Stay Ahead of the Curve – Don't Become a Malpractice Case Study

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FLORIDA NURSE PRACTITIONER NETWORK

Presentation Objectives

- Discuss the facts of selected nurse practitioner claims
- Provide participants the interactive opportunity to discuss the claim resolution
  - Consider whether negligence has occurred
  - Indemnity payment
  - Expense costs
- Discuss Nationwide Claim Metrics for nurse practitioners
- Create awareness of indemnity and expense payments made for selected nurse practitioner claims
- Provide recommendations to support nurse practitioners in managing professional liability risks

Case Study #1

Case Study #1

- This case study involves a nurse practitioner as an owner and treating practitioner in a family medical office setting.
- Our family nurse practitioner was the primary provider of a 67 year-old male patient for various medical conditions including diabetes, Crohn's disease and hypertension.
- He had a 50 year history of cigarette smoking (one to two packs-a-day) and for the past 40 years he admitted to being a "heavy beer drinker."
- Our NP was his primary treating provider for five years after he was discharged from his previous primary medical provider due to non-compliance with his chronic illnesses and abusive statements to the former provider's office staff.
- The patient claimed that he had issues affording medications and this is the reason for his non-compliance, but offered no explanation for his abusive behavior.

Case Study #1

- During the first three years of treating with our NP, the patient had health insurance and this allowed him to afford his medications and be consistent with his medical treatments.
- At one point he had a pulmonary embolism diagnosed and was placed on blood thinners. The NP monitored his monthly international normalized ratio (INR) for a few months until the patient stopped coming into the office despite the NP's phone calls to advise the patient that monthly INRs were necessary to monitor blood thinner dosage.
- The last two years, he missed most of his scheduled appointments and when his medications required provider approval, he would call the NP and demand refills from the staff without an appointment.
- He was argumentative and even threatened to bring lawsuit against the staff if they failed to refill his medication or tried to contact him about missed appointments.

Case Study #1

- One evening the patient was seen in an emergency department (ED) complaining of tingling in his left arm and weakness in his left leg.
- The patient's initial tests, including the laboratory, electrocardiogram, chest x-ray and computerized tomography (CT) of the brain were essentially normal.
- The ED provider discharged the patient home and instructed to him to take a baby aspirin a day, follow up with his primary care provider, return to the ED with any concerns and scheduled an outpatient magnetic resonance imaging (MRI) of the brain.

Case Study #1

- The patient called our NP the next morning to advise her of his prior ED visit and that he had an MRI of the brain scheduled for the following day.
- He made an appointment with the NP for after the MRI to review the findings.
- As soon as the MRI was completed, the radiologist called our NP to report his findings.
- The radiologist testified that the he conveyed the MRI findings with a sense of urgency and faxed the results soon after his phone call. He communicated that critical medical treatment was needed, such as starting the patient on a blood thinner and having a magnetic resonance angiogram (MRA) of the carotids. His medical opinion was that the patient was suffering from small strokes and that he possibly had a blood clot in the right carotid artery.
- Our NP disputed the radiologist's testimony of how the test results were reported to her and stated that she was only told to schedule an MRA and start the patient on a blood thinner.

Case Study #1

- Upon speaking with the radiologist regarding the results, our NP instructed her staff to call the patient to determine which pharmacy he wanted his blood thinner prescription sent and schedule a MRA (STAT).
- Three hours later the patient was on his way home from picking up his prescription when he suffered a massive ischemic stroke and was involved in a motor vehicle collision.

Case Study #1

- The patient was admitted to the hospital for stroke care, but later transported to a trauma center where a CT scan of the brain noted his stroke was progressing.
- His internal carotid artery was 80 percent occluded causing him to need a right hemicraniectomy.
- Four weeks after suffering from the massive stroke, the patient was discharged to a skilled nursing facility to work on regaining function (speech, mobility, use of extremities, motor function/ skills, etc.).
- The patient remains in a skilled nursing facility unable to ambulate or care for himself, but is able to communicate and is somewhat able to participate in his care.
- Several healthcare providers, including our NP and the ED practitioner were sued initially one year after the patient's massive stroke.

