Nurse Practitioner Liability Update

Professional Liability Claim & Licensing Board Metrics and Case Scenarios

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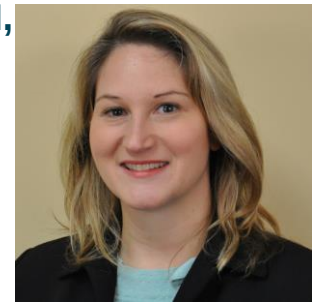

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Objectives

- Analyze the leading allegations made against nurse practitioners in medical malpractice claims and State Board of Nursing matters.
- Define the average incurred costs related to a malpractice claim, lawsuit or State Board of Nursing matter.
- Identify key risk management tools nurse practitioners can incorporate into their practice.

Professional Liability Case Study

Case Study

- The insured in this case was a family nurse practitioner (FNP) who was employed by a weight loss clinic (“the clinic”).
- The FNP had been practicing for 10 years in the field of family practice and had been working at the clinic for several months at the time of the incident.
- The clinic was owned by a physician who also served as the medical director, but he was not involved in the care of patients or clinic procedures.
- The clinic’s weight loss program included prescribing phentermine, as well as behavioral modification and nutritional counseling.
- Phentermine is often the drug of choice due to its accessibility and cost-effectiveness as compared to the semaglutides, which may have health insurance coverage limitations.

Case Study

- This case involved a 40-year-old female patient who presented to the clinic for treatment related to a longstanding history of obesity. She expressed concerns about the health risks associated with obesity.
- The patient also expressed a desire to “lose a lot of weight quickly” for an upcoming wedding event in addition to her goal of long-term weight management.
- The NP’s initial assessment included a review of the patient’s medical history and current medications, as reported to her by the patient.
- The patient’s blood pressure was noted to be **184/124.** The patient denied having a history of cardiac disease, hypertension, or being on antihypertensive medication.

Case Study

- The patient informed the FNP that she had used phentermine in the past for weight loss and had positive results. The patient also reported that she smoked and frequently used energy drinks to control her appetite.
- **Based upon the patient's elevated blood pressure, the FNP informed the patient that she could not prescribe phentermine to her at this time.**
- The patient was adamant in her desire to receive the phentermine and again informed the FNP that she did not have a history of hypertension.
- It was later discovered during litigation that the patient did have a history of hypertension and that she had stopped taking antihypertensive medication prescribed by her primary care provider (PCP) against medical advice.

Case Study

- The day following the initial clinic visit, the patient returned to the clinic requesting phentermine. She had not sought treatment for hypertension.
- The FNP was working at another clinic location that day, and there was no licensed provider on duty. The clinic had a sister operation located in a nearby city, and the providers rotated between the sites, often delegating clinic coverage to unlicensed medical assistants.
- The medical assistant (MA) on duty recorded a blood pressure reading of **146/86** and referred to the NP's note from the previous day, interpreting it as a valid order allowing her to dispense the phentermine.
- One of the clinic's criteria for prescribing phentermine was that the patient's blood pressure needed to be below 150/90. She dispensed the phentermine, but did not provide the patient with information regarding dosage or side effects.

Case Study

- The MA was newly hired and did not receive training regarding protocols for dispensing medications when there was no provider on-site. The patient did not return to the clinic, nor did she contact the FNP in follow-up after receiving the phentermine.
- Ten days after the patient received the phentermine, she was admitted to the hospital with aphasia and hemiplegia and was diagnosed with a severe right temporal lobe intracranial bleed (stroke).
- The attending neurosurgeon documented that the stroke was directly related to hypertension in the setting of phentermine use.
- The patient underwent a craniotomy with evacuation of the hemorrhage and a partial temporal lobectomy.

Case Study

- There was an extensive rehabilitation period, and the patient was left with residual neurological injuries, including dysphagia, muscle weakness, gait disturbance, incontinence and cortical blindness.
- As a result of these injuries, the patient required lifelong care for herself, as well as assistance in caring for her two minor children.

