel maintained that it would be difficult for the father to receive a wrongful death damage recovery due to his estrangement from his daughter.

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What the Experts Said…

- The hospital, which was viewed as having the majority of exposure in this matter, led the litigation strategy, with the defense providing significant input.
- Expert testimony noted that the insured RN had not breached the standard of care in his treatment of the patient. In his deposition, he presented in an excellent manner. Moreover, his documentation supported his testimony.

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Resolution

Settlement negotiations began with the plaintiff's unwillingness to settle for any amount less than $300,000.

One week prior to the commencement of the trial, the plaintiff dismissed the insured RN from the claim.

Total Incurred: Greater than $35,000 in legal expenses.

Figures represent only the payments made on behalf of our registered nurse and do not include any payments that may have been made by the registered nurse's employer on her behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Control Recommendations

- ***Serve as the patient's advocate*** in ensuring patient safety and the quality of care delivered.
- ***Know and comply with your facility's policies, procedures and protocols.*** If policies and procedures are obsolete, unclear, or absent, request that the appropriate individual or committee update, clarify, or initiate the policy.
- ***Ensure that nursing policies and procedures are patient-centered and in written format.***
- ***Know the organization's policies and procedures related to clinical practices and documentation.*** Unfamiliarity with established policies and protocols is not a defense, especially if a clinician has acknowledged receiving education on such policies and protocols.

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Risk Control Recommendations

- ***Document your patient care assessments, observations, communications, and actions in an objective, timely, accurate, complete, and appropriate manner.***
- ***Invoke the chain of command, when necessary, to focus attention on the patient's needs and status.*** Nurses are the patient's advocate, ensuring that the patient receives appropriate and timely care.
- ***Contact the risk management department, or the legal department of your organization regarding concerns with patient care or practice issues.***

Claims at a Glance

- The average total incurred of professional liability claims in the 2020 dataset ($210,513) increased over 4% compared to the 2015 dataset ($201,670) and almost 3% compared to the 2011 dataset ($204,594).
- Nurses should be aware of a greater risk of claims settling for higher amounts relative to historic averages. The range of adverse claim outcomes can vary significantly.

Analysis of Claims by Licensure Type

Indemnity and Expenses for Closed Claims with Paid Indemnity ≥ $10,000

Licensure type	Percentage of closed claims	Total paid indemnity	Total paid expense	Average total incurred
Registered Nurse	86.8%	$70,171,018	$11,885,985	$208,636
Licensed practical nurse/vocational nurse	12.8%	$11,091,316	$2,015,567	$219,871
Student nurse	<1%	$590,000	$29,670	$309,835
Overall	100.0%	$81,852,334	$13,931,222	$210,513

Nurse Specialty

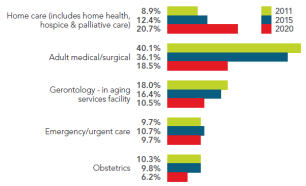
Average Total Incurred of Closed Claims by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000

Nurse specialty	Average Total Incurred
Obstetrics-labor and delivery	$558,007
PACU	$384,912
Behavioral health	$228,518
Correctional health	$219,924
Home care (includes Home health, Hospice, and Palliative care)	$216,051
Critical care- Adult (ICU/SICU)	$215,015
Ambulatory surgery	$214,911
Emergency/urgent care	$174,866
Adult medical/surgical	$146,101
Gerontology - in aging services facility	$145,685
Aesthetic/cosmetic	$104,132
Overall Average Total Incurred	$210,513

Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Specialty

Closed Claims with Paid Indemnity of ≥ $10,000



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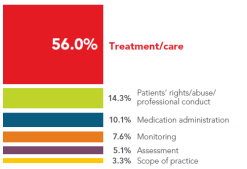
Top Malpractice Allegation Categories

Distribution of Top 6 Closed Claims by Allegation

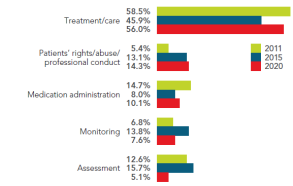
Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those allegations with the highest distribution.



Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Allegation

Closed Claims with Paid Indemnity of ≥ $10,000



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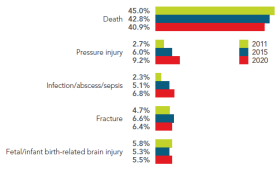
Injuries

Comparison of 2011, 2015 and 2020 Closed Claim Count Distributions by Injury

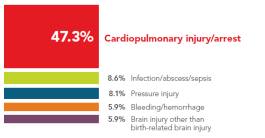
Closed Claims with Paid Indemnity of ≥ $10,000



Distribution of Top 5 Closed Claims by Cause of Death

Closed Claims with Paid Indemnity of ≥ $10,000

This figure only highlights those identified causes of death with the highest distribution.



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Case Study

Nurse Practitioner

Case Study: Pediatric Nurse Practitioner

- This case involves a Certified Pediatric Nurse Practitioner-Primary Care (CPNP-PC) working in a pediatric practice.
- The pediatric clinic was located in a large urban city and had been caring for the patient since she was two days old.
- The patient's mother reported no problems during the pregnancy or birth of the patient. The patient lived with her parents and three older siblings in a two-story house a few minutes from the clinic. The three older siblings also were patients at the clinic and, apart from the occasional ear infection or viral illness, were healthy and meeting all of their developmental milestones.
- Over the course of two years, the patient was treated by several of the providers in the practice for both well and sick visits.

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Case Study: Pediatric Nurse Practitioner

- The patient had met all of her developmental milestones for the first year of her life.
- At the 12-month wellness visit, the patient was seen by one of the three CPNP-PC (co-defendant) working in the clinic.
- The patient's mother testified that during this visit she asked the CPNP-PC if any blood work needed to be performed, as her other children had blood work drawn at their 12-month well child visit.
- The CPNP-PC reported that she discussed milestones and vaccines with the mother. However, there was no record in the patient's healthcare information record of this discussion or of the query regarding lab work.
- The only note related to lab work was "deferred", written by the provider next to the topic of lead screening on the form, but no explanation as to the reason for this notation.

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Case Study: Pediatric Nurse Practitioner

- Three months later, the patient presented to the office with symptoms of a cold and a runny nose. This was the first time the insured CPNP-PC (defendant) saw the patient.
- The insured CPNP-PC testified that she did not conduct a risk assessment for any needed wellness lab work or vaccinations because this was a "focused sick visit". She diagnosed and treated the patient for an upper respiratory infection.

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Case Study: Pediatric Nurse Practitioner

- The insured CPNP-PC saw the patient again for her 15-month well visit.
- Upon intake, a nurse colleague documented that the mother has "new concerns because she doesn't feel like the child is talking much."
- The intake nurse checked the box indicating the patient was meeting the 15-month milestone of saying "single words," but added "sometimes" beside the check box.
- The mother reported that she did not believe her daughter was talking appropriately for a 15-month-old. The mother stated the child was not stringing words together and frequently pointed to items, rather than verbalizing.

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Case Study: Pediatric Nurse Practitioner

- The mother contended that the CPNP-PC responded by stating that a response of single words was normal for a 15-month-old.
- The mother testified that she verbalized a concern with the issue of lead exposure and a lack of blood work during the visit. She stated that she was familiar with such testing due to her other children having been tested, as well as based upon her prior employment as a medical assistant at a pediatric practice.
- The CPNP-PC asked if they "lived in an old house," to which the mother responded that she did not know the year that house was built, as it was owned by her parents. The mother testified that the CPNP-PC stated, "She's probably fine."