Allegations

- Failure to advise patient of an urgent medical condition
- Failure to keep an adequate medical record
- Failure to timely address an emergent condition/ complication

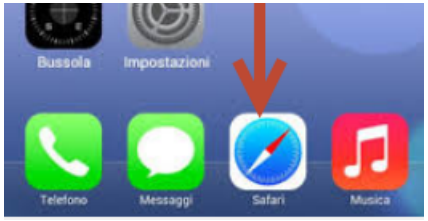
Risk Management Comments

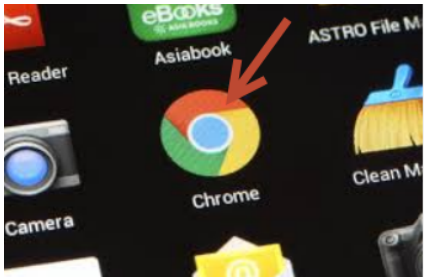
- The lawsuit lasted more than six years due to the patient's family firing their first attorney and hiring a second attorney. The medical cost the patient suffered was severe and the patient's attorney claimed damages of:
  - Medical expenses related to stroke: $1,070,138
  - Future economic damages: $2,913,376

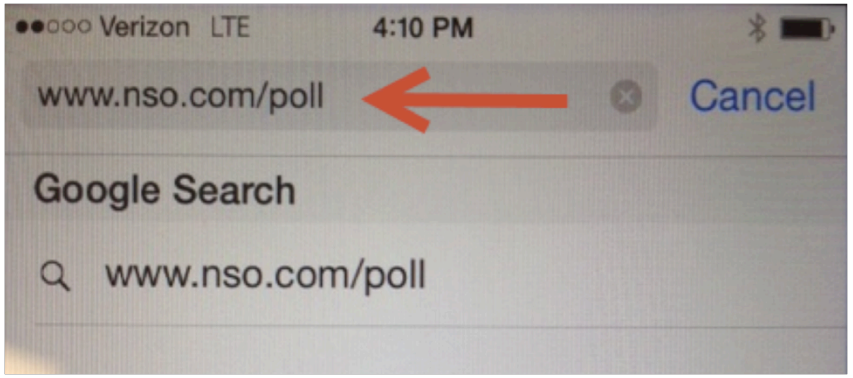
- Our NP was in poor health and wished to settle the claim even though the defense attorney claimed the likelihood for a defense verdict at 60 percent. Mediation was attempted several times, but three weeks prior to trial a settlement was reached on behalf of our NP.

Use Your Smart Phone…

www.nso.com/poll
Click on Case 1







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Test Your Liability IQ … Answer Now!

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Click on Case 1

- Do you believe that the nurse practitioner was negligent?
- Do you believe that any other practitioners or 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?

How Much was Paid on Behalf of our NP?

- Indemnity payment: Greater than $150,000
- Expense payment: Greater than $30,000

Figures represent only the payments made on behalf of the nurse practitioner and do not include any payments that may have been made by the nurse practitioner's employer on his behalf or payments from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

What the Experts said…

- The defense medical experts that reviewed the claim stated that little could have been done to have prevented the patient's stroke since it was greater than four hours between the times our NP learned of the MRI results and when the patient's stroke occurred.
- Even if the NP would have instructed the patient to go to the ED, nothing would have prevented the stroke.

What the Experts said…

- When the patient's health records were reviewed by our defense nurse practitioner expert witness, she was critical of the overall documentation.
- She noted omitted medical entries from the patient's past office visits and no references to the patient's missed appointments or follow-up phone calls for missed appointments.
- Missing documentation included education and counseling regarding the patient's noncompliance with his healthcare recommendations and regarding the rants he would use toward the office staff when he needed medication refills.
- The defense experts' opinion of the overall patient's care and the NP's actions on the day of his massive stroke was defensible. However, with the poor quality of medical documentation and nonexistent follow up on behalf of the office staff, the nurse practitioner expert stated that the health record gave the impression that the practitioner and her office appear incompetent.

Risk Control Recommendations

- **Document all patient-related discussions, consultations, missed appointments, clinical information and actions taken,** including any treatment orders provided, and ensure that the documentation factual and refraining from subjective statements.
- **Counsel and document counseling of noncompliant patients and/or responsible parties** regarding the risks resulting from their failure to adhere to medication and treatment regimens.
- **Perform periodic audits of patient health records to identity departures from documentation standards** and determine opportunities for improvement.

