

Managing the Risk of Non-Compliant Patients

Retail Clinics—A Growing Trend . . . 2
 To Refer or Not to Refer 3
 NSO Helps the Environment. 4
 Nurse Practitioner Case Study—
 Following the Standard of Care. . . 4

When patients are in your office, you do all you can to provide them with the highest quality care. But what happens when they leave your office? Patients who don't follow your instructions for self-care or disease management in their day-to-day lives can put their health at serious risk. Unfortunately, they can put your nurse practitioner practice at risk too, unless you take steps to protect yourself.

Enhancing patient compliance

The best way to serve patients while protecting your practice is to work to improve patient compliance. Try to discern the reasons behind the patient's lack of follow-through. Is it lack of understanding, organization, resources? Once you know why a patient isn't following treatment, then tailor your strategy to the response. Referrals to community resources, patient education classes, or support programs may make all the difference to your patients' compliance to instruction.

It also helps to involve family members in discussions about the importance of self-care and disease management. Family members may have an easier time accepting the potential ramifications of non-compliance, and can help motivate the patient to stay on track at home.

When designing a self-management plan, give the patient an active role. Provide choices whenever possible, and ask the patient for input. Set one or two small, measurable goals at each visit to allow the patient to experience success. Before agreeing to a goal, ask the patient to rate the likelihood of success on a scale of one to 10. If the patient doesn't express confidence, revise the goal. Often, self-care issues such as weight loss or dietary changes can overwhelm patients; once they see results from one change, they are more likely to add other modifications to their lifestyle.

Make sure your instructions are clear and specific. It is not enough to tell a post-operative patient to "take it easy for a few days." Be explicit: "do not lift more than 10 pounds." This type of specificity can help protect you if the patient does not comply and is injured. Give instructions both in writing and orally; have the patient "teach back" the instructions to ensure understanding.



Managing the non-complaint patient

Despite your best efforts, some patients will continue to be non-complaint. The best way to manage this risk is through scrupulous documentation. Include detailed references to all patient and family education, referrals, and goal setting conversations, with direct quotes from the patient whenever possible. Each time a patient is noncompliant, note it in the record, with details about what the patient failed to do, the result, and your efforts to re-educate and re-direct. In the event of a claim, these types of details can help establish a pattern of contributory or comparative negligence.

In serious cases, it may be advisable to send a certified letter to the patient, detailing the seriousness of the patient's condition, the urgency and importance of action, and the likely consequences of non-compliance. Be sure to include the return receipt in the patient's medical record as proof that the letter was received.

If a patient admits that he or she will not follow your instructions, have the patient sign an informed refusal form. Like an informed consent document, an informed refusal form states

Continued on page 2

Retail Clinics—A Growing Trend

Healthcare Finance News recently reported that there are now nearly 1,000 retail health clinics operating in 36 U.S. states. The trend, which was first introduced in 2002, shows no signs of slowing down. Retail clinics offer convenience for patients and new opportunities for nurse practitioners. But from a liability perspective, they may also present some unique risks.



If you are currently working in a retail clinic, or are considering working in one, take the time to protect yourself by learning the facts about the industry and keeping some basic guidelines in mind. Here are some recommendations:

- Remember it is your responsibility to ensure that you are operating within the regulations governing nurse practitioners in your state. National retail clinic chains may not be aware of state-to-state differences in practice law. Do your homework and insist on practicing within those boundaries. Anything else can expose you to risk.
- Take the time to document each patient encounter carefully. Even in a fast-paced setting focused on patient convenience, clear, efficient charting is critical. This is especially true since the NP is often the only staff member present. Carefully note referrals to PCPs, patient instructions for home care, follow up instructions, and consultations with supervising physicians (if required) along with dates, times and your signature.
- Verify that the site complies with

applicable regulations like OSHA and HIPAA and has adequate training, as well as comprehensive policies and procedures in place. In addition to ensuring a safe environment for patients and staff, policies and procedures also offer protection in the event of a malpractice lawsuit. They set standards for providing quality care and interacting appropriately with patients, families and staff, and establish the organization's chain of command and responsibility. If a lawsuit occurs, a record of compliance with policies and procedures can help eliminate or mitigate staff liability.

- Review a copy of the company's malpractice policy to ensure that it clearly covers all services offered, at limits defined by state, federal, or insurance credentialing requirements. You'll also want to verify that the policy provides claims-made or occurrence coverage. Claims-made policies only provide coverage for incidents that occur and are reported during the policy's

effective dates. Occurrence policies cover any incident that occurs during the policy period regardless of when the claim is filed or whether the policy is still in effect.

It's always important to maintain your own individual professional liability insurance policy through NSO in addition to the coverage provide by your employer. Doing so ensures that you're protected, and that you'll be represented by your own attorney in the event of a claim if needed. This can be particularly important when practicing in a new environment like a retail health clinic.

For more information about retail clinic risks, see the 2006 issue of *NSO Risk Advisor for Nurse Practitioners* at www.nso.com/news.