Case Study-Allegations

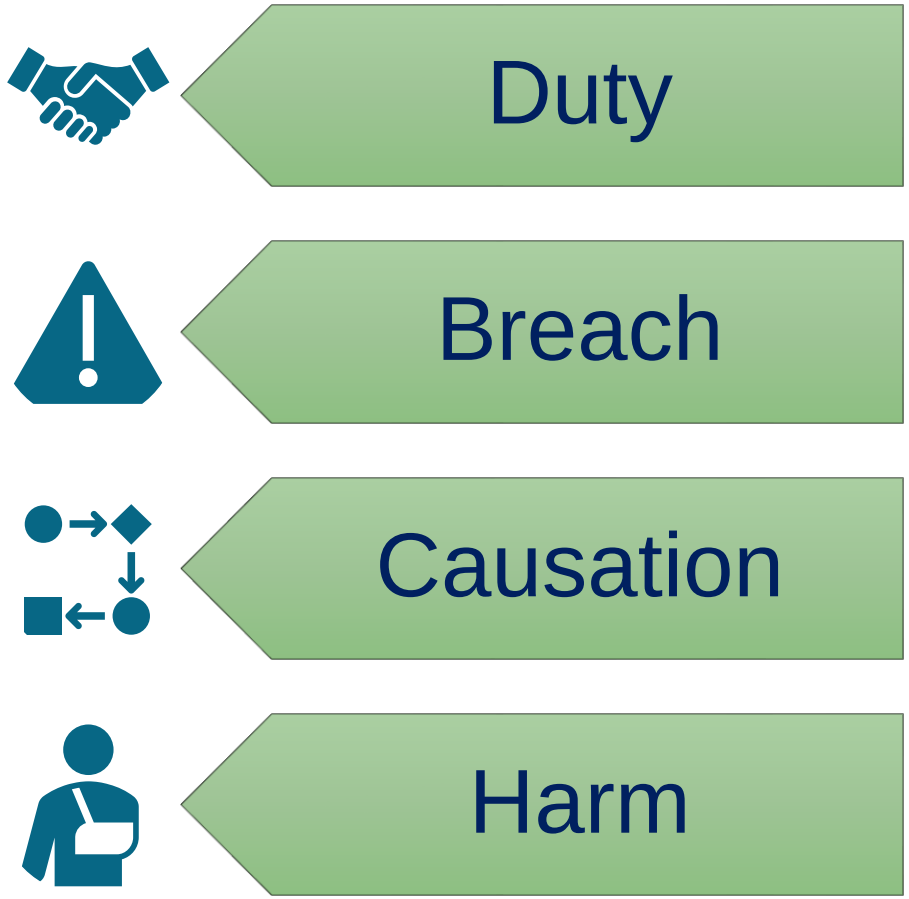
- Six months after the patient (plaintiff) was discharged from rehabilitation treatment, she filed a lawsuit against the FNP, the medical director and the clinic.
- She asserted that the FNP failed to conduct a complete assessment, inappropriately prescribed phentermine and failed to conduct informed consent.
- The plaintiff further asserted that the medical director was negligent in allowing unlicensed staff members to dispense medications without proper oversight and for failing to ensure that there were updated policies in place to ensure proper supervision, staff training and delegation of duties.
- The clinic entity was held vicariously liable for the actions of the MAs and the FNP.

Case Study-Allegations

- The plaintiff testified in her deposition that the FNP advised her to return to the clinic the day following the initial visit and that she would be able to receive the phentermine if her blood pressure was within acceptable limits.
- She denied being advised to seek additional medical treatment for hypertension and testified that the FNP did not inform her that she intended to re-evaluate her prior to agreeing to prescribe the phentermine.
- The plaintiff admitted that the FNP provided an informational brochure about phentermine, but she testified that she did not understand that phentermine could exacerbate hypertension which could then result in a stroke. Plaintiff stated that, had she been informed, she would not have taken the medication.
- The plaintiff stated that she was anxious to get started on the weight loss program, so did not ask any questions.