Risk Control Recommendations

- **Educate each patient regarding the steps involved in the treatment process,** as well as the patient's responsibility to notify the practitioner of any condition, unusual occurrences or feelings of distress during the treatment.
- **Refer unstable and acutely ill patients to the nearest emergency services.** If a patient is in the office and needs emergent or urgent care, call 911 and allow the patient to be transported by ambulance instead of in a private vehicle. If a patient refuses to allow ambulance transport to the hospital, obtain an "Against Medical Advice" (AMA) form with the patient's signature acknowledging their acceptance of the risks associated with driving while needing emergent or urgent care.

NP Claim Metrics

Policy Counts by Specialty

Nurse Practitioners Nationwide View

	% POLICIES	TOTAL POLICIES
Family Practice	34%	8,820
Adult/Geriatric/GYN	23%	6,115
Psychiatric	9%	2,410
Obstetrics/Perinatal	1%	320
Student	29%	7,606
NP Firm or Group	3%	878
Total	100%	26,149

Nurse Practitioners Inforce by Specialty as of 08/2016

Claim Metrics

Nurse Practitioners Nationwide View

	%	PAID	RESERVE	EXPENSE	TOTAL
Open	9%	$ -	$22,538,360	$ 5,226,490	$ 27,764,850
Closed with No Payment	48%	$ -	$ -	$ -	$ -
Closed with Payment	13%	$ 76,081,233	$ -	$ 18,861,084	$ 94,942,317
Closed Expense Payment Only	30%	$ -	$ -	$ 14,960,024	$ 14,960,024
Total	100%	$ 76,081,233	$22,538,360	$ 39,047,598	$137,667,191

Open & Closed Claims 2011 thru 2015 as of 08/01/2016

Claim Metrics by Specialty

Nurse Practitioners Nationwide View

	%	TOTAL PAID INDEMNITY	AVG. PAID INDEMNITY
Family Practice	52%	$44,884,277	$231,362
Adult/Geriatric/GYN	30%	$20,731,301	$186,768
Psychiatric	5%	$5,753,830	$136,996
Obstetrics/Perinatal	12%	$3,854,742	$226,750
Cosmetic	<1%	$42,500	$42,500
NP Firm or Group	1%	$258,333	$86,111
Student	<1%	$556,250	$185,417
Total	100%	$76,081,233	$205,070

Open & Closed Claims 2011 thru 2015 as of 08/01/2016

Claims with Payment by Coverage

Nurse Practitioners Nationwide View

	%	INCURRED	%	AVERAGE
PL w/ Indemnity Paid	28%	$ 74,081,233	83%	$ 205,070
PL w/ Expense Only	60%	$ 14,960,024	15%	$ 19,659
License Protection	6%	$ 543,990	2%	$ 7,330
Deposition Assist	4%	$ 122,822	<1%	$ 2,684
Records Request	1%	$ 7,865	<1%	$ 920
HIPAA	1%	$ 1,740	<1%	$ 12,812
Assault	0%	$ 0	<1%	$ 473
Personal Injury	0%	$ 0	0%	$ -

Closed Claims with Indemnity or Expense Payment only

Case Study #2

Case Study #2

- This case involves an adult/geriatric NP working part time in a family practice office setting.
- The patient is a 57-year-old female hospitalized for depression. Upon discharge, she was instructed to schedule an appointment with a medical care provider to oversee her medical needs. She scheduled an appointment with our NP one week after discharge.
- Our NP documented a detailed history and physical, which revealed that the patient had a recent history of hyperlipidemia and hypertension.
- The patient had been diagnosed with bipolar disorder, schizophrenia and post traumatic stress syndrome in her early twenties as a result of abuse she suffered as a child. She reported that apart from her depression, she was stable with her other psychiatric disorders.
- Her medications included Simvastatin, Lisinopril, Aripiprazole, Citalopram and Clonazepam.

Case Study #2

- The patient prepared a written statement to our NP stating that she was acutely suffering from disorganized speech, impaired cognition, memory impairment, uncontrollable temper and increased anxiety. She expressed that she felt as if she was “heading towards dementia”.
- The husband and patient were also concerned with the costs of her medications. They were on a fixed income and could not afford all the medications prescribed for her when she was discharged from the hospital.
- The NP’s plan of care was to begin counseling, as well as discontinue the Aripiprazole and begin a prescription of Risperidone because it was less expensive for the patient.
- The patient was agreeable to the plan of care and scheduled a follow-up appointment one month later.