Sources

Klein, Tracy A. "Working in a Retail Clinic: What Nurse Practitioners Need to Ask," *Topics in Advanced Practice Nursing eJournal*, 2006; 6(3), Release Date: September 20, 2006; Reviewed and Renewed: October 19, 2007. www.medscape.com/viewprogram/5982, accessed 3/24/08.
"Number of retail health clinics nearing 1,000 nationwide," 1/15/08 Healthcare Finance News. <http://www.healthcarefinancenews.com/story.cms?id=7520>, accessed 3/24/08.

Managing the Risk of Non-Compliant Patients

Continued from page 1

that the patient has been advised of the potential risks of not following your prescribed treatment plan. Provide a copy of the signed form to the patient and retain one in the medical record.

In extreme cases, you may want to consider terminating your professional relationship with the patient. If you've carefully documented your interactions with the patient over time, you should have adequate evidence to support this decision. However, it is still necessary to follow proper procedures to avoid a charge

of abandonment. Specific requirements for termination vary by state; check with your state board of nursing to ensure that you follow the rules to the letter.

Generally, the reason for the termination should be communicated to the patient by certified letter, and the patient should be given 30 days to find another provider.

Discharge is not an option for patients who require continuous care or frequent urgent or emergency care; don't attempt to terminate your relationship with a patient who is at a critical treatment point,

i.e. a patient with cancer undergoing chemotherapy or a patient with diabetes in kidney failure. Discharge is also not recommended for patients that exhibit unstable behavior or mental health issues. In these cases, address the unique issues that may be affecting the patient's compliance and make referrals as necessary. For example, case management services provided by the patient's health insurance carrier may help the patient better manage the stresses of chronic disease management, or a specialist may help the patient deal with mental health issues. As always, document all conversations and actions thoroughly.

Continued on page 3

To Refer or Not to Refer— Know the Risks

As a nurse practitioner, your scope of practice is defined by your state's Nurse Practice Act. The Act may specify the types of treatment you may provide, your prescribing limits, whether you can serve as a primary care provider (PCP), and whether or not your treatment must be supervised by a physician. All of these factors come into play when deciding if you should refer a patient to another provider.

Nurse practitioners need to have a thorough understanding of these issues, because failure to refer is considered negligence and can be the basis for a lawsuit if something goes wrong with a patient's care. These situations can also be construed as attempting to treat a condition outside your scope of practice, or failure to diagnose.

This isn't just an issue for nurse practitioners; failure to refer is a growing liability issue for physicians, as well as other healthcare practitioners. The reality is that the expectation for referrals has increased as medical care has become increasingly specialized. All primary care providers are expected to recognize when a referral is necessary and to act accordingly.

The best approach is to be realistic and know where your expertise lies. If a patient has rare or complex symptoms, or fails to respond to your treatment plan, consider a referral to a specialist. Never consider a referral a failure—it's in the best interests

of your patient and your practice.

To protect yourself against failure-to-refer allegations when you refer a patient, be sure to document all referrals in the patient's chart. Be specific; whenever possible, refer your patient to a particular provider, rather than giving vague instructions to "see a specialist." It's best to have your practice make contact with the referred-to provider to open the lines of communication before the patient is seen. Again, document all communications with the specialist in the patient's chart, with specific dates, times, names and details.

To ensure continuity of care, establish tickler files for follow-up; you'll want to ensure that the patient was seen and get a report of the visit for the medical record. If the patient fails to follow through with a referral, contact the patient to reinforce the importance of the referral and document the conversation. If the patient repeatedly fails to schedule a referral appointment, send a certified letter explaining the need for the referral and the potential consequences of noncompliance. Be sure to retain the return receipt in the patient's record along with a copy of the letter.

Part of your responsible practice as a nurse practitioner is recognizing when another provider's knowledge and skills can better meet the needs of your patient. Understanding when and how to refer can help protect your patient's health and your exposure to risk.

Sources: "Nurse Practitioner Primary Care Competencies in Specialty Areas," US Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, Division of Nursing, April 2002. <http://www.nonpf.com/finalaug2002.pdf>, accessed 3/25/08.

Continued from page 2

As nurse practitioners see more and more patients with chronic conditions like diabetes and heart disease, patient self-care and compliance become more and more critical. Boosting patients' understanding of their critical role in their care will help your patients realize better outcomes, and help protect yourself from lawsuits.

Sources:

"How Do I Protect Myself from a Non-complaint Patient?" Medscape.com - Ask the Experts about Legal/Professional Issues for Advanced Practice Nurses. www.medscape.com/viewarticle/518000, accessed 3/21/08.

Perspectives on Clinical Risk Management: "Difficult Patients," Massachusetts Medical Society, http://www.massmed.org/AM/Template.cfm?Section=Difficult_Patients, accessed 3/20/08.

Earn a 10% Premium Discount

Take NSO's Continuing Education
program and earn contact hours!

Licensed NSO customers who complete the CE program will earn 6.0 ANCC/AACN contact hours, plus a 10% discount on their NSO professional liability insurance policy premium on their next three consecutive renewals. Review and take the tests online at www.nso.com/ces. If you have any questions call NSO at 800-247-1500.

