

Liability in Emergency Departments and Disciplinary Exposure for Nurse Practitioners

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ABSTRACT

Nurse practitioners play a key role in providing care to the millions of Americans who visit hospital emergency departments each year. In the emergency department environment, pediatric, geriatric, and pain management cases are areas where nurse practitioners may encounter increased liability. Failure to act in accordance with the Nurse Practice Act or established standards of care not only creates an opportunity for legal risk, but may lead to a malpractice suit or disciplinary action by the state's board of nursing. Utilization of risk control strategies can improve quality of care and avoid malpractice and/or disciplinary actions.

Keywords: emergency department, liability, malpractice/disciplinary action, nurse practitioner, risk management

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INTRODUCTION

Emergency departments (EDs) are a significant source of health care in the United States, with > 131 million total ED visits occurring in 2011.¹ Use was highest among children < 6 years old (24%) and for adults ≥ 75 years old (27%).² Despite implementation of the Affordable Care Act, with a significant increase in the number of Americans with medical insurance and accessibility to primary care sources, emergency room visits continue to rise in the US. According to a March 2015 poll conducted by the American College of Emergency Physicians, 28% of doctors surveyed nationally saw large increases in volume, whereas 47% saw slight increases. By contrast, fewer than half of the doctors reported any increases in 2014 in the early days of the Affordable Care Act.³

This high demand can lead to crowded EDs and longer wait times for patients. It also translates into demanding work environments for medical personnel, including family and acute care nurse practitioners (NPs) who are more frequently filling clinical roles in EDs across the country. This includes providing emergency care for patients across the lifespan with all acuities, as well as providing health

promotion, disease prevention, and injury prevention services to their patients and families.

The often hectic, ever-changing work environment can expose NPs to liability risks for numerous factors, including larger patient loads, more complex job responsibilities, a variety of expected norms, and increased patient expectations. In the ED, there are several areas that can make the NP especially vulnerable, including pediatrics, geriatrics, psychiatrics, and pain management. Issues can arise that may expose NPs to potential litigation or disciplinary action from their respective state board of nursing (BON), which in turn may impact their license and ability to provide patient care.

In this article I discuss high-risk areas in the ED that NPs should be aware of, as well other factors, such as unprofessional conduct (for the NP or colleague), that may lead to complaints to the BON and potential disciplinary action and litigation. Although there may be common reasons for these errors, I also provide NPs with several risk control strategies that they should understand and implement as part of their work protocol to ensure safe practice and avoid litigation or disciplinary issues.

HIGH-RISK PRACTICE AREAS

NPs working in the ED should have the necessary skill, knowledge, and training to provide emergency care to patients of all ages and at various levels of need for medical services consistent with services offered by the hospital. However, certain patient care areas are higher risk than others, and merit additional clinical supervision and possibly supplementary training, clinical experience, and continuing education. NPs should be aware of these areas, which are described in what follows.

Pediatrics

Infants, children, and adolescents have very specific health needs, and in the ED these needs can be exacerbated, especially in medical centers that do not specialize in pediatric emergency medicine. Because pediatric patients can deteriorate quickly, ED health care providers need to be keenly aware of red flags in pediatric assessment to ensure safety and quality. Recognizing this need, the American Academy of Pediatrics, Committee on Pediatric Emergency Medicine, American College of Emergency Physicians, Pediatric Committee, and the Emergency Nurses Association Pediatric Committee published a joint policy statement setting forth guidelines and the resources necessary for EDs to serve pediatric patients.⁴

For NPs, it is worth noting some of the top areas of risk for pediatric emergency care, which include:

- Communication breakdowns during transitions of care and handoffs.⁵ The patient may initially see one NP on arrival and be transferred or assigned to a registered nurse or other NP, or be referred to his or her primary care provider. There may be a verbal, recorded, or written report about the transfer, but it may be ineffective.⁶ Communication problems and ineffective transitions of patient care can lead to inadequate treatment, unnecessary errors, excess pain, and even death for the patient.⁷ In turn, this may result in charges against the NP for failing to follow standards of care, among other charges.
- Barriers to obtaining presenting problems and adequate histories.⁵ Children, especially those

who are very young and are nonverbal, must depend on parents or other caregivers to provide information. In addition, cultural and language differences may impede the ability of the NP when taking a complete history. Also, in rare cases, an adult caregiver may directly produce or lie about illness in a pediatric patient under his or her care (Munchausen syndrome by proxy). Regardless of the cause, an incomplete patient history (or disregard of a patient history, drug use, etc) may lead to inadequate treatment or other serious issues for the patient, and a professional liability lawsuit against the NP or a BON complaint.

- Ensuring safe medication prescribing and administration.⁵ This is vital because, when medication errors occur, pediatric patients have a much higher risk of death than adults.⁸ Medication errors are serious and may lead to charges of gross negligence for the NP. The following brief case study demonstrates the devastating effects of a medication error: a 15-month-old patient presented to an ED with a high fever and urinary tract infection. The NP ordered azithromycin 800 mg intravenously, which was corrected by the pharmacy to 80 mg. However, the registered nurse filled 2 syringes each with a 500-mg dose and administered 800 mg based on the NP's written order. The patient became unresponsive and died. Lack of communication was an intervening factor.

Additional areas in pediatric emergency care that pose increased liability are diagnostic errors or errors in triage/patient assessment, which may lead to morbidity or mortality for the patient, and charges of negligence and failure to follow standards of care for the NP. For example, pediatric patients with a fever are a common challenge in the ED, and require knowledge about febrile conditions that occur in children across a variety of age groups. Children with fever account for as many as 20% of pediatric ED visits,⁹ and the underlying disorders in these cases range from mild conditions to the most serious of bacterial and viral illnesses.^{10,11} High-impact conditions associated with fever include appendicitis, meningitis, and sepsis.

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