Case Study #2

- During the follow-up appointment, the patient reported that her depression had improved, but she continued to have anxiety and decreased sleep. The patient was instructed to increase the Risperidone from 0.5 mg to 1.0 mg and return to the office in one month.
- The patient returned to the NP as scheduled and reported new concerns with walking, drooling and difficulty with speech. The NP scheduled the patient with an appointment for a neuropsychiatric evaluation in two months.

Case Study #2

- Two weeks later, the patient's husband called the NP reporting that the patient was having generalized tremors and was unable to speak. The NP instructed the husband to take the patient to the nearest emergency department for immediate evaluation and treatment. (This was the last time the NP heard from the patient and her family.)
- The emergency department diagnosed the patient with a psychiatric illness and instructed her to keep her scheduled neuropsychiatric evaluation.
- Approximately one week later, the patient's condition continued to deteriorate. Her husband took her to a different emergency department due to her inability to speak and walk.
- The patient was admitted to the hospital and diagnosed with Neuroleptic Malignant Syndrome due to Risperidone.
- Currently, the patient is totally disabled, has cognitive impairment and exhibits limited gait.

Allegations

- Failure to recognize contraindications and/or known adverse interactions among ordered medications
- Failure to seek advice with the collaborating or supervising practitioner regarding a patient with recurring complaints and/or signs and symptoms that do not respond to the prescribed medication
- Failure to refer a patient for financial assistance, payment counseling and/or free or low-cost alternatives to medical treatment/medication
- Failure to timely recognize and address an emergent condition/complication

Additional Information

- The NP had prescribed Risperidone for other patients and was aware of the common side effects, but was not aware of Neuroleptic Malignant Syndrome. Thus, he did not inform the patient of this specific potential side effect of the medication.

Test your Liability IQ … Answer Now!

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Click on Case 2

- Do you believe that the nurse practitioner was negligent?
- Do you believe that any other practitioners or 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?

How much was paid on behalf of the Nurse Practitioner?

- Indemnity payment: Greater than $175,000
- Expense payment: Greater than $160,000

Figures represent only the payments made on behalf of the nurse practitioner and do not include any payments that may have been made by the co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

What the Experts Determined

- Several defense experts were asked to review this claim. Differing opinions were noted regarding the standard of care being met by the NP.
- Experts were critical of the NP not being aware of the side effects of medication he prescribed and failing to collaborate with his supervising physician on the patient's medical decline.
- Given the differing expert opinions, the decision was made to attempt to settle the claim on behalf of the NP.

Risk Control Recommendations

- **Remain current regarding clinical practice, medications, biologics and equipment** for the diagnosis and treatment of acute and chronic illnesses and conditions related to one's specialty.
- **Participate in ongoing education and instruction** regarding new medications, focusing on clinical indications, potential patient risk and recommended dosages.
- **Comply with established standard for educating and informing patients and families about prescriptions**, including the brand names and generic names, the purpose of the medication, realistic expectations regarding drug efficacy, potential side effects, and indications for contacting the NP or seeking emergency assistance.
- **Assist patients by enrolling them in reduced or manufacturer drug-provision programs** if they are noncompliant with their medications due to financial reasons.

Risk Control Recommendations

- **Engage in timely and proactive discussions with providers** and other members of the care team to ensure that the team is educated about the patient's treatment plan.
- **Report thoroughly and in a timely manner any changes in the patient's condition and/or response to treatment** and document such interactions along with any revisions in the treatment plan in the patient's healthcare information record.
- **Consult with the collaborating or supervising physician** at least as frequently as required and for all cases have a difficult or delayed diagnosis.
- **Seek timely specialist consultations and advice** regarding patients with recurring complaints and/or signs and symptoms that do not respond to the prescribed treatment.

