



Nurse Practitioner Spotlight: Defending Your License

Nurses Service Organization (NSO), in collaboration with CNA, has published our [Nurse Practitioner Liability Claim Report: 5th Edition](#). It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help nurse practitioners (NPs) reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: www.nso.com/NPclaimreport.

This NP Spotlight focuses on an analysis and risk recommendations regarding one of the most significant topics in the report: Defending Your License.

An NP’s license is one’s livelihood, and its protection is paramount. An NP’s practice and conduct are expected to be safe, competent, ethical and in compliance with applicable laws and rules. The State Board of Nursing (SBON) serves to protect the public and promote the progress of the profession, and thus should be respected for its work in these areas. However, when a complaint is asserted against an NP to the SBON, NPs must be equipped with the resources to adequately defend themselves. Being unprepared may represent the difference between an NP retaining or losing their

license. This Spotlight provides an overview of the role of the SBON in the legal/regulatory system, describes the disciplinary process, and imparts helpful recommendations on defending yourself if you were to receive a licensing board complaint.

The 5th Edition of the *NSO/CNA Nurse Practitioner Liability Claim Report* revealed a total of 250 closed license protection matters with payment in the five-year analysis, with an average defense expense of \$7,155. This data reflects an increase in the average defense expense compared to the previous dataset. License protection matters include reimbursement for the cost of legal representation to defend the NP during the SBON investigation. Therefore, the reasons for the rise of SBON defense payments include the escalating costs of defense counsel, inflation, and the individual nature of each SBON disciplinary investigation, which may take years to resolve.

The chart below represents the license protection data comparison for the 2012, 2017 and 2022 Claim Reports. The average total payment reflects the legal fees and other expenses involved in defending the NP against the complaint. Any costs or expense associated with fines or indemnity/settlement payments to a plaintiff are not included.

License Protection Data Comparison of 2012, 2017 and 2022 Claim Reports

	2012	2017	2022
License protection paid matters	133	240	250
Total paid	\$590,718	\$1,436,876	\$1,788,804
Average payments	\$4,441	\$5,987	\$7,155

Understanding the Legal System

There are three types of law, the third of which is implicated during licensing board complaints.

- Civil law protects the rights of citizens and offers legal remedies. Civil actions typically involve a plaintiff suing to collect money to compensate for an injury. One example of a civil action would be a medical professional lawsuit. The outcome of civil cases is determined by the preponderance of evidence in favor of one party.
- Criminal law involves the system of legal statutes and rules that define conduct classified as a crime. Examples include driving under the influence, theft or assault. Criminal cases are determined by proving guilt beyond a reasonable doubt.
- Administrative law governs the rules and regulations promulgated and enforced by government agencies – such as your state Board of Nursing. Administrative cases are determined by the state providing 'clear and convincing' evidence of the allegations, though this standard may vary by state.

The Nurse Practice Act

Every state has enacted laws and issued regulations governing the conduct of licensed professionals. The law specific to licensed nursing professionals is the Nurse Practice Act. All nursing professionals should become conversant with their relevant state Nurse Practice Act. The Nurse Practice Act gives your state Board of Nursing and professional license regulatory agency the authority to:

- Provide NPs with certain rights and responsibilities;
- Develop practice and education standards, policies, and administrative rules and regulations;
- Educate NPs regarding nursing practice;
- Credential and issue nursing licenses; and
- Enforce the laws pertaining to nursing practice by investigating reports of professional misconduct and making decisions regarding discipline.

Licensee Rights During the Disciplinary Process

If you are named in a licensing board complaint, the state will not provide nor recommend an attorney, but gives you the right to retain an attorney. The state also permits you the opportunity to present evidence to defend yourself during a hearing.

The Disciplinary Process

A board complaint can be filed against an NP by various parties, for example, a patient, a patient's family member, a colleague or an employer. You may or may not know the identity of your accuser, and the complaint can be filed anonymously.