Consider

- Do you believe that the nurse practitioner was negligent?
- Do you believe that any other parties were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the nurse practitioner?
  - If yes, how much?



Plaintiff's Experts

- The plaintiff's NP expert opined that that the FNP did not adhere to the standard of care, which required her to re-evaluate the patient before prescribing the phentermine to rule out hypertension and/or cardiovascular disease.
- The Food and Drug Administration (FDA) labeling indicated that cardiovascular disease was a contraindication for prescribing phentermine.
- The NP expert noted that the FNP inappropriately delegated duties to the unlicensed clinic staff.

Plaintiff's Experts

- A physician specializing in obesity medicine, testified on the plaintiff's behalf and criticized the medical director for failing to ensure proper oversight of the clinic and to develop and implement written protocols reflecting the standard of care.
- The plaintiff's neurosurgery expert opined with certainty that the phentermine was the direct and proximate cause of the stroke.
- The experts highlighted that they believed there was inappropriate delegation of duties to unlicensed staff and that these delegating practices were commonplace at the clinic.

Defense Experts

- The defense expert in neurology opined that the phentermine was likely a contributing factor to the patient's stroke; however, he noted that the patient's comorbidities, i.e., hypertension, obesity and smoking, also played a role.
- A causation defense was considered by the FNP's defense attorney. However, the defense team believed that it would be difficult to contest the plaintiff's neurosurgery expert who testified that the stroke was directly related to the use of phentermine.
- A pharmacology expert for the defense opined that the dosing, storage and logs related to phentermine dispensing were within the standard of care for a weight loss clinic.

Defense Experts

- An NP expert for the defense was unable to support the care provided and opined that the FNP failed to adhere to the standard of care regarding prescribing medication, delegation of duties to unlicensed staff and documentation.
- The NP expert opined that the FNP should have reviewed the patient's healthcare information record and/or requested clearance from the plaintiff's PCP after identifying hypertension in the initial assessment.

FNP's Testimony

- The FNP testified in her deposition that she advised the patient to follow-up with her PCP or go to the emergency department for treatment of the hypertension and that she would re-evaluate her when her blood pressure was under control to determine if she was an acceptable candidate for phentermine use.
- The FNP did not document this conversation in the healthcare information record; rather the documentation stated: "the patient will return for a blood pressure recheck tomorrow and phentermine will be dispensed if her blood pressure is within the acceptable range".
- The FNP admitted in her deposition that her documentation did not accurately reflect the discussion that she had with the patient. This discrepancy diminished the FNP's credibility, resulting in a challenge to defend the care she provided.

FNP's Testimony

- The FNP stated that she provided training to newly hired MAs regarding office practices.
- However, shortly after the incident, the MA informed the FNP that she had not received training regarding handling patient requests when there was no provider on site. She resigned shortly after the lawsuit was filed.

The Resolution

- In summary, the defense team identified the following weaknesses in this case:
  - The FNP's documentation conflicted with her deposition testimony.
  - An audit trail of the electronic medical record, requested by the plaintiff, revealed that there were attempts to amend the documentation after the incident. The FNP denied tampering with the documentation. The clinic staff involved in this case were no longer employed at the clinic and could not be located for their testimony to either support or refute the FNP's assertion.
  - The FNP's assessment was limited to what the patient self-reported with no attempt to review the prior healthcare information record. In this case, a review would have identified the patient's history of untreated hypertension and nonadherence to taking prescribed antihypertensives.
  - There was inadequate staff training regarding scope of practice and inappropriate delegation of duties to unlicensed staff members.
  - Clinic policies did not reflect the practices in place at the time of the incident.