NP Claim Metrics

Claims by Location of Loss

Nurse Practitioners Nationwide View

Professional Liability Closed Claims with Indemnity or Expense Payment

	% DIST	INCURRED	% INC	AVERAGE
MEDICAL OFFICE	50%	$38,926,889	51%	$211,559
CLINIC	17%	$11,992,934	16%	$193,434
AGING SERVICES	13%	$5,752,357	9%	$122,518
HOSPITAL - INPATIENT SERVICES	6%	$4,500,634	6%	$214,316
HOSPITAL - EMERGENCY ROOM	5%	$4,636,088	6%	$257,561
PATIENT'S HOME	3%	$4,812,675	7%	$481,268
REHABILITATION FACILITY	2%	$943,333	1%	$188,667
PRISON OR CORRECTIONAL FACILITY	3%	$1,430,850	2%	$130,077
HOSPITAL - LABOR & DELIVERY	<1%	$650,500	<1%	$325,250
SCHOOL	<1%	$255,000	<1%	$127,750
HOSPITAL - CCU/ICU	<1%	$487,500	<1%	$243,750
HOSPITAL - OPERATING ROOM/SURGICAL SUITE	<1%	$100,000	<1%	$100,000
HOSPITAL - RENAL DIALYSIS	<1%	$70,000	<1%	$70,000
PSYCHIATRIC INPATIENT	1%	$997,473	2%	$332,491
PSYCHIATRIC OUTPATIENT	<1%	$500,000	<1%	$500,000
DIALYSIS FACILITY	<1%	$25,000	<1%	$25,000
TOTAL	**100%**	**$76,081,233**	**100%**	**$205,070**

Claims by Allegation

Nurse Practitioners Nationwide View

Professional Liability Closed Claims with Indemnity or Expense Payment

	% DIST	INCURRED	% INC	AVERAGE
DIAGNOSIS – Failure/Delay	28%	$26,447,359	35%	$256,771
TREATMENT & CARE MANAGEMENT	24%	$19,382,797	25%	$217,784
MEDICATION	23%	$19,465,908	26%	$223,746
MONITORING	7%	$2,708,130	4%	$108,325
ASSESSMENT	9%	$6,034,880	8%	$167,636
PROFESSIONAL MISCONDUCT	7%	$1,142,723	2%	$51,941
PATIENT'S RIGHTS	1%	$208,720	<1%	$52,179
EQUIPMENT	1%	$690,716	<1%	$138,143
TOTAL	100%	$76,081,233	100%	$205,070

Claims by Injury

Nurse Practitioners Nationwide View

	% DIST	INCURRED	% INC	AVERAGE
DEATH	**34%**	**$ 28,194,297**	**37%**	**$223,764**
STROKE	**3%**	**$ 6,292,499**	**8%**	**$524,375**
CANCER	**6%**	**$ 5,904,499**	**8%**	**$281,167**
BIRTH INJURY	**2%**	**$ 3,750,488**	**5%**	**$468,811**
LOSS OF ORGAN OR FUNCTION	5%	$ 3,273,049	4%	$192,532
ADDICTION/DEPENDENCY/OVERDOSE	8%	$ 2,750,000	4%	$91,667
BRAIN DAMAGE EXCL BIRTH INJURY	2%	$ 2,657,973	4%	$379,710
EMOTIONAL/PSYCHOLOGICAL HARM/DISTRESS	7%	$ 2,134,632	3%	$82,101
INFECTION/ABSCESS/SEPSIS	6%	$ 2,023,272	3%	$91,966
NEUROPAIRMENT/DEFICIT	3%	$ 1,942,500	3%	$161,875
EYE INJURY/VISION LOSS	1%	$ 1,862,500	2%	$465,625
ALLERGIC REACTION/ANAPHYLAXIS	2%	$ 1,842,750	3%	$263,250
EAR INJURY/HEARING LOSS	2%	$ 1,552,500	2%	$388,125
PRESSURE SORE/ULCER AND WOUND	2%	$ 1,544,759	2%	$257,459
AMPUTATION	<1%	$ 1,450,000	2%	$725,000
CARDIAC CONDITION	2%	$ 1,435,000	2%	$239,167
PARALYSIS	<1%	$ 1,265,000	2%	$421,667
SUICIDE	3%	$ 1,010,000	2%	$101,000

