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UNDERSTANDING NURSE PRACTITIONER LIABILITY:

CNA HealthPro Nurse Practitioner Claims Analysis 1998-2008, Risk Management Strategies and Highlights of the 2009 NSO Survey

INTRODUCTION

As major providers of professional liability insurance for nurse practitioners, CNA HealthPro and the Nurses Service Organization (NSO) are dedicated to raising client awareness of medical malpractice risks. Four years ago CNA and NSO published the first *Nurse Practitioner Claims Study, 1994-2004*. This update enhances the data and recommendations found in the original claims data with an all new survey conducted among over 3,000 nurse practitioners insured through the NSO/CNA program.

Please note: This document represents key findings from the full CNA HealthPro Nurse Practitioner Claims study. To read the full study, please go to www.nso.com/NPclaimstudy2009.

LEGAL AND REGULATORY ENVIRONMENT

Nurse practitioners are at the forefront of a paradigm shift occurring in today's healthcare industry. Ten years ago, nurse practitioners did not assume a prominent role in patient care. However, as policymakers address the goal of making healthcare accessible in all of our communities, they increasingly focus upon the nurse practitioner.

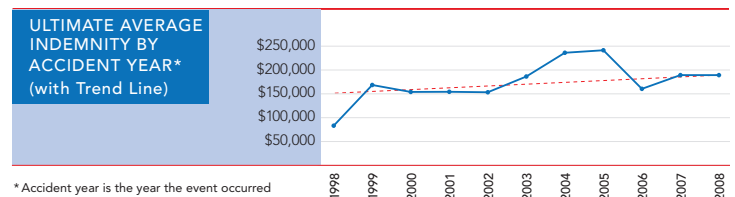
Nurse practitioners now occupy a central role in malpractice litigation. A threshold issue in such litigation often is the express regulatory authority of a nurse practitioner to render certain types of patient care. States differ dramatically in the professional activities that nurse practitioners may perform. The roles and responsibilities of nurse practitioners are further defined by policies, procedures and/or protocols promulgated by their employers. Administrators, nurse practitioners and legal counsel must remain abreast of state-specific scope of practice guidelines.

Nurse practitioners will continue to play a critical role in the healthcare industry. As the legal and regulatory framework of advanced nursing practice changes, mitigating the risk of professional liability claims for nurse practitioners and defending claims of negligence when they occur will remain a challenge.

CLAIMS DATA AND ANALYSIS

ULTIMATE SEVERITY OF CLAIMS BY ACCIDENT YEAR

The average indemnity payment has increased over the past 10 years. It was \$168,600 in 1999 and is projected to be \$189,300 in 2008. The average expense payment has also increased over the past 10 years. It was approximately \$28,500 in 1998 and is projected to be \$42,900 in 2008.



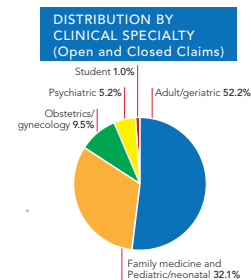
* Accident year is the year the event occurred

ANALYSIS OF CLAIMS BY CLAIM CATEGORY

A total of \$89.7 million has been paid or reserved for all open and closed claims. More than \$7.5 million has been paid for investigation and management of claims closed with no indemnity payment, and more than \$5 million has been paid for investigation and management of open claims.

CLAIMS BY CLAIM CATEGORY	Percent of Reported Claims*	Total Paid Indemnity	Total Paid Expense	Total Case Reserve	Total Paid Indemnity, Expense, and Reserves
Closed with expense only	35.4%	\$0	\$7,567,044	\$0	\$7,567,044
Closed with indemnity payment	13.6%	\$39,067,185	\$12,415,994	\$0	\$51,483,178
Closed without payment	34.6%	\$0	\$0	\$0	\$0
Open	16.5%	\$667,003	\$5,052,576	\$24,919,323	\$30,638,902
Total	100.0%	\$39,734,188	\$25,035,614	\$24,919,323	\$89,689,124

* Percentage of Reported Claims equals 100.1 due to rounding.

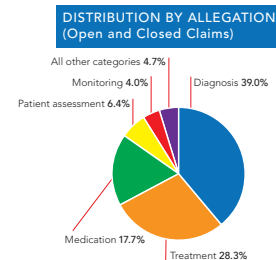


ANALYSIS OF CLAIMS BY CLINICAL SPECIALTY

The data indicates nurse practitioners specializing in adult/geriatric or family medicine account for 84.3% of CNA claims. Pediatric/neonatal claims had the highest severity, averaging \$318,150 per claim, followed by obstetrics/gynecology, \$193,900, and family medicine averaging \$169,227 per claim.

ANALYSIS OF CLAIMS BY ALLEGATION

Among the legal allegations filed against nurse practitioner, errors in diagnosis averaged \$186,168 per claim, errors in treatment \$111,971 and medication errors \$147,554. Although allegations that nurse practitioners provided services outside their designated scope of practice accounted for only 1% of claims, they resulted in the highest average paid indemnity: \$450,000.



RISK MANAGEMENT RECOMMENDATIONS

The risk management recommendations detailed in the full study are designed to help nurse practitioners develop a proactive approach to providing quality patient care in a safe environment. The following are a few of the highlights:

INSURANCE

Ensure that collaborating and supervising professionals, nurse partners and employing or contracting facilities maintain appropriate professional liability insurance limits, required by practice setting, state law or regulations.