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Case Study: Pediatric Nurse Practitioner

- The healthcare information record did not reflect any reference to an inquiry regarding lead exposure or lead testing.
- On the section of the healthcare information record labeled "Lead Test," the CPNP-PC wrote that the patient was "Ø at high risk," which she testified as meaning that she had reviewed the risk factors with the parent.
- The CPNP-PC also testified that was her customary practice to review the last two progress notes before a wellness visit, if time permitted.
- The insured NP further testified that, if the patient was new to her, she would typically consult with the last provider that saw the patient in order to obtain an informal intake report. However, she could not recall if she had taken these actions with this patient at her 15-month-old wellness check. Moreover, no documentation existed to that effect.

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Case Study: Pediatric Nurse Practitioner

- The insured NP testified that, during the 15-month wellness visit, she was unaware that the test had been deferred at the 12-month visit. She could not confirm whether she would have expected the triage nurse to flag the deferral for her as part of the intake process.
- The insured NP saw and treated the patient on three additional occasions over the next four months. The visits were "focused sick visits", which included gastroenteritis and upper respiratory infections.
- The insured NP did not perform lead exposure assessments on the patient as these were characterized as “focused sick visits.”

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Case Study: Pediatric Nurse Practitioner

- For her 18-month-old wellness visit, the mother took the patient to the pediatric practice where she was previously employed.
- As part of the visit, the mother completed a risk assessment questionnaire on which she checked a box indicating her daughter "frequently puts things in her mouth."
- The mother testified that her daughter had never had blood drawn for a lead test or a complete blood count (CBC).
- A finger prick sample was tested and came back elevated at 47 µg/dL. Venous blood was ordered to confirm the level, revealing a level of 48 µg/dL.
- At the 24-month wellness visit, the current treating pediatrician ordered a special education evaluation to include evaluation of speech and motor skill delays. The evaluation revealed a speech delay, with a vocabulary of only six to eight words, as well as a fine motor skills delay. The repeat venous blood lead level remained elevated at 23 µg/dL. The patient did not receive chelation therapy, but ongoing monitoring was conducted.
- Over time, monitoring revealed her lead testing levels had returned to normal.

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Risk Management Comments

- When the child was six-years old, her parents (plaintiffs) filed a malpractice lawsuit against our insured CPNP-PC, as well as the CPNP-PC who treated the patient at her 12-month wellness check visit, the practice and the collaborating pediatrician. The allegations against the insured NP included:
  - Failure to screen and test for lead poisoning leading to a delay in diagnosis.
  - Failure to provide anticipatory guidance to educate the patient's mother on lead paint exposure risk.
- The state screening guidelines require all children ages 6-72 months to be screened for lead poisoning if the child lives in or regularly visits a house or childcare center built before 1978. Plaintiff's counsel contended that because the insured was a CPNP-PC, she should have been conversant with the state requirements for lead testing.
- While the insured NP's collaborating physician and defense experts were supportive of the treatment provided during the sick visits, neither could support the missed lead screening during the well visits.

Do you think the nurse was negligent?

Do you believe that the nurse was negligent?

Do you believe that any other practitioners or parties were negligent?

Do you believe that an indemnity and/or expense payment was made on behalf of the nurse?

If yes, how much?

Resolution

The co-defendant CPNP-PC who treated the patient at her 12-month wellness check visit left the country and would not participate in the case.

The claim was settled on behalf of the insured CPNP-PC prior to a jury trial. The practice and the collaborating physician also settled with the plaintiffs, but the amount of the settlement is unknown.

Total Incurred: more than $550,000.

Figures represent only the payments made on behalf of our nurse practitioner and do not include any payments that may have been made by the nurse's employer on her behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Control Recommendations

- ***Remain current regarding state requirements, clinical practice, medication, treatment and equipment*** utilized for the diagnosis and treatment of acute and chronic illnesses and conditions related to clinical specialty.
- ***Utilize evidence-based clinical practice guidelines or protocols*** when establishing a diagnosis and providing treatment, and document the clinical justification for deviations in protocols.
- ***Document all patient-related discussions,*** consultations, clinical information and actions taken, including any treatment orders that are provided.
- ***Compile, document and utilize appropriate comprehensive patient clinical history,*** as well as relevant social and family history.
- ***Perform a physical examination*** to determine the patient's health status and evaluate the patient's current symptoms/complaints.