NSO Risk Advisor is intended to inform Nurses Service Organization customers of potential liability in their nursing practice. It reflects general principles only. It is not intended to offer legal advice or to establish appropriate or acceptable standards of professional conduct. Readers should consult with a lawyer if they have specific concerns. Neither NSO, the NSO Risk Advisor, nor CNA insurance companies assume any liability for how this information is applied in practice or for the accuracy of this information. The CNA professional liability insurance policy for nurses is underwritten by American Casualty Company of Reading, Pennsylvania, a CNA company. CNA is a registered service mark and trade name of CNA Financial Corporation.

The NSO Risk Advisor is published by Affinity Insurance Services, Inc., a unit of Aon Corporation. Headquarters are located at 159 E. County Line Road, Hatboro, PA 19040-1218. Phone: (215) 773-4600.

© 2008 by Affinity Insurance Services, Inc. All world rights reserved. Nurses Service Organization is a registered trade name of Affinity Insurance Services, Inc.

Editorial Information: Send comments and questions c/o NSO Risk Advisor to 159 E. County Line Road, Hatboro, PA 19040-1218. Due to space limitations, all editorial sources and references may not be listed, but they may be available on request. Reproduction without permission of the publisher is prohibited.

ADVISORY BOARD

- Melanie Balestra, NP Esq.
Law Office of Melanie Balestra
Irvine, CA
- Gloria F. Donnelly, PhD, RN, FAAN
Dean, College of Nursing and Health Professions
Drexel University
Philadelphia, PA
- Renée Gecsed, MS, RN
Director, Education, Practice & Research
New York State Nurses Association
Latham, NY
- Susan King, RN, MS
Executive Director
Oregon Nurses Association
Tualatin, OR
- Terry Kirk, RN, MSN, EdD
Chief Nursing Officer
Houston Northwest Medical Center
Houston, TX
- Diana J. Mason, RN, PhD, FAAN
Editor-in-Chief
American Journal of Nursing
New York, NY
- Donna Middaugh, PhD, RN
Associate Dean for Service
University of Arkansas
Little Rock, AR
- Barbara Resnick, PhD, CRNP, FAAN, FAANP
Professor, School of Nursing
University of Maryland
Baltimore, MD
- Sally Watkins, PhD(c), RN
Director of Nursing Practice
Washington State Nurses Association
Seattle, WA

Editor-in-Chief: Michael J. Loughran

Executive Editor: Dolores A. Hunsberger

Senior Managing Editor: Diane Widdop

Managing Editor: Alicia R. D'Onofrio

Publisher: HPSO

Publisher's Representative: Alicia R. D'Onofrio

For questions about this newsletter, send an e-mail to service@nso.com.

NSO helps the environment

NSO Risk Advisor is going green! And you can help, too. Register to receive the next edition of the NSO Risk Advisor via e-mail. To do so, go to www.nso.com/gogreen and sign up. However, if you'd like to continue to receive the paper version, we'll print it on recycled paper, as we've done for the past several years. You can also read past issues of the NSO Risk Advisor on our website by visiting www.nso.com/gogreen.

Nurse Practitioner Case Study— Following the Standard of Care

A 25-year old woman came to a family planning clinic for a gynecological exam. The front desk clerk asked if she'd be willing to see the nurse practitioner instead of a physician. The patient agreed and was examined by the nurse practitioner on staff.

During the exam, the NP palpated a mass in the woman's upper left breast. The NP checked the patient history and learned that her mother had died of breast cancer. The NP discussed her finding with the patient, and explained that because of her family history, and the location of the mass, the probability of malignancy was high. The patient was instructed to get a mammogram and return to the office for follow-up within three months. The NP documented her findings, the conversation with the patient and the referral in the patient's chart.

The patient did not return to the clinic. The NP and administrative staff made several attempts to contact her by telephone, and finally sent a letter to her home outlining the gravity of her situation and the need for follow-up. The letter was never acknowledged.

Two years later, the woman's primary care physician referred her to an oncologist who diagnosed breast cancer with metastasis in the neck. The woman underwent a radical mastectomy,

followed by chemotherapy and radiation. She died one year later, at the age of 28.

The patient's estate filed a lawsuit against the nurse practitioner and the clinic, alleging negligence and failure to diagnose and treat. The court found in favor of the defendants, noting that the standard of care had been met and that the patient's failure to follow up constituted contributory negligence.

Lessons learned:

This nurse practitioner did just about everything right in this case. She noted the signs of breast cancer, including the increased risk based on the location of the mass and the family history. She communicated this to the patient, along with a clear plan for follow up within a specific time frame. And she followed up when the patient failed to return. (One recommendation: she should have sent the follow-up letter via registered mail, to prove that the patient received it.)

All in all, this NP provided excellent patient care. This was easy to demonstrate, because she documented her actions thoroughly and accurately. Remember, no matter how diligent you are in your care of patients, you can still be sued. Without documentation, there would be no way to verify your actions—remember, if it wasn't documented, it wasn't done.