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Liability  
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## Nurse Practitioners

In this *infoLAW*<sup>®</sup>, the Canadian Nurses Protective Society (CNPS) addresses legal issues related to practising as a Nurse Practitioner (NP).<sup>1</sup>

### Potential Liability

CNPS statistics reveal that NPs were involved in 1.6 per cent of the lawsuits and 2.1 per cent of the occurrences reported to CNPS between 1997 and 2001.<sup>2</sup> The ten-year claims history from the American National Practitioner Data Bank indicates that malpractice payments for nurses have been rare (1.7% of all payments) and NPs were responsible for only 4.7 per cent of all nurse payments.<sup>3</sup>

Studies conducted over the last 25 years suggest that the quality of primary care provided by NPs is equal to or, in some cases, better than that of physicians. This is supported in recent studies. A British study focussing on the care provided by NPs and physicians in an emergency department found that the NPs made fewer errors and there were no significant differences in patient satisfaction, the accuracy of examinations, adequacy of treatment, or planned follow-up.<sup>4</sup> An American study, comparing NPs and physicians working as primary care providers in the same environment and with the same authority, concluded that “patient outcomes for nurse practitioner and physician delivery of primary care do not differ.”<sup>5</sup> As well, a British review of 11 clinical trials and 23 observational studies looking at similar issues found that “nurse practitioners seemed to provide a quality of care that is at least as good, and in some ways better, than doctors.”<sup>6</sup>

### Legal Risks

NPs are accountable for their practice and, like all professionals, face liability risks related to their health care role. The American experience is an indicator of some of the risk areas:

#### a) Diagnosis

American NP malpractice claim payouts involve diagnosis issues in 41.7 per cent of the cases.<sup>7</sup> One such case involved payouts on behalf of a gynecologist, a family practice physician, and an NP because of their failure to diagnose and treat Paget's disease, a form of breast cancer.<sup>8</sup> A second case involved a finding of negligence against emergency room physicians and an NP for failure to diagnose cardiac disease in a 44 year old woman who presented with symptoms of pain/spasms in her neck, chest and left arm.<sup>9</sup>

#### b) Treatment

In the U.S., 24.5 per cent of NP malpractice claim payouts are related to negligent treatment.<sup>10</sup> For example, an NP prescribed morphine for the treatment of a 49 year old patient's chronic back pain. When the medication was not effective, the NP increased the dosage. Two days later the patient died of acute morphine intoxication.<sup>11</sup>

#### c) Consultation

A general practitioner's and an NP's failure to consult and refer to a dermatologist were issues in a recent New York case. The NP had minimal training in dermatological conditions, but proceeded to prescribe antibiotics and a topical cream for a patient suffering from pemphigus vulgaris - which later caused her death.<sup>12</sup>



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## Liability Protection

All NPs should have personal liability protection for malpractice claims. As members of a professional association or college that is a participating member of CNPS, NPs are automatically eligible for personal occurrence-based professional liability protection. Is additional protection necessary? If the NP is an employee, the employer should carry primary insurance coverage for this role. Additional malpractice insurance should not be necessary. NPs should confirm the extent of the coverage in place and that it does cover NPs. If an NP is an independent contractor, however, additional malpractice and business insurance will be necessary. This type of coverage is available through the CNPS Plus program (1-800-267-9364). Nurse Insure (1-800-265-6876) also offers additional coverage and is available to members of the Registered Nurses Association of Ontario (RNAO). As well, professional discipline coverage is available through some unions, the CNPS Plus program and, for RNAO members, through the Legal Assistance Program (1-800-268-7199).

## Summary

NPs should be familiar with their provincial/territorial nursing legislation and professional practice standards. Practice Advisors are available for consultation through the professional associations or colleges. Additional professional support is available from interest groups such as the Nurse Practitioners Association of Ontario ([www.npao.org](http://www.npao.org)) and the Canadian Association of Advanced Practice Nurses ([www.caapn.com](http://www.caapn.com)). Nurse Lawyers at CNPS are also available to discuss liability issues related to nursing liability.

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1. “A Nurse Practitioner/Advanced Practice Nurse is a registered nurse who has acquired the expert knowledge base, complex decision making skills and clinical competencies for expanded practice, the characteristics of which are shaped by the context and/or country in which s/he is credentialed to practice.” International Council of Nurses: Definition and characteristics for nurse practitioner/advanced practice nursing roles [official paper], 2002, June, online: [www.icn.ch/networks\\_ap.htm](http://www.icn.ch/networks_ap.htm).
2. Canadian Nurses Protective Society, 2001 Annual Report, p. 12 & 13, online: [www.cnps.ca](http://www.cnps.ca).
3. Practitioners include: physicians, dentists, nurses, nursing-related practitioners, and other health care practitioners. National Practitioner Data Bank, 2000 Annual Report, U.S. Department of Health and Social Services, p. 25, online: [www.npdb-hipdb.com](http://www.npdb-hipdb.com).
4. Sakr M. *et al.* Care of minor injuries by emergency nurse practitioners or junior doctors: a randomized controlled trial. *Lancet*, 1999; 354:1321.
5. Munding M. *et al.* Primary care outcomes in patients treated by nurse practitioners or physicians: a randomized trial. *JAMA*, 2000; 283(1):59, 68.
6. Horrocks S. *et al.* Systematic review of whether nurse practitioners working in primary care can provide equivalent care to doctors. *BMJ*, 2002; 324:819, 821, online: [www.bmj.com](http://www.bmj.com).
7. Supra note 2.
8. *Jenkins v. Payne*, 251 Va. 122 (Va. Sup. Ct. 1996).
9. *Knuth v. Emergency Care Consultants, P.A.*, [2002] MN-QL 835 No. C3-01-1660 (Minn. C.A. 2002).
10. Supra note 2.
11. *Tartaro et al. v. USA*, acting through The Department of Veterans Affairs, County (TX) District Court, Case No. 2000-cv-00032. Cited with permission of Medical Malpractice Verdicts, Settlements & Experts, July 2001; 17(6):27.
12. New trial ordered by the court of appeal. *Rivera v. County of Suffolk et al.*, 736 N.Y.S. 2d 95 (N.Y. Sup. Ct. App. Div. 2002).

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*N.B. In this document, the feminine pronoun includes the masculine and vice versa.*

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