

## SON Guidelines for Professional Malpractice Coverage

Faculty members who are registered nurses are responsible for determining whether they have sufficient professional malpractice insurance in their role as a faculty member at the School of Nursing. This is an individual decision based on numerous factors. The guidelines provided here are intended to help clarify malpractice insurance provided by the University to faculty members and help faculty make informed decisions about the purchase of additional malpractice coverage. UNC Risk Management Services (Steve Kenny), the Risk Manager for the North Carolina Public Officials and Employees Liability Commission (Joe Rippard) and University attorneys (Pat Crawford and Paul Meggett) reviewed and endorsed these guidelines to help faculty members make decisions about the need to purchase professional malpractice coverage.

1. Faculty members who have administrative or clinical teaching assignments, regardless of nursing education, licensure, or certification, are not required to purchase additional malpractice insurance for their faculty position if their assignment is strictly clinical teaching and/or administrative.
2. Faculty members who are registered nurses or who are advanced practice registered nurses (nurse practitioners, clinical nurse specialists, certified nurse midwives, certified nurse anesthetists) and who render nursing services will need to have professional malpractice insurance beyond what the University provides. In general, the University does not provide this malpractice coverage for practice outside the normal faculty role; however, most clinical agencies provide this coverage for faculty with practice arrangements. The Associate Dean for Community Partnerships & Practice can help negotiate for malpractice coverage with faculty practice arrangements.
3. Even if faculty members do not regularly practice but periodically provide nursing services to clients, patients, or advise colleagues or neighbors, they are encouraged to seek additional professional malpractice coverage.

Although not required for faculty who only function in their faculty roles, many faculty members will prefer to purchase their own malpractice coverage in the event that they exceed the scope of faculty work and are at risk for liability (e.g. by providing advice to colleagues, friends, neighbors). The following guidelines apply to faculty members who are nurses (in any nursing category) or advanced practice registered nurses and who function strictly in an administrative or clinical teaching capacity:

- Coverage from the North Carolina Defense of Employee Act and the Employee Excess Liability policy applies to faculty members who act within the scope and course of their SON employment, or as a first responder, and who function strictly in an administrative and/or clinical teaching capacity. This coverage extends worldwide, even in a hospital clinic or elsewhere in a hospital, as long as the faculty members are acting within the scope and course of their SON employment and are not employed by, or working for, the hospital proper. The SON does not have reason or an obligation to purchase medical professional liability coverage

for these faculty members who act within the scope and course of their SON administrative or preceptor clinical teaching capacity employment.

- Any claims are situation specific and are subject to the interpretation of the State Attorney.
- Faculty members who practice outside of their scope of SON employment will not be covered by the NC Defense of Employee Act and the Employee Excess Liability Policy.

All faculty members are encouraged to consider the following:

- Professional malpractice insurance carriers will only offer insurance for one's highest level of education, licensure or certification.
- Some carriers offer insurance coverage for part-time malpractice coverage. Faculty members who work full-time with split responsibilities with practice and teaching will need to explore whether the insurance coverage will process claims if part-time malpractice insurance is purchased (rather than full-time). Insurance companies may not process claims if part-time malpractice insurance is purchased yet the faculty member works full-time, regardless of type of workload responsibilities.
- Faculty who practice actively may choose to purchase additional malpractice coverage even when one's employer or practice agency offers coverage. Pros and cons provided by NP Attorney Carolyn Buppert are available from the OCPP for your review. Review employer provided professional malpractice coverage to determine if it sufficient to cover advance practice nursing.
- "Occurrence" coverage is recommended rather than a "claims" policy so that coverage is available at the time of a lawsuit regardless if the policy is still in effect. Consider purchasing a "tail" policy following a claims-made policy.
- Avoid discussing presence or absence of professional malpractice insurance with clients/patients/families.

The Office of Community Partnerships & Practice (OCPP) maintains a list of insurance carriers to share with interested faculty. The American College of Nurse Practitioners has published its recommendations about Nurse Practitioners need for malpractice insurance, and this document is available through OCPP.

Addendum  
Information to Share with NP Faculty Members  
(Additional Information Available at Office of Community Partnerships & Practice)

Two excerpts regarding the need for NPs are provided below. The premise however is that the NPs are practicing. Little or no literature exists specific to providing guidance to NP faculty members who primarily teach.

