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## Family Nurse Practitioner Scope of Practice Issues When Treating Patients With Mental Health Issues

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### ABSTRACT

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In primary care settings, family nurse practitioners (FNPs) are often the first to see patients with mental illnesses. FNPs can diagnose and treat patients with uncomplicated mental illness, such as depression and anxiety, within their scope of practice (SOP). However, FNPs should be aware of areas that fall outside of their SOP, such as diagnosing and treating patients with complicated or severe mental illnesses or exceeding prescribing authority for psychiatric medications. Any breach of their SOP could lead to civil liability and disciplinary actions. FNPs should adopt best practices to ensure patient safety and protect their licenses.

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### Introduction

Scope of practice (SOP) is a cornerstone for professional regulation used by nurse practitioner (NP) licensing boards across the country, usually a state's Board of Nursing (BON). This concept defines the procedures, actions, and processes that NPs can perform as part of their professional licensure.<sup>1</sup> Regulations are handled by each state and can vary from state to state.<sup>2</sup>

By definition, the SOP for family NPs (FNPs) is broad, with FNPs caring for a wide spectrum of patients (from pediatrics to geriatrics) and domains (private practices to hospital clinics and other outpatient settings, both urban and rural).<sup>2</sup> In some rural or remote settings, FNPs may be the only health care provider available to patients.<sup>2</sup>

The SOP for FNPs could include providing mental health care services, and FNPs in primary care settings often are the first to see patients with common mental illnesses, such as depression and anxiety.<sup>3</sup> In fact, FNPs are increasingly providing mental health care as demand from patients has increased. According to the National Institute of Mental Health, nearly 1 in 5 adults in the United States suffers from a mental illness (44.7 million in 2016).<sup>4</sup> Among adolescents, an estimated 49.5% of young people aged 13 to 18 have had a mental disorder.<sup>4</sup>

Among mental illnesses, major depression is common, with approximately 16.2 million adults (6.7% of all US adults) having had at least 1 major depressive episode.<sup>5</sup> Anxiety disorders also greatly affect US adults, with more than 31% having had an anxiety disorder sometime in their lives.<sup>6</sup> Furthermore, this increase in patient demand has been exacerbated in recent years by a growing shortage of mental health care practitioners, including psychiatrists, whose numbers declined by 10% from 2003 to 2013.<sup>7</sup>

Although a legal or regulatory concept, the importance of SOP cannot be overstated. FNPs need to be familiar with their state's SOP to ensure patient safety as well as to protect their professional license, because acting outside of their recognized SOP in any patient care setting could expose them to civil liability and disciplinary actions brought by their BON, with the potential of having their professional licenses revoked.<sup>8</sup> This is especially true when treating patients with mental illness or working with behavioral health issues, where an FNP may be trained and have the skills to diagnosis and initially treat mental illness but may be restricted by his or her SOP on the breadth and depth of care permitted.<sup>3</sup>

With that in mind, this article will outline several important SOP issues for FNPs working with patients with mental health issues and provide recommendations to help them ensure best practices and patient safety. The recommendations also will help them avoid blurring the boundaries delineated by their SOPs and protect their professional licenses.

### FNP SOP Issues With Behavioral Health Care

Patients with mental illnesses, such as depression, anxiety, and attention-deficit/hyperactivity disorder, are often initially treated

by primary care providers such as FNPs.<sup>3</sup> FNPs are well positioned to provide mental health care, going beyond mental health screening to initial intervention, which dovetails with the FNP philosophy of patient-centered care.<sup>9</sup> However, FNP education covers only some aspects of mental health care and does not sufficiently prepare FNPs to treat patients with complex mental illnesses compared with psychiatric mental health NPs or other behavioral health specialists. FNPs should be aware of potential scenarios where the care they provide could breach their SOP. Below are some key examples of possible violations:

- Failure to monitor patient outcomes and refer patients to a psychiatric mental health NP, psychologist, or psychiatrist if symptoms have not improved, the patient is getting worse (acute decompensation) or is noncompliant, or the FNP disregards family members who have raised concerns about a patient.<sup>3</sup>
- Failure to refer patients with *common* mental illness, such as depression, when specifically required by a state's SOP.<sup>3</sup>
- Failure to refer patients with *complicated or severe* (complex) mental illnesses, such as personality disorders, or if a specialist is needed based on the level of care or emergent conditions that prompt a referral/psychiatric consultation.<sup>3</sup>
- Exceeding prescribing authority for psychopharmacotherapy (in states where FNPs are authorized to prescribe/furnish such medications) or psychotherapy.<sup>3</sup>
- Failure to focus only on direct medical problems, such as blood pressure or diabetes, when treating patients with substance misuse diagnoses.