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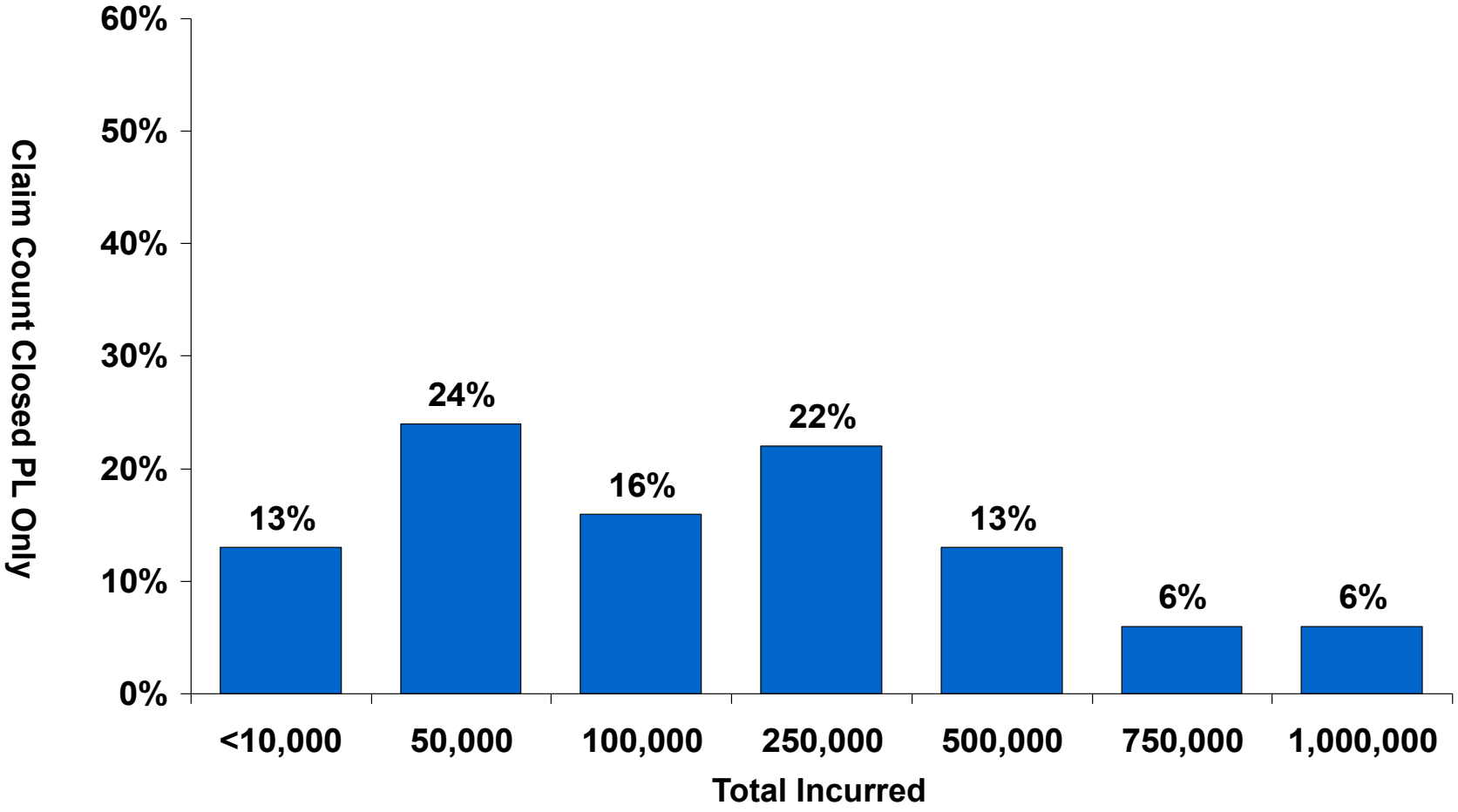
Claims above $1 Million Incurred

Closed Claims 2011 thru 2015 as of 08/01/2016

Claims by Distribution of Total Incurred

Nurse Practitioners Nationwide View

Professional Liability Closed Claims with Indemnity or Expense Payment



Closed Claims 2011 thru 2015 as of 08/01/2016

Case Study #3

Case Study #3

- This case involves an employed NP working in an urgent care center when he treated a 58-year-old male with a “boxer” fracture to his right hand.
- Our NP ordered the medical assistant to apply a temporary gutter splint to the patient’s right hand and instructed the patient to return to the center in 11 days for a cast.
- The patient returned to the center as scheduled and our NP noted in the healthcare information record the appearance of ecchymosis above the fourth and fifth mid-metacarpal area with tenderness and decreased range of motion. Additional x-rays were ordered, which our NP interpreted as revealing a “complex/oblique fracture with good position” of the fourth and fifth metacarpals.
- A metal gutter splint was ordered by the NP and applied by the medical assistant. The patient was scheduled to see an orthopedic surgeon two days later.