In addition, many states require self-reporting of certain violations, such as misdemeanors, felonies, and plea agreements.

Involvement in a disciplinary action will take time to resolve, which can make the entire process stressful. This process is illustrated by the graphic below.



Nurse Practitioner Spotlights

For risk control strategies related to:

- [Depositions](#)
- [Patient Adherence](#)
- [Telemedicine](#)
- [Diagnosis](#)
- [Documentation](#)
- [Prescribing](#)



Visit nso.com/npclaimreport

Investigative Stage

While the procedures may vary by state, all complaint reports are reviewed, including those that are anonymous. Many, if not all SBONs, are required to review every complaint received in order to determine if the SBON has the jurisdiction or authority to investigate and enforce laws and regulations related to the alleged conduct. If the SBON decides to initiate an investigation into your conduct, the SBON may not be permitted to tell you how it received the report, or give you any information or documents.

Some SBONs use board-appointed investigators who may or may not be nursing professionals. The investigator will use various methods to determine the facts, such as interviewing parties who were present, reviewing documentation and records, performing drug screens (if impairment is asserted), and compiling any pertinent facts related to the events and circumstances surrounding the complaint.

You may receive a letter, email or a phone call from the SBON asking you to submit a written statement explaining the reported incident. Or, the SBON may require you to appear at a certain time and date for an interview with the investigator. Never ignore a request from the SBON.

If you are contacted during the investigative stage, consult with an attorney before you respond to the SBON within the deadline set by the Board. You must be cooperative, but be aware that whatever you share constitutes evidence that the investigator will provide to a prosecuting attorney or the SBON.

NPs should not appear at proceedings without representation by legal counsel. Look to your legal counsel for guidance before answering questions from, or making statements to, the SBON or the investigator. Your attorney may be able to speak to the investigator, learn more about your matter, and help you navigate the entire process in a constructive direction.

Prosecution Phase

Upon completion of the investigation, the prosecuting attorney or state agency will determine how to proceed. One option is an informal conference. Although less formal than an actual hearing, informal conferences are official proceedings. During the conference, you will be interviewed by a member of the SBON and possibly its attorney. Your attorney should be present with you during all proceedings.

- You will have an opportunity to produce any evidence that supports your case.
- A resolution may be offered, closing the matter.

If the SBON believes it has significant evidence against you, the matter may proceed directly to a formal hearing where a disciplinary action may be proposed. The hearing is similar to a civil trial. It may take place in a courtroom-like setting before an administrative law judge and hearing panel. The hearing panel may include several SBON board members, or the entire SBON, depending upon the state. A court reporter records the entire proceeding, and a transcript is made. When both sides have presented their cases, the hearing is concluded.

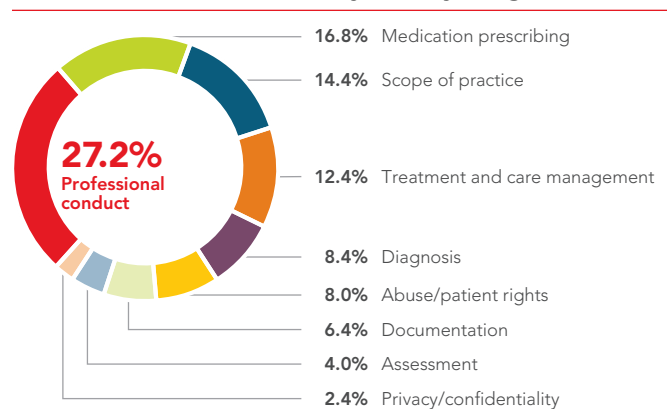
- Information is exchanged, known as discovery, and you are entitled to review the documents possessed by the prosecutor.
- Witnesses may be called to testify.
- The NP undergoes cross-examination.
- The outcome of the formal hearing is a ruling by the administrative law judge and the SBON. The process can take months or even years to fully resolve – lengthening the process – and increasing the legal defense costs.