The Resolution

- The case had the potential for a high jury verdict, given the permanent nature of the plaintiff's neurological injuries and the potential for jury sympathy for the plaintiff and her minor children.
- The plaintiff testified that she could no longer care for her two minor children and was unable to work in her field as a medical technologist. Integral to the resolution plan of the defense was the fact that the defense experts were unable to support the care provided by the FNP.
- Based upon the above-referenced defense challenges and diminished potential for a successful defense jury verdict, a presuit settlement was negotiated on behalf of the insured FNP.

Resolution

Total Incurred: More than **$975.000.**

Figures represent only the payments made on behalf of the insured NP and do not include any payments that may have been made by or on behalf of other involved providers or companies.

Risk Control Recommendations for Nurse Practitioners

- **Conduct comprehensive assessments** to determine if patients are appropriate candidates for a proposed treatment or medication based upon age, current health conditions and past medical history, among other criteria. Consider risk factors which may influence the treatment, and document the thought process.
- **Remain current in knowledge of new and specialty medications**, including but not limited to their pharmacology, side effects and drug-drug interactions; consult with a pharmacist as needed.
- **Conduct informed consent discussions to ensure that patients understand the proposed medications and treatment plan.** Informed consent should be conducted by NPs when prescribing controlled substances, drugs with "box warnings", off-label medications or other medications which may have the potential for serious side effects. Document the informed consent discussion, including questions asked and answered, and the NP's rationale for prescribing the medication.

Risk Control Recommendations for Nurse Practitioners

- **Document all patient communications contemporaneously, factually and comprehensively. Include details of the discussions and questions asked and answered.** Objective and concise documentation is essential for both continuity of care, as well as for the defense of a potential malpractice claim.
- **Provide patient education regarding the importance of adherence to the recommended treatment plan and track patient adherence relating to follow-up care and referrals.** Document all clinical advice and efforts made to promote patient adherence.
- **Assess the patient's health literacy level** to ensure that they have an adequate understanding about their role in the treatment plan. Consider using the "teach-back" method for communicating patient instructions about required tests or other elements of the treatment plan.