Case Study #3

- Approximately one month later, the patient returned to the urgent care center with a complaint of decreased movement and swelling in his fingers.
- He stated that he was dissatisfied with the orthopedic surgeon, whom he asserted would not spend any time with him, did not discuss therapy or follow-up treatment and would not return his calls.
- Our NP ordered additional x-rays, which revealed a lack of any callus formation. He noted that the patient had considerable edema to his hand and could not fully flex his fingers.
- Our NP elected to leave the gutter splint on the patient's hand and scheduled an appointment for a second opinion. The patient did not keep the appointment with the second orthopedic surgeon. He decided to return to his initial treating orthopedic surgeon despite his dissatisfaction.

Case Study #3

- Over the next few months, the patient's hand worsened, which the orthopedic surgeon believed this condition suggested Reflex Sympathetic Dystrophy (RSD).
- The patient remained dissatisfied with the treating orthopedic surgeon and was non-compliant with appointments and the physical therapy treatment regimen.
- Four months after he fractured his hand, the patient sought a second opinion from another orthopedic surgeon. The orthopedic surgeon stated that the patient most likely suffered nerve damage due to RSD, resulting from his splint being placed too tight.
- One year after his fracture, the patient continued to suffer from temperature intolerance, numbness, tingling and loss of hand grip.

Allegations

- Failure to counsel the patient on the risk of being noncompliant with treatment plan/regimen
- Failure to provide appropriate clinical supervision to ancillary medical staff
- Failure to keep an adequate medical record
- Failure to timely address a patient's change in condition
- Failure to ensure that patient has kept scheduled referrals and consultations

Additional Information

- The medical assistant was inexperienced and never received any formal training on applying splints. She had only been employed a few months prior to treating the patient.
- The urgent care facility had a hybrid healthcare information record system utilizing both paper and electronic health records, which made it difficult to follow the patient's medical care and plan of care.

Test your Liability IQ … Answer Now!

www.nso.com/poll
Click on Case 3

- Do you believe that the nurse practitioner was negligent?
- Do you believe that any other practitioners or 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?

How much was paid on behalf of the Nurse Practitioner?

- Indemnity payment: $0.00
- Expense payment: Greater than $80,000

Figures represent only the payments made on behalf of the nurse practitioner and do not include any payments that may have been made by the co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

What the Experts Determined

Several experts were used in defense of this claim and in their opinion they determined:

- The NP's treatment plan and actions of referring the patient to a specialist (orthopedic surgeon) were appropriate and within the standard of care.
- The documentation, even though was difficult to follow, was appropriate.
- The experience of the medical assistant was limited and she had not received proper training on applying orthopedic splints at this facility.
- The job description of the office manager included the responsibilities of training and precepting clinical staff. It was their opinion that the NP would have had no way to know if the medical assistant was clinically competent to apply orthopedic splints.
- The patient contributed to his injury by not being compliant with his treatment plan, missing appointments and failing to participate in physical therapy.

What the Experts Determined

- The courts awarded a dismissal of all claims against the NP without any compensation to the patient.
- Defense experts' supportive testimony regarding the NP's treatment of the patient was a key component to the court's dismissal of all allegations against the NP.
- This was a successful outcome for the defendant NP.

Risk Control Recommendations

- **Develop, maintain and practice professional written and spoken communication skills.**
- **Document the NP's clinical decision making process and rationale** for any deviations in practice from established clinical protocols, guidelines and standards**.**
- **Follow documentation standards established by professional organizations** and comply with your employer's standards. If a hybrid health record is being utilized, perform periodic audits of health records to identify opportunities for improvement.
- **Document all patient-related discussions, consultations, clinical information and actions taken** including any treatment orders provided.
- **Record all patient noncompliance with ordered testing and treatm**ent, as well as counseling given and other efforts made to encourage compliance.

Risk Control Recommendations

- **Engage in timely and proactive discussions with** members of the healthcare team to ensure team is educated about the patient's treatment plan.
- **Report thoroughly and in a timely manner any changes in the patient's condition and/or response to treatment to the supervising providers** and document such interactions along with any revisions in the treatment plan in the patient's clinical record.
- **Provide appropriate clinical assistance and supervision for ancillary healthcare staff,** in compliance with facility's policies, procedures or employment agreements.
- **Reassess each patient** to determine response to medical treatment and interventions by the healthcare staff. Document findings, effectiveness of treatment, response of patient/family and the need for changes in the plan of care.

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Questions?