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Risk Control Recommendations

- ***Engage in timely and proactive discussions with physicians*** and other members of the care team to ensure that the team is educated about the patient's treatment plan.
- ***Prescribe medication in compliance with state nurse practice act,*** state prescriptive authority, authority for nurse practitioners and employer policies and protocols.
- ***Order and follow up with all indicated monitoring tests*** and document results in the patient healthcare information record.
- ***Educate and document education given to patients and/or their parents regarding their responsibilities for adhering to medication and treatment regiments,*** including lifestyle modifications as well as the risk of noncompliance.

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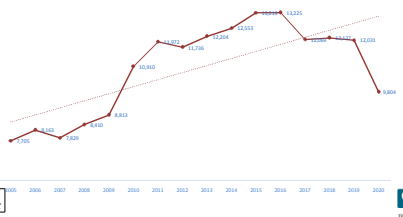
License Protection: Overview

Medical malpractice is only one part of nurses' professional liability risks. According to the National Practitioner Databank, RNs were about **44 times** more likely to be involved in an adverse licensing action than a medical malpractice claim in 2020. From the NPDB, as of 3/23/2021:

NPDB: Registered Nurse SBON Actions, 2005-2020



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License Protection Matters: At a Glance

- The average paid expense to defend an RN or LPN/LVN's license during a SBON investigation was **$5,330** in the 2020 report dataset.
- This is an increase of 33.7% compared to the 2015 dataset and 58.9% compared to the 2011 dataset.

License Protection Data Comparison, 2011, 2015 and 2020 Claim Reports

	2011	2015	2020
License protection paid matters	1,127	1,301	1,377
Total paid	$3,779,129	$5,188,984	$7,339,111
Average payments	$3,353	$3,988	$5,330

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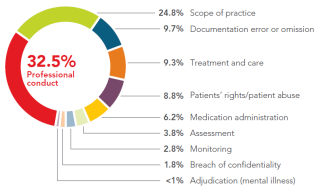
License Protection Allegations

- Drug diversion and/or substance abuse is the most frequent professional conduct allegation, representing 42.3% of professional conduct matters.
- Failure to maintain minimum standard of nursing practice comprised 58.9% of scope of practice license protection matters.
- Nearly half of documentation matters (49.6%) involved an allegation related to fraudulent or falsified patient care or billing records.

License Defense Matters by Primary Allegation Class



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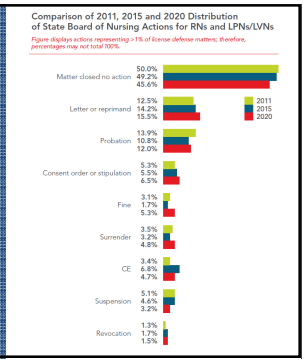
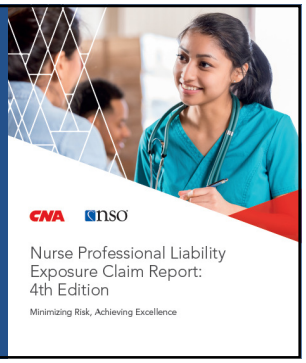
Outcomes

- 45.6% of matters closed with no action taken by the SBON.
- Surrender of license increased to 4.8% of matters in the 2020 report, up from 3.2% of matters in the 2015 report.
- Even complaints resulting in less severe action by the SBON, such as probation, consent agreements, fines, or CE, may pose significant emotional and professional impact on the nurse.



Nurse Professional Liability Exposure Claim Report: 4th Edition: *Minimizing Risk, Achieving Excellence*

Visit nso.com/NurseClaimReport to download your free copy of the report and additional risk control resources.



Questions?

Thank you!

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