Any of these scenarios could lead to an allegation of a breach in SOP and a complaint to a state BON, which in turn would trigger an investigation and potential disciplinary action. A BON investigation has serious implications for any FNP, who would require legal assistance (and the associated costs of hiring an attorney) and could face the possibility of losing his or her professional license.<sup>10</sup>

A look at closed/paid claims in connection with legal assistance provided to protect NPs licenses provides FNPs with valuable information about high-risk areas, including breaches in SOP. According to a 2017 closed claims data analysis compiled by Nurses Service Organization (available on its website), SOP claims have increased significantly, with total claims more than doubling from 9% in 2012 to 22.1% in 2017, with an average payment in 2017 of \$6,687.<sup>10</sup> Within SOP allegations, allegations of “practice violates SOP and standards of care” were the most frequent (60.3%), with defense costs averaging \$7,030.<sup>10</sup>

### Considerations When Integrating Mental Health Care Into Practice

FNPs should consider the following recommendations to help them determine whether they are practicing within their SOP when treating patients with mental illness and to protect themselves from civil liability and BON disciplinary/license issues. FNPs should:

- Thoroughly know their state's SOP for FNPs and conduct an annual review of their SOP to stay current of any changes.<sup>10</sup> FNPs also should consider using tools such as a decision tree to determine whether they are practicing within the legal SOP. One example is the Scope of Practice Decision Making Guidelines for All Licensed Nurses from the State of Oregon.<sup>11</sup> Another example is the Kentucky Board of Nursing Scope of Practice Decision-Making Model for advanced practice registered nurses.<sup>12</sup> FNPs also are encouraged to study national organization standards of

practice and stay abreast of FNP literature and research, especially about integrating behavioral health care into primary care.

- Be rigorous and very specific in their assessment of patients with mental health complaints. They also should document all details such as the patient's assessment, treatment plan, and compliance with follow-up appointments.
- Use psychiatric assessment tools/questions, such as the Beck Depression Inventory-II,<sup>13</sup> a widely used indicator of the severity of depression in adults, and mental health guide handouts available from the National Association of Pediatric Nurse Practitioners that are tailored by age and provide information on prevention, screening, intervention, and management of common mental health disorders.<sup>14</sup>
- Be aware of their prescribing authority in connection with psychopharmacotherapy.<sup>3</sup>
- Collaborate/refer with psychiatric health care professionals to expand care (ie, psychotherapy or psychopharmacologic therapy) when needed. Appropriate psychiatric consultations are a key part of helping FNPs stay within their SOP when treating patients with mental health issues. It is important to note that after the initial point of contact and diagnosis of the patient, followed by referral or psychiatric consultation, patient management and overseeing coordinated patient care may remain under the control of the FNP as the primary care provider.
- Be aware that charges of patient abandonment may be more likely to occur when treating a patient with depression. If a patient fails to make follow-up appointments, calls in for medication refills, etc, and the FNP feels that the patient would benefit from obtaining care from another primary care provider, the FNP must provide adequate notice so that the patient can locate another health care provider to avoid claims of patient abandonment. Alternately, if the patient is getting worse, the FNP should initiate a referral for a psychiatric consultation.
- Follow the FNP SOP when treating patients with substance misuse disorder, such as treating for blood pressure, diabetes, etc, but be aware that treatment of the addiction would be beyond the FNP SOP. Federal statute prevents NPs from prescribing some drugs for the treatment of opioid addiction and also limits the role of FNPs in serving as addiction treatment providers.<sup>15</sup>
- Use caution when prescribing alternative care. FNPs must ensure that they have a thorough understanding about the alternative care they are prescribing and monitor the patient when this care is added.
- Take additional coursework. Core mental health is covered in FNP curricula and certification requirements, but additional coursework is invaluable. FNPs can benefit greatly from in-depth workshops or continuing education courses on depression and anxiety so that they can determine when these diagnoses may be progressing or becoming so severe that patient care is no longer within their SOP and requires a referral (ie, common depression to severe depression or anxiety to panic attacks).
- FNPs should not treat any kind of *severe or complex* mental illness, such as schizophrenia, bipolar disorder, or personality disorder. These patients should be referred to a psychiatric consultation (physician or psychiatric mental health NP).
- Complete the studies and obtain the appropriate certification as a psychiatric mental health NP if they want their professional focus to be in mental health care.