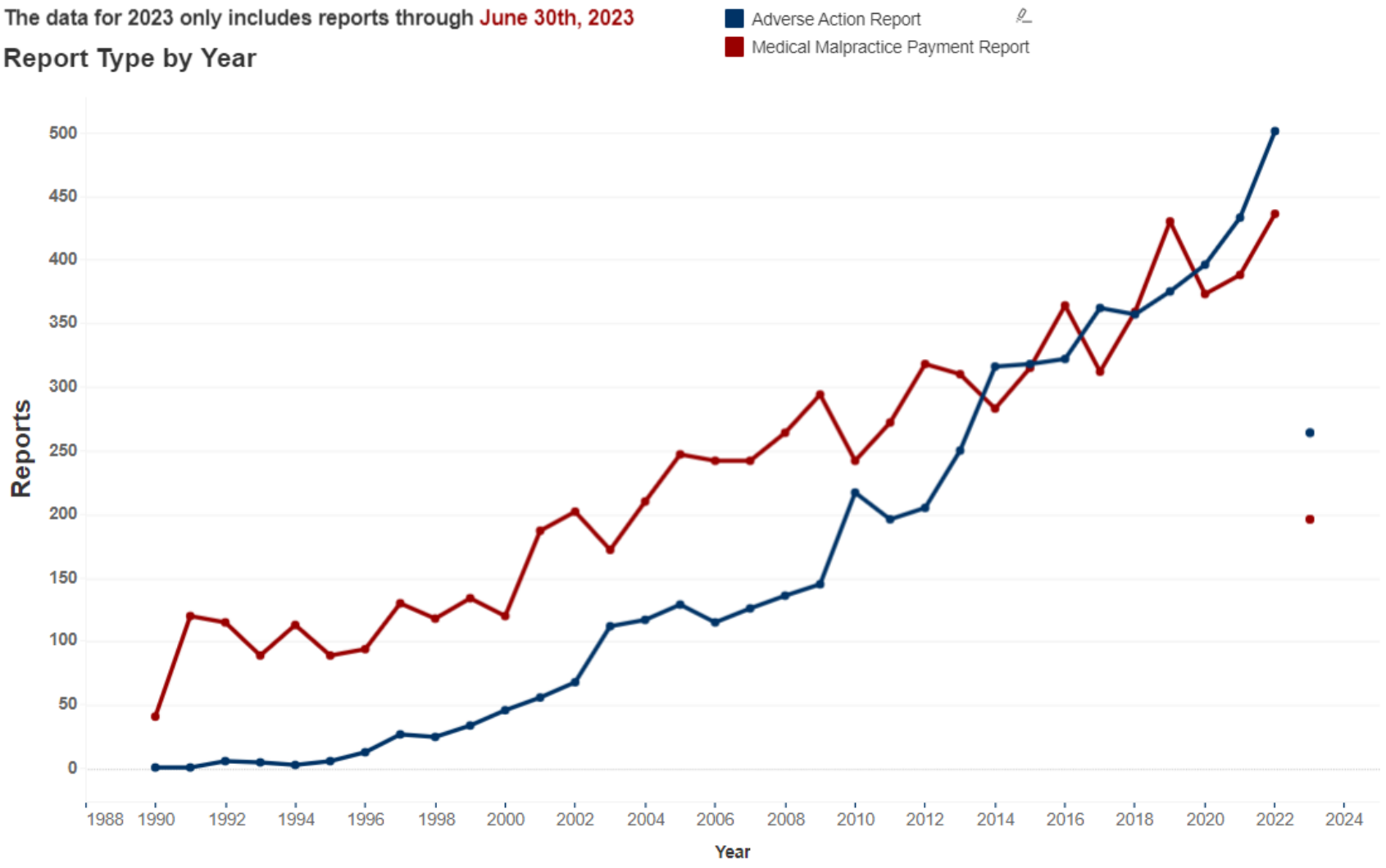
Risk Control Recommendations for Practice Owners

- ***Develop a standardized process for*** delegation of tasks to unlicensed staff members in compliance with state-specific scope of practice laws.
- ***Provide ongoing training for unlicensed staff members and specifically for*** new team members who may be unfamiliar with office procedures. Training should include information regarding scope of practice and proper documentation, including late entries. Instruct staff to refrain from altering the healthcare information record after an adverse event or upon learning that a claim has been filed. Conduct routine audits of the healthcare information record to ensure compliance.
- ***Comply with state/ federal laws and regulations***, related to ownership and supervisory/collaborative relationships with physicians.
- ***Ensure that written and procedures for the practice are updated*** and reflect appropriate practices regarding staff training and supervision, documentation, delegation of duties and scope of practice.

License Protection

Metrics & Case Study

National Practitioner Data Bank:
Total Medical malpractice payments and Adverse Actions reported to the NPDB for Advanced Practice Nurses remain relatively low. Both have steadily increased since the 1990s.



Division of Practitioner Data Bank, Bureau of Health Workforce, Health Resources and Services Administration. Generated September 13, 2024 using the Data Analysis Tool at https://www.npdb.hrsa.gov/analysistool.

Top 5 License Defense Allegations for NPs

Professional conduct, medication prescribing and improper treatment and care complaints account for more than half of all license protection closed matters at 64 percent.

Allegation Class	% of total matters
Professional Conduct	27%
Medication Prescribing	25%
Treatment & Care Management	12%
Failure to Diagnose	8%
Assessment	8%

NP license protection matters that closed between 1/1/2020 and 6/30/2024, with a defense expense payment ≥$1

License Defense Outcomes for NPs

Approximately 36 percent of license board matters lead to some type of board action against a nurse practitioner's license.