SCOPE OF PRACTICE

Annually review state nurse practice acts and other pertinent state and/or federal regulations defining the scope of practice for nurse practitioners. Revise collaborative practice agreements and other documents accordingly.

DOCUMENTATION

A complete health information record is the best legal defense. The following information and communications should be documented:

- **Discussions with the patient** and/or responsible party regarding diagnostic test results (both normal and abnormal), as well as recommendations for continued treatment and patient response to results
- **Informed consent** or informed refusal of recommended treatment and preceding discussions
- **Patient telephone encounters**, including after-hours calls, with the name of the person contacted, advice provided and action(s) taken reflected in the written summary
- **Dated and signed receipt of test results**, procedures, referrals and consultations, along with a description of subsequent actions taken
- **Referrals** for consultation or testing
- **Review and revise** patient problem and medication lists during every visit and with every change in diagnosis
- **Prescription refills** authorized via telephone, including the name of the pharmacy and pharmacist, and read-back of the prescription
- **Missed appointments**, including all efforts to follow up with the patient
- **Educational materials** or references provided to the patient

DIAGNOSIS AND TREATMENT

- **Diligently screen** for, monitor and/or treat diseases known to have high morbidity and mortality, such as diabetes, heart disease and cancer.
- **Utilize available clinical practice guidelines** or protocols when establishing a diagnosis and providing treatment and document the justification for deviations from guidelines or protocols.
- **Seek timely consultation** and advice regarding patients with recurring complaints and/or signs and symptoms when they do not respond to the prescribed treatment.
- **Document** the decision-making process that led to the diagnosis and treatment plan.
- **Notify patients** when screening is due and follow up if patients do not respond, documenting all communications.

Please note: Additional recommendations regarding **Health Information Records** and **Medication Management** may be found at www.nso.com/NPclaimstudy2009.

NURSE PRACTITIONERS WILL BENEFIT
FROM TAKING A PROACTIVE RISK
MANAGEMENT APPROACH TO
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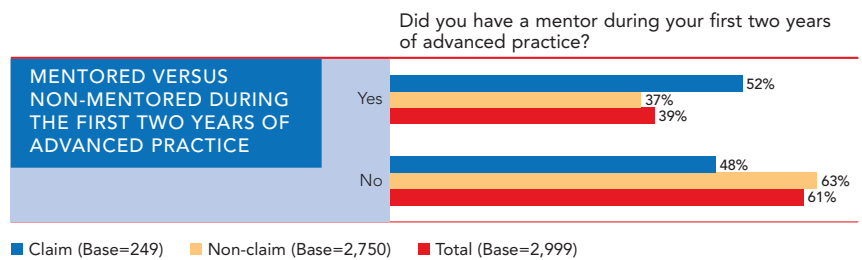
IS THERE A CORRELATION BETWEEN CLAIMS AND PROFESSIONAL INDEPENDENCE, PRESCRIPTIVE AUTHORITY, EDUCATIONAL SETTING AND EXPERIENCE WITH MENTORS?

THE NSO NURSE PRACTITIONER SURVEY

The *Nurse Practitioner Claims Study, 1994-2004*, was the first of its kind. It answered a lot of questions regarding professional liability claims, but it also generated others. To shed light on a number of these issues NSO surveyed its nurse practitioner insureds.

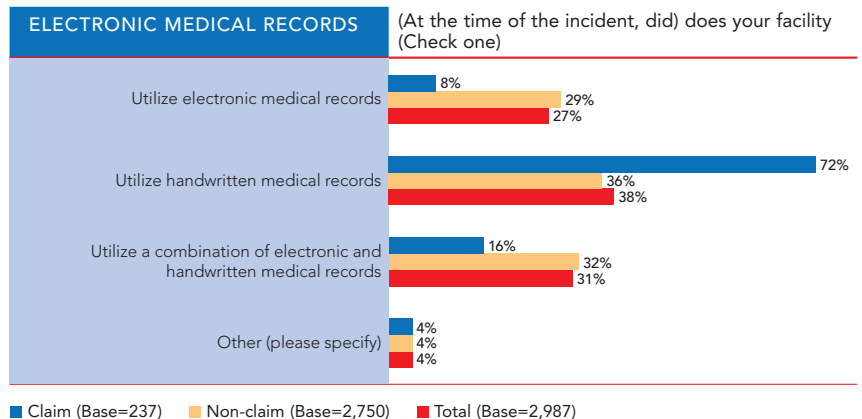
Of the 3,037 nurse practitioners who participated in the survey, 287 had been involved in a professional liability claim. Here is a partial summary of the survey findings:

- **Independent versus collaborative versus supervised practices:** Nurse practitioners with claims were more likely than nurse practitioners without claims to respond that their state regulations require direct physician supervision.
- **Level of prescriptive authority:** Nurse practitioners with claims have less prescriptive authority than those without claims.
- **Traditional education environment versus on-line:** Regardless of claim status, a university or college on-site program was the predominant educational resource for obtaining nurse practitioner designation.
- **Mentored versus non-mentored during the first two years of advanced practice:** Working with a mentor did not decrease the likelihood of having a claim.



Other key findings include:

- At the time of the reported claim, over half of nurse practitioners had been working in the specified position **less than four years**, while more than two-thirds had been working in this position six years or less.
- Nurse practitioners as a whole typically see an **average of 16 patients per day** while nurse practitioners with claims report seeing more than 18 patients per day at the time of the incident.
- Most nurse practitioners with claims reported using handwritten **medical records** at the time of the incident.



To read the full NSO Nurse Practitioner Survey, visit www.nso.com/NPclaimstudy2009

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