



Nurse Practitioner Spotlight: Preparing for a Deposition

Nurses Service Organization (NSO), in collaboration with CNA, has published our 5th Edition of the NSO/CNA *Nurse Practitioner Liability Exposure Claim Report*. 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 Nurse Practitioner Spotlight focuses on the analysis and risk recommendations regarding one of the most significant topics in the report and for nursing professionals: **Preparing for a deposition.**

Nurse Practitioners (NPs) may be subpoenaed to provide a deposition or court testimony in matters where they are not a defendant, but are or were involved in the treatment and care of a patient who is involved in legal action. Being deposed in a professional liability lawsuit or licensing board investigation is potentially one of the most stressful events NPs may encounter. Depending upon the facts and information revealed, deposition testimony can directly influence the outcome of a case. This spotlight provides an overview of the legal process relating to depositions and imparts helpful tips on how to prepare for and provide deposition testimony. We examine the objectives of the pre-deposition meeting with your attorney, what a witness can expect during deposition questioning, and essential suggestions for conveying confident responses.

The 5th Edition of the NSO/CNA Nurse Practitioner Professional Liability Exposure Claim Report observed that 382 nurse practitioners requested assistance with depositions during the report period. The total expense represents the claim expenses, including attorney fees and other administrative costs.

Analysis of Deposition Assistance by Expense

Coverage type	Number of deposition closed claims	Total expense
Deposition assistance	159	\$323,528

Case Study: Deposition Request involving a nurse practitioner with a non-clinical matter

A police officer observed the insured NP back his vehicle into another vehicle as he was reversing out of a parking space, denting the rear bumper of the parked car. The officer then observed the NP pull his car away and begin to leave the scene. The officer stopped the NP and asked why he failed to stop after hitting the parked vehicle. The NP and the officer became involved in a verbal altercation. During this encounter, the NP proceeded to yell at the officer that he was an NP and could not wait for the owner of the parked vehicle to return to provide his insurance information due to the need to return to work. When the police officer tried to place the NP under arrest, the NP resisted, repeatedly jerking his arm away from the officer.

The NP was charged with resisting, delaying or obstructing a peace officer, which constitutes a misdemeanor. The NP pled no contest to this charge and was convicted. Upon renewal of his license, he reported this conviction to the State Board of Nursing (SBON), as required in the state where the NP practiced.

The SBON opened an investigation into the NP's conviction. As part of the SBON's investigative process, the NP had to give a deposition so that the SBON could determine whether his offense was substantially related to his ability to practice safely. The NP was able to produce letters of support and recommendation from

colleagues attesting to his professionalism. The NP also worked with his attorney to formulate a letter expressing his regret regarding the incident, including other mitigating circumstances in this case.

Considering all of these factors, as well as his status as a licensee in good standing for more than 10 years, and the isolated nature of this event, the SBON decided against revoking or suspending the NP's license. Instead, the SBON issued a public reprimand and required the NP to pay a \$2,500 fine. Expenses paid to defend the insured NP in this matter totaled more than \$1,600.

Risk Management Comments

NPs must understand and recognize stressful situations that may lead to conduct which may be deemed unprofessional even if it occurred outside of the NP's clinical practice. NPs should be proactive in seeking support to manage the situations or circumstances that can make them vulnerable. NPs must educate themselves on an ongoing basis about quality of care & work/life issues and strategies, and focus on mastering and reinforcing key competencies. The importance of maintaining these skills cannot be overemphasized.

The deposition is one of the most critical stages of litigation and State Board of Nursing complaints and can directly influence the outcome of a case. With respect to depositions, effective testimony requires preparation. NPs may be named as a defendant in a malpractice lawsuit. Even if you're not named in the lawsuit, you may be called as a witness to respond to questions in a pre-trial deposition. Thus, the importance of being prepared for a deposition cannot be minimized. A NP should always prepare with his or her attorney prior to any deposition.

NPs also should maintain files that can be helpful with respect to demonstrating their character and the confidence that others have placed in the nurse practitioner. This includes letters of recommendation, performance evaluations, documentation of volunteer activities, continuing education certificates, and thank-you letters from patients. These types of documents can be useful to provide to the State Board of Nursing during the disciplinary defense process. For more information on protecting your license and disciplinary defense, see the [Nurse Practitioner Spotlight: Defending Your License](#).

Risk Management Recommendations

When determining whether or not to release confidential information after receiving a subpoena to provide a deposition, consider the following guidelines:

- **Engage and inform your professional liability insurance provider, your employer's risk manager and legal counsel of the deposition notice.** In advance of the deposition date, your legal counsel will meet with you to outline the defense, as well as discuss the anticipated line of questioning.
- **Know and practice within the state scope of practice act,** and in compliance with the standard of care and state board of nursing requirements.

- **Understand and comply with the Nursing Code of Ethics** and other relevant ethics codes issued by other professional organizations or state boards of nursing.
- **Never ignore a subpoena,** whether it involves releasing clinical records, appearing for a deposition or testifying in court. Consult with an attorney knowledgeable about health law and request guidance about potential conflicts between legal mandates and client privacy rights when responding to a subpoena.
- **Prepare for any deposition or testimony under oath with the assistance of your attorney.** The preparation should include practice in responding to questions truthfully and accurately, without providing information that is not sought.