SBON Action	% of total matters
Closed, no action	64%
Public Reprimand	14%
Probation	10%
Fine, CE, or both	6%
Consent Order	2%
Suspension	2%
Revocation	1%
Surrender	1%
TOTAL	100%

NP license protection matters that closed between 1/1/2020 and 6/30/2024, with a defense expense payment ≥$1

License Protection Case Study

Negligent Treatment and Care of an Infant Resulting in Death

License Protection Case Study

- This case involves a nurse practitioner (NP) employed by a pediatric office practice who had been working as a registered nurse (RN) for seven years before becoming an NP. She had been working as an NP for 14 years at the time of the incident.

- The patient was a 10-month-old female who had been seen at the pediatric practice by our insured NP on at least one occasion before this office visit. On the day of the incident, the patient was brought in by her mother to be seen for what she described as a “bad cough.” The mother explained that the patient had been experiencing fever, wheezing and coughing with congestion and phlegm in her chest and nose for the past few days. The mother said that, in the past day, these symptoms had gotten worse.

License Protection Case Study

- The NP assessed the baby and diagnosed the patient with bronchitis. The NP ordered a breathing treatment with a nebulizer. The NP did not chart that the infant was wheezing, however, and later said that she would only have ordered a breathing treatment for the patient because the infant was wheezing. The NP also prescribed an albuterol inhaler, and amoxicillin and advised the mother to continue giving acetaminophen and ibuprofen until the infant's fever breaks. While the NP believed the infant to be suffering from bronchitis, she prescribed an antibiotic to prevent a possible bacterial infection. A medical assistant gave the infant the breathing treatment in the office and showed the mother how to use the nebulizer machine. The mother said the NP briefly came into the room after the breathing treatment and seemed satisfied with the results, but did not provide any additional information or instructions to the mother. The NP admitted that the practice was busy that day, and she did not chart the results of this post-treatment assessment of the infant after she received her breathing treatment in the office.

License Protection Case Study

- After the appointment, the infant and her mother returned home. There were multiple calls made by the mother to the NP and office staff after the office visit that day. The mother was repeatedly told by the office staff to “wait for the meds to take effect.” She was not advised to seek care at the emergency department if symptoms continued or worsened. Later that night, while the infant was sleeping, she began choking, and her lips turned blue. Her mother called 911, and CPR was started on the infant. The infant was transported to the hospital by ambulance in full cardiac arrest. The infant remained in the hospital for two days. Sadly, the infant was declared brain dead. The death certificate stated the cause of death was respiratory syncytial virus (RSV) and anoxic brain injury.

- The State Board of Nursing was informed of this case as a result of a malpractice lawsuit in which the NP settled the case with the family for an undisclosed amount.

License Protection Case Study: The Investigation

- The State Board of Nursing (SBON) investigated this case based on the allegations against the NP of unprofessional conduct and gross negligence in the treatment and care provided to the infant. The SBON found that while the healthcare information record indicated the chief complaint as fever and wheezing, the NP noted all categories as “within normal limits” under the exam portion of the chart. Further, there were no abnormal respiratory exam findings noted; the NP did not document the infant’s heartrate, her respiratory rate or her oxygen saturation level in the chart.

License Protection Case Study: The Investigation

- The SBON's investigation focused on "gross negligence" because of the extreme departure from the standard of care.
- In light of these allegations, the SBON reviewed the NP's actions against what actions would have ordinarily been taken by a competent NP under similar circumstances.
- The SBON opined that there was a repeated failure to exercise ordinary care and take standard precautions which the NP knew, or should have known, could have jeopardized the patient's health or life.