1) The American College of Nurse Practitioners held a meeting January 2005 on malpractice issues. A summary of the meeting and suggestions provided by Ric Ricciardi, MSN, RN, CPNP, FNP, President of NAPNAP in his May 27, 2005 President's Message is below:

I recently attended a meeting hosted by the ACNP on Malpractice Issues. In attendance were senior leaders of the three companies that provide malpractice coverage to nurse practitioners: CM&F Group, Inc., Marsh, Inc., and Nurses Service Organization (NSO). Each of the representatives from the insurance industry provided similar data regarding nurse practitioner malpractice claims: over the last decade, there were an increasing number of claims, a marked increase in the dollar amount of the awards being paid out, and nurse practitioners were less likely to be released from claims. It's difficult at this time to determine if the increasing number of claims is solely due to the increasing numbers of nurse practitioners in practice, the increasing acuity of patients, or some other cause. Unfortunately, as a community, we do not know how many nurse practitioners are insured by their employer and how many have private malpractice insurance policies. These data are critical when discussing malpractice premium issues with the insurance industry and governmental and nongovernmental agencies.

Some suggestions from the meeting include:

- Malpractice insurance is a requirement in today's practice environment.
- If your employer provides malpractice insurance, ask to see the written policy and review it thoroughly. Review the malpractice insurance policy on an annual basis and each time there is a policy change.
- If your employer is self insured, you should strongly consider purchasing your own malpractice insurance policy.
- When you purchase your own insurance policy, the insurance company will provide an attorney to represent you. This may not be the case if you are insured under your employer's policy or if your employer is self-insured.
- It's best to get "occurrence" rather than "claims made" coverage in the malpractice insurance policy. Under a "claims made" policy, the policy covers claims against you only while the policy is in effect. You will need to purchase a "tail" to assure coverage for claims filed in the future for actions that occurred in the past. Under the "occurrence" policy, you are covered for claims that occurred while the policy was in effect. It does not matter if the

coverage is in effect at the time the claim is made. The benefit of occurrence coverage is that even if you cancel your policy at some future date, you will still have coverage for events that occurred while the policy was in effect. This is particularly important given the statute of limitations in pediatrics.

- Before purchasing insurance, check on the financial strength of the insurance company. The library should have a copy of the Best's Guide to Insurance Companies. If possible, don't accept anything less than an A+ rating. In addition, the stronger the company rating, the more likely you are to get strong legal representation.
- These suggestions were not meant to be all-inclusive. Most importantly, review your malpractice insurance policy on a regular basis.
- Websites of interest:
  - [http://www.cmfgroup.com/about\\_cmfg.html](http://www.cmfgroup.com/about_cmfg.html)
  - <http://www.marsh.com/MarshPortal/PortalMain>
  - <http://www.nso.com/index.php>
  - <http://www.profrisk.com/claimsmade.html>

2) Ruth Catolico Ashley, Esp. provided this answer about liability insurance posted at <http://www.napnap.org/>

**Question:** Do I need individual liability insurance if my employer covers me?

**Answer:** Yes, you absolutely do. Although you may have been discouraged from purchasing malpractice insurance by your risk manager or hospital attorney, it is likely that this individual did not wear both hats of nurse and lawyer.

Some lawyers set forth the argument that getting your own liability insurance would make you a "deep pocket" and more likely to be sued. Unfortunately, if you have been directly involved with any injury to a former patient who is now a plaintiff (the individual suing you for damages), it is highly unlikely that the injured plaintiff will care whether or not you have malpractice insurance. In most cases, the information regarding insurance is not available prior to the filing of a lawsuit anyway, and the plaintiff will name any party who may have contributed to his/her injury.

The main reason why each individual nurse practitioner needs to have individual malpractice coverage is because of the liability that attaches to every nursing act or nursing service provided when you are beyond the "scope of employment." This phrase simply means that you are not on the job as an employee or as an independent contractor, and you have not formed the PNP-patient relationship.

This covers all volunteer situations, emergency situations off the job, and any other time you respond as a nurse. Your employer's malpractice insurance provides a defense only when you are in your capacity as an employee. These are some of the situations where you may be liable beyond the scope of employment.

Imagine that your neighbor has a child that comes down with a high fever, vomiting and diarrhea. As her friend and neighbor, she asks you for help and your opinion. She asks you because you are a nurse, and you respond and perhaps provide services as a nurse.

As soon as you have responded as a nurse, you have voluntarily formed the nurse-patient relationship and you are now legally responsible for the care that you provide. Remember, you did not have the nurse-patient relationship before she asked and you responded.

Perhaps you are out to dinner with friends, and someone at the next table starts gasping and clutching his chest. As he falls to the ground, you quickly respond by checking a pulse and doing a quick physical assessment. It is clear he is having a cardiac arrest right there in the restaurant. You immediately respond as a nurse, clearing his airway and beginning cardio-pulmonary resuscitation. Again, you have voluntarily formed the nurse-patient relationship where none existed and now you are legally responsible for the care that you provide.

This is not to discourage you to stop responding in situations beyond the scope of employment. This is simply information to alert you of the legal responsibility that you incur once you respond as a nurse.

Because of this legal responsibility that attaches to everything you do as a nurse, it is of utmost importance that you purchase your own individual malpractice coverage for those 16, 14, or 12 hours of the day when you are not on the job and you still respond, act and speak as a nurse.