LIABILITY ISSUES FOR ADVANCED PRACTICE CLINICIANS AND THOSE THAT SUPERVISE THEM

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LEARNING GOALS

To understand Nebraska law governing liability pertaining to the care and treatment provided by advanced practice clinicians

“What you don’t know can hurt you”
OVERVIEW

- Differences between APRNs and PAs
  - Licensing requirements
  - Scope of practice
- Liability issues under NE law
- Examples
- How we can help

Advanced Practice Clinicians:
APRNs and PAs

WHAT’S THE DIFFERENCE?

- PA: work with physicians to diagnose and treat patients
  - Approved PA program and examination
  - Complete continuing medical education
- APRN: general designation for registered nurses who have passed certain post-RN requirements
  - Hold RN license
  - Graduate-level nursing education program in a clinical specialty area
  - Certified in a specialty (NP, CNS, CRNA, CNM)
<table>
<thead>
<tr>
<th>APRN CATEGORIES</th>
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<tbody>
<tr>
<td>• Nurse Practitioner</td>
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<tr>
<td>• Clinical Nurse Specialist</td>
</tr>
<tr>
<td>• Certified Registered Nurse Anesthetist</td>
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<tr>
<td>• Certified Nurse Midwife</td>
</tr>
<tr>
<td>• Similarities: education and licensure</td>
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<tr>
<td>requirements</td>
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<td>• Differences: specialty areas and practice</td>
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Permitted Scope of Practice

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**APRN: NURSE PRACTITIONERS**

- Full practice authority and independence

- Practice without physician supervision after completing experience requirements
  - 2000 hours
  - Transition-to-practice agreement with supervising provider

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APRN: OTHER

• CNS, CRNA, and CNM have a more limited scope of practice than NP that requires physician supervision
  o CNS: full practice but not independent
  o CRNA: subject to hospital narrowing scope and not independent
  o CNM: supervised with written practice agreement

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PHYSICIAN ASSISTANT

• Not independent
• PA must have a supervising physician
  o Supervising physician:
    • Licensed with no restrictions
    • Written agreement with PA
  o Supervision:
    • Must be continuous
    • Physical presence not necessary

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May I See the Doctor?

Statistics - Source: Wilson, Fernando et al. UNMC Ctr. for Health Policy, College of Public Health in Collab. with The Nebraska Area Health Edu. Ctr. Program (AHEC), Feb. 2018
May I Sue the Doctor?
Common Law Concepts: The Basics

MAY I SUE THE DOCTOR?
COMMON LAW LIABILITY ISSUES: PAs

- Vicarious liability
  - Respondeat superior
- Agency law
  - Apparent agency
- Supervising physician liability

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MAY I SUE THE DOCTOR?
STATUTORY LIABILITY ISSUES: PAs

- PAs are agents of their supervising physicians
- Supervising physician requirements
  - Written agreement
    - Defines the scope of practice
    - Supervising physician will retain responsibility
  - Continuous
- Physicians shall be liable

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MAY I SUE THE DOCTOR?
COMMON LAW LIABILITY ISSUES: APRNs

- Vicarious liability
  - Respondeat superior
- Agency law
  - Apparent agency
- Supervising physician liability
- Contrast NP (independent) with CNM (limited)

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MAY I SUE THE DOCTOR?
STATUTORY LIABILITY ISSUES: APRNs

- No agency or liability statutes like PAs
- Common law liability governs
  - Example: independent nurse practitioners vs. transition-to-practice nurse practitioners vs. certified nurse midwives
How does this factor into defending my lawsuit?
Can a physician opine on standard of care?

Pitfalls & Issues
Sample Scenarios

POINTERS
- Policies
- Supervising Agreements
- Other? (ED, locum tenens)

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