License Protection Case Study: The Investigation

- Specifically, the SBON noted the NP did not meet treatment and care standards by:
  - Failing to perform a complete respiratory assessment
  - Failing to document a complete respiratory assessment
  - Failing to chart the patient's heartrate in the healthcare information record
  - Failing to chart the patient's respiratory rate in the healthcare information record
  - Failing to chart the patient's oxygen saturation level in the healthcare information record
  - Failing to chart that the patient was wheezing in the healthcare information record
  - Failing to chart the results of a post-treatment assessment of the patient after she received her breathing treatment in the office

What potential consequence(s) should the NP face for their actions in this case?

- *Case dismissed – no action*
- *Warning letter*
- *Formal reprimand*
- *Fine*
- *Continuing education*
- *Consent order or stipulation agreement*
- *Probation*
- *License suspension*
- *License surrender*
- *License revocation*

License Protection Case Study: Outcome

- After reviewing the evidence, including the NP's testimony, the SBON recommended disciplinary action against the NP.
- The SBON determined that, while this was an isolated incident in the NP's career, the NP's conduct was egregious as RSV is a common, and very contagious, virus that infects the respiratory tract of most children before their second birthday. It can be more serious in young infants, even life-threatening.

License Protection Case Study: Outcome

- The SBON revoked the NP's license. However, the revocation was stayed and the NP was placed on probation for three years during which time the following conditions had to be met:
  - Pay a $10,000 civil penalty
  - Refrain from taking a position with direct patient care for six months
  - Submit performance evaluations
  - Be supervised during employment
  - Complete approved continuing education courses
  - Participate in ongoing counseling, and
  - Submit written reports verifying compliance with the Board's actions.

- The disciplinary action was reported to the National Practitioner Data Bank.

License Protection Case Study: Outcome

- This Board matter took **five years to resolve**, and the total incurred expenses to defend the NP in this investigation totaled just over **$19,000**.

(Note: Monetary amounts represent the legal expenses paid solely on behalf of the insured nurse practitioner.)

Risk Management Recommendations

- ***Perform a patient clinical assessment and physical examination*** to evaluate and address the specific clinical issues under consideration.
- ***Utilize available clinical practice guidelines or protocols when establishing a diagnosis*** and providing treatment, documenting the justification for deviations from guidelines or protocols.
- ***Consider potential unintended consequences of pursuing a specific diagnosis***, including:
  - Are factors present that do not align with the diagnosis?
  - Are there symptoms that are inconsistent with the current diagnosis?
  - Why are these symptoms not indicative of another diagnosis?
  - Is there a life-threatening condition with similar symptoms that hasn't been considered?

Risk Management Recommendations

- ***Complete regular training and continuing education*** to serve pediatric patients, particularly nurse practitioners who work in settings that serve pediatric patients, and maintain awareness of and access to organizational/facility pediatric protocols and guidance.
- ***Refer to RSV resources*** such as those on the National Association of Pediatric Nurse Practitioners (NAPNAP) website including NAPNAP's position statement on the RSV crisis. NAPNAP has created a series of micro-learning videos, each just five minutes, to break down a specific clinical aspect of RSV.
- ***Refer to CDC resources*** for healthcare providers on RSV Immunizations. CDC resources also includes information for RSV Prevention, FAQs, and an Immunization Information Statement.
- ***Diligently screen for, monitor and/or treat diseases known to have high morbidity and mortality***, such as RSV, for infants and children under 5 years of age.

Risk Management Recommendations

- ***Document the decision-making process*** that led to the diagnosis and treatment plan.
- ***Document all patient-related discussions, consultations, clinical information and actions taken***, including any treatment orders that are provided.
- ***Discuss clinical findings, diagnostic test/procedure results, consultant findings, diagnosis, the proposed treatment plan and reasonable expectations for the desired outcome with patients,*** parents and/or guardians, in order to ensure their understanding of their care or treatment responsibilities. Document this process, noting the patient's response.
- ***Never testify in a deposition without first consulting your insurer or legal counsel***. Contact your attorney or designated professional before responding to calls, emails, or requests for documents from any other party.

Thoughts?

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