Allegations

Comprising 27.2 percent of license protection matters, professional conduct allegations are the most frequent allegations asserted against NPs in license protection matters. Professional misconduct as defined by the state includes allegations such as unprofessional conduct with patients or coworkers, termination from employment due to unspecific performance issues, and professional boundary issues with patients. Collectively, professional conduct, medication prescribing, and scope of practice complaints account for more than half, 58.4 percent, of all license protection closed matters.

See **Figure 29**.

29 License Defense Matters by Primary Allegation Class



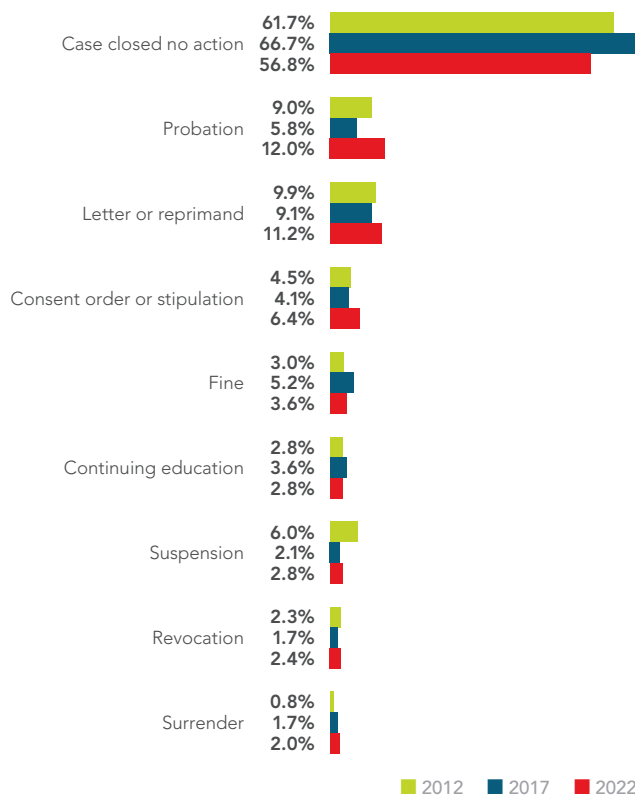
State Board of Nursing Actions

SBON disciplinary actions can range from no action against the NP, up to and including revocation of the NP's license to practice.

The majority of matters in the 2022 dataset, 56.8 percent, resulted in the SBON deciding to take no action. In 12.0 percent of matters, the NP was placed on probation. In 11.2 percent of matters, the NP received a letter of concern, which is considered a 'warning' or reprimand. The more serious outcomes include: license suspension 2.8 percent, license revocation 2.4 percent, and license surrender 2.0 percent, see **Figure 32**.

Most **outcomes involving discipline** against a nurse practitioner's license become a **permanent matter of public record**.

32 Comparison of 2012, 2017 and 2022 Distribution of State Board of Nursing



In some cases, the SBON may impose multiple disciplinary actions, such as receiving a reprimand coupled with a fine. Depending upon the state in which you practice, most outcomes involving discipline against a NP's license become a permanent matter of public record and reported to NURSYS® and the National Practitioner Data Bank (NPDB). The SBON also may report that disciplinary action to other agencies, regulatory authorities, or other SBONs, which may decide to initiate their own investigation and take action.

NPs who have experienced adverse disciplinary actions may appeal those decisions. The standards for appealing a SBON decision are defined by your state and will outline the specific requirements, time frames and processes.

License Protection vs. Professional Liability. What's the difference?

