

## Legal Aspects in School Nursing Practice

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## Most Common Issues in Litigation for School Nurses

- Failure to follow the Standard of Care
- Failure to adhere to policy/protocol/procedure
- Failure to document, including lack of documentation, altered documentation, missing or "lost" documentation, incomplete documentation
- Failure to recognize change in student's condition
- Failure to appreciate the change in student's condition

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## Fact

**School nurses are at a higher risk for liability compared to their colleagues**

- professional isolation
- a wide range of responsibilities
- conflicts between education and health law  
FERPA vs HIPAA
- Out of state field trips-must get permission in that state to practice

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## Ways to ensure safe practice and avoid litigation

- Be familiar with our individual Nurse Practice Act (NPA)
- Adhere diligently within our Scope of Practice (SOP)
- Know the Standards of Care (SOC) for our specialty area(s)
- Educate ourselves regarding evidence-based practice
- Stay abreast of changing trends in school nursing through continuing education
- Educate ourselves regarding medical-legal issues
- Make sound, safe, and practical nursing judgments for all our students

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## Nursing Negligence/Malpractice Unintentional Tort

- Any action that falls below an acceptable standard of care that ends in harm to the patient.
- Any action(s) that contribute (s) to harm or injury of the patient.
- Any action(s) that can be considered to provide a reasonably close connection to the harm or injury.
- Typically inadvertent and due to a variety of factors

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## Intentional Torts in Nursing Practice

- A civil wrong resulting from an **intentional** act on the part of the tortfeasor (alleged wrongdoer).
- Examples:
  - Assault-threat
  - Battery-actual
  - False imprisonment
  - Invasion of privacy
  - Slander.
- Consequences include fines and criminal proceedings

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## The 3 P's of Documentation

- **Policy**- school district policies should be followed and documented as such.
- **Prudent care**- A nurse has the duty to provide reasonable and prudent care to a student
- **Protect yourself**- it's a pain but contact the parent on any interaction or presentation of a student that gives you pause. Get your school doctor involved...they are paid to work for the district!

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## Question Authority

- **Failing to question or challenge an administrator could result in liability**
- The School Nurse is an advocate for student health and safety, which means, according to School Health Alert, if a student's health or safety is at risk, school nurses have the right - and the duty - to speak up
- Reach out to your administration. Ask to review and comment on your nursing policies. If there are discrepancies: you either have to have the policy changed or change your practice.

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## Parent Communication

- This is our most important tool and biggest time sucker
- Cell phone/texting makes parent communication a must. Hair on fire theory.
- Use email with read receipt
- Document your separate parent interactions, such as follow up phone calls, etc.

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## Take Time to Think...

Prior to dispo'ing out of your system...

- Did you document your interactions?
- Did you accurately portray your care of the student?
- Did you document any abnormal findings?
- Did you document contact with parent or guardian concerning your findings?

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## Illegal Search and Seizure

*Safford Unified School District v. Redding*, 557 U.S.  
364 (2009)

- It was suspected that 13 year old had an Ibuprofen in her underwear
- Backpack and locker search=negative
- Administrator took student to school nurse
  - underwear and bra
- Mother never told what happened. She sued and it went all the way to the Supreme Court. Mother won.
- Nurse was granted Qualified Immunity.

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## Qualified Immunity

Do we Qualify?

- Shields public officials from damages for civil liability
- Protects a government official from lawsuits alleging that the official violated a plaintiff's rights
- Only allowing suits where officials violated a "clearly established" statutory or constitutional right.
- This immunity is available to state or federal employees who are performing their job.

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## What if you do get sued?

- Review your documentation from the encounter
- Review previous visits
- If not written: your custom and practice means something!
- Remember the BOE attorney is on your side (most of the time) but you are entitled to your own attorney.

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## Case Study-Parts is Parts-Part 1

Hearing v Sliwowski et al 2009

- 6 y.o. % pain in her genitals to school secretary
- Secretary called mother-hx of frequent bladder infections
- Nurse Sliwowski came in two days later to same %
- Had student remove pants and spread labia  
had secretary as standby
- Mother sued Nurse personally for 1.75 million under 4th Amendment (illegal search)
- Went through the courts for 6 years...Verdict?

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## Case Study-Parts is Parts-Part 2

A student presented to the school nurse. Complained of perineal pain (this was done with screaming and crying)

- Nurse called Guardian (grandmother) who asked her to take a look see and gave verbal permission
- Nurse had a stand by and did look at perineum
- Biological mother caught wind and called Super
- Nurse placed on LOA
- BOE hearing
- Note the Hearing v. Sliwowski case -Nurse viewed 6 y.o. without parental consent-

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## Case Study-Child Choking Death

- Child in small class setting, multiply handicapped
- Teacher within arms length of student at lunch
- Nurse in classroom during lunch
- Mother made ham sandwich with hidden chicken nuggets
- Student Choked-two more nurses responded
- They used suction (they had portable suction!)
- Student on life support then family decision to stop efforts.
- District Sued and Nurse in class sued personally

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## Case Study-Spanish Speaking Student Head Injury

- Friday-Student presented with mouth sores
- Thursday-Student presented with the % head pain
- Monday-mother came in stating he was in hospital with bleeding on brain
- Documentation poor
- Outcome-craniotomy
- underlying ITP
- Nurse personally sued for intentional tort; School district sued for 32 Million

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## Remember

- Think of your charting as a snapshot of the student.
- Take the time to assess every student, even the “frequent fliers” Can be truly a focused assessment.
- Document your findings...remember the phrase, “not written, not done”
- Don’t let too much time go by: document that you instructed student to return; re-assess and document on your student’s f/u visit.
- Remember the phrase “to return in one hour if no better”
- Trust your instincts.

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## Questions

Private Liability Insurance or Not?  
Who would represent you?  
What is admissible?

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## References:

- Hootman, J., Schwab, N. C., Gelfman, M.H.B., Gregory, E.K. & Pohlman, K.J. (2005). School nursing practice: Clinical performance issues. In M.H. Gelfman & N.C. Schwab (Eds.) *Legal issues in school health services* (pp.167-229). Lincoln, NE: Authors Choice Press.
- Schwab, N., & Gelfman, M. (2005). *Legal issues in school health services: A resource for school administrators, school attorneys, school nurses.* iUniverse.

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## References:

- <http://web.magnushealth.com/insights/7-must-know-legal-facts-for-school-nurses>
- <https://schoolnursenet.nasn.org/blogs/nasn-profile/2017/03/13/school-sponsored-trips-role-of-the-school-nurse>
- [https://www.education.nh.gov/instruction/school\\_health/faq\\_records.htm#records](https://www.education.nh.gov/instruction/school_health/faq_records.htm#records)
- <http://www.opn.ca6.uscourts.gov/opinions.pdf/13aoo77p-06.pdf>