To help NPs understand the deposition process, this section provides a brief overview of what is a deposition, what actions NPs should take if they receive a subpoena, and associated expectations. It also imparts helpful tips on how to prepare for and provide deposition testimony including objectives of the pre-deposition meeting with your attorney, what a witness can expect during deposition questioning, and essential tips for conveying confident responses.

What is a deposition?

A deposition is a question-and-answer session conducted under oath for the purpose of compiling information from an individual who is either named in a lawsuit (i.e., a named defendant) or is a witness to the matter being litigated. An attorney will ask the witness questions while a court reporter records the testimony verbatim. In some cases, the deposition may be videotaped.

What actions should be taken following receipt of a subpoena?

The first action nursing professionals should take is to inform their professional liability insurance provider and employer's risk manager or legal counsel of the deposition notice. These professionals help ensure that a proper response is filed, while also counseling clinicians against the unauthorized release of information in their response. In advance of the deposition date, legal counsel will meet with the witness regarding the litigation in order to outline the defense, as well as discuss the anticipated line of questioning.

What are the objectives of the pre-deposition meeting with your attorney?

The pre-deposition meeting serves to inform the witness about the details of the lawsuit or State Board of Nursing investigation, including the specific allegations being asserted. It should be a face-to-face meeting with defense counsel and held well in advance of the deposition date, in order to allow sufficient time for preparation. A primary objective of the meeting is to outline the legal arguments for the defense. Often, counsel may construct a defense theme that will resonate throughout the litigation process. The preparation meeting also serves to discuss the questioning process. Defense counsel will review standard guidelines designed to help witnesses provide truthful responses. For additional deposition guidance, see "**12 Essential Deposition Tips for Conveying Confident Responses.**"

What measures are required before the pre-deposition meeting?

Before the pre-deposition meeting, a witness should thoroughly review any pertinent documents, including the patient's healthcare information record, personal notes and any medical literature consulted during treatment, carefully comparing the facts of care to the allegations asserted in the lawsuit. Any concerns or issues raised during the review should be shared with defense counsel at the meeting, in order to ensure that the witness has an accurate recall regarding the incident in question.

What can a witness anticipate during deposition questioning?

Depositions may appear, on the surface, to be more informal than testifying in court because they are typically conducted in an attorney's office without a judge present, and attorneys may dress casually and appear relaxed. However, depositions are equally as important to the case as the court trial and should not be taken lightly. Plaintiff attorneys will often try to restrict witnesses to one version of the incident, forcing them to be as accurate and precise as possible in their responses. During depositions, the plaintiff's attorney may use complex or aggressive questioning techniques, and the NP must be able to answer all questions truthfully, without divulging additional or extraneous information. A witness should remain calm during questioning and permit the defense attorney time to interject or object to an improper question.

12 Essential Deposition Tips for Conveying Confident Responses

Notwithstanding thorough preparation, giving a deposition can be an anxiety provoking and uncomfortable experience. The following tips can help witnesses to convey a professional demeanor and confident responses:

1. Always tell the truth.
2. Listen carefully and think before you speak. Don't be pressured into rushing a reply.
3. Speak slowly and clearly, and answer in a courteous manner.
4. If you need to consult the medical record, ask to do so.
5. If your attorney objects, stop speaking.
6. Do not look at your attorney when a question is asked. It is your testimony.
7. If you do not know the answer to a question, do not guess. Say that you do not know the answer.
8. If you do not remember something, say so.
9. If you do not understand a question, ask for clarification or rephrasing.
10. Answer only the question asked and do not anticipate further questions.
11. Understand the theme of the defense and assert it in response to allegations being made against you.
12. If you need a break, ask for one.

Compliance with subpoenas for deposition is important from legal, ethical, and risk management perspectives. **Ignoring deposition requests will not make the subpoena "go away". Moreover, failure to comply with a request can result in legal ramifications for the nurse.**

In the event of legal action

If you have received a subpoena to provide a deposition or court testimony as a named defendant, or if you are or were involved in the assessment and/or treatment of a patient who is involved in legal action, adequate preparation is critical to a successful outcome. The following measures can serve as a guide on how to prepare for and provide deposition testimony, as well as avoid potential missteps in the pivotal first phases of a lawsuit:

- **Consult with an attorney knowledgeable about health law** and request guidance about potential conflicts between legal mandates and patient privacy rights when responding to a subpoena.
- **Do not discuss the case with anyone** except your defense attorney and your professional liability insurance provider.
- **Do not accept or sign any documents related to the claim** from anyone without obtaining approval from your professional liability provider.
- **Avoid discussing, commenting upon or taking issue with any information you receive** regarding judicial or administrative proceedings.
- **Do not admit to liability, consent to any arbitration or judgment, or agree to any settlement proposal without consulting with your defense attorney.**
- **Contact your attorney or professional liability insurance provider before responding to calls or emails** from other parties involved in the case.
- **Report any communication you receive from the patient, patient's attorney or any administrative, licensing or regulatory authority to your professional liability insurance provider.**
- **Promptly return calls from your attorney and professional liability insurance provider.**

Nurse Practitioner Spotlights

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