License Protection	Professional Liability
<p>Inquiry by the State Board of Nursing, arising from a complaint.</p> <p>Allegation can be directly related to a nurse practitioner's clinical responsibilities and professional services, and/or they may be of a nonclinical nature (i.e., substance abuse, unprofessional conduct, or billing fraud).</p> <p>The State Board of Nursing is authorized to suspend or revoke a license. Its primary mission is to protect the public from unsafe practice of the professional.</p>	<p>Civil lawsuit arising from a patient's malpractice claim.</p> <p>Allegations are related to clinical practice and professional responsibilities.</p> <p>The civil justice system cannot suspend or revoke your license to practice. Rather, professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.</p>

Risk Management Recommendations

Below are some proactive concepts and behaviors to include in your customary nursing practice, as well as steps to take if you believe you may be involved in a SBON matter related to your practice of nursing:

Everyday Practice

- **Practice within the requirements of your state nurse practice act, in compliance with organizational policies and procedures, and within the national standard of care.** If regulatory requirements and organizational scope of practice differ, comply with the most stringent of the applicable regulations or policy. If in doubt, contact your SBON or specialty professional nursing association for clarification.
- **Document your patient care assessments, observations, communications and actions in an objective, timely, accurate, complete, and appropriate manner. Never alter a record for any reason** or add anything to a record after the fact unless it is imperative for patient care. If it becomes necessary to add information to the record, properly label the delayed entry, but never add any documentation to a record for any reason after a complaint has been asserted. If additional information related to the patient's care emerges after you become aware that SBON action is pending, discuss the need for additional documentation with your manager, the organization's risk manager and your legal counsel.
- **Maintain files that may be helpful with respect to your character.** Retain copies of letters of recommendation, performance evaluations, thank you letters from patients, awards, records of volunteer work and continuing education certificates.
- **Immediately contact your professional liability insurer if you:**
 - Become aware of a filed or potential professional liability matter against you.
 - Receive a subpoena to testify in a deposition or trial.
 - Have any reason to believe that there may be a potential impingement on your license to practice.

- **Refrain from discussing the matter with anyone other than your defense attorney or the professionals managing your matter.**
- **Promptly return calls from your defense attorney and professionals.** Contact your attorney or designated professional before responding to calls, e-mail messages or requests for documents from any other party.
- **Provide your insurer with as much information as possible when reporting such matters, including contact information.**
- **Never testify in a deposition without first consulting your insurer or legal counsel.**
- **Copy and retain all legal documents for your records, including:**
 - The summons and complaint
 - The subpoena
 - Attorney letter(s)
 - Any other legal documents pertaining to the matter

License Protection Coverage

Professional liability insurance that includes coverage for license protection helps to insure nurse practitioners against licensing board complaints by:



- Reimbursing you up to the applicable limit for your defense of disciplinary charges arising out of a covered incident.**
- Covering costs associated with a disciplinary inquiry, up to \$25,000 annual aggregate.**
- Covered expenses may include legal representation, lost wages and travel.**

This information is designed to help nurse practitioners evaluate risk control exposures associated with their current practice. It is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.



This information was excerpted from NSO and CNA's full report, *Nurse Practitioner Professional Liability Claim Report: 5th Edition*.
www.nso.com/NPclaimreport



151 North Franklin Street
Chicago, IL 60606
1.866.262.0540
www.cna.com



1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.247.1500
www.nso.com

In addition to this publication, CNA and Nurses Service Organization (NSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to nurse practitioners, as well as information relating to nurse practitioner professional liability insurance, at www.nso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com.

The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. "CNA" is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporation subsidiaries use the "CNA" trademark in connection with insurance underwriting and claims activities. Copyright © 2022 CNA. All rights reserved.

Nurses Service Organization is a registered trade name of Affinity Insurance Services, Inc.; (TX 13695); (AR 100106022); in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc., (CA 0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency.

Nurses Service Organization (NSO) is the nation's largest administrator of professional liability insurance coverage to individual nursing professionals. Nurses Service Organization is a registered trade name of Affinity Insurance Services, Inc., an affiliate of Aon Corporation. For more information about NSO, or to inquire about professional liability insurance for nursing professionals, please contact NSO at 1-800-247-1500 or visit NSO online at www.nso.com.

Published 7/2022.