### BON and Disciplinary Actions in Connection With SOP Violations With Patients with Mental Health Issues

FNPs who perform patient care outside of their SOP put their licenses at risk. Any task performed outside of the FNP's SOP,

including mental health care, is grounds for disciplinary action by his or her state BON. Complaints could come from patients and family members of patients if they are unhappy with the way the patient is being treated, and the BON could charge that the FNP was practicing psychiatry.

The result of these actions could range from probation and suspension (with or without fines) to license revocation. In addition, SOP breaches could lead to more serious civil issues, such as claims of malpractice, because these types of actions usually occur after a patient undergoes some sort of severity (ie, suicide, admission to a psychiatric hospital).

The following case scenarios describe litigation or disciplinary actions, or both, taken by BON for charges of practicing beyond the SOP in connection with patients with mental health issues, the defense presented, and final outcome/sanctions ordered by the BON. Importantly, risk control recommendations also are included and could be used by FNP's seeking to improve and enhance their everyday practice strategies and risk management procedures when treating patients with mental health issues.

#### *CASE SCENARIO: Pediatric Patient With Psychiatric Comorbidities*

An FNP began seeing a female patient as an infant. The patient was easily upset, would cry, and was difficult to comfort. The patient continued to be upset and was emotionally withdrawn as she got older. She could be a very loving child but would scream when her mother left the room. In her early teens, the patient became increasingly sullen and angry. She would indulge in impulsive behaviors, such as having sex with a young man she barely knew. The patient had only a few friends and found it difficult to make new friends. At times, the patient seemed terrified without her mother. The patient started cutting behavior and experiencing panic attacks. The FNP treated the patient with antidepressants and quetiapine fumarate at age 16. The patient committed suicide at age 18 by overdosing herself on quetiapine fumarate.

A malpractice lawsuit was filed, alleging that the FNP had been practicing outside her SOP and should have referred the patient to a psychiatrist or psychiatric mental health NP early in the patient's life. An expert witness supported the plaintiff's claim. The lawsuit was settled on behalf of the plaintiff and was then reported to the BON. After an investigation, the BON placed the FNP on probation for practicing outside of her SOP. Risk control recommendations:

- Have parents keep a diary of a child's behavior when monitoring for mental illness.
- Continue to assess the child with psychological testing.
- Counsel parents if it is determined that the child's behavior is not normal.
- Refer the patient to a psychiatrist or psychologist for evaluation and treatment.
- Check with parents to ensure that referral recommendation has been followed.

#### *CASE SCENARIO: Adult Patient With Pain and Depression*

An adult mother of 3 children visited an FNP complaining that she had no energy and was having trouble getting out of bed in the morning. The patient also stated that she suffered from migraines and joint pain. After a physical examination of the patient, followed by much discussion, the FNP diagnosed the patient with depression and prescribed alprazolam for depression and hydrocodone bitartrate and acetaminophen (Norco; Allergan, Dublin, Ireland) for pain. The patient continued to call in for refills but did not show up for

appointments. When she did return, she stated that her pain had increased and she needed more hydrocodone bitartrate and acetaminophen. The FNP increased the dosage of hydrocodone bitartrate and acetaminophen. This pattern went on for several years. The patient eventually attempted suicide, and her husband reported the FNP to the BON, complaining that the FNP's inappropriate treatment of his wife caused her suicide attempt. After an investigation, the BON found that the FNP attempted pain and psychiatric management of a patient that was outside of her SOP. The BON also found that she failed to explore other treatment modalities and continued to prescribe a drug with an addictive nature. The BON placed the FNP on probation for practicing outside of her SOP. The BON determined that the FNP should have referred the patient to a psychiatrist, psychologist, or pain management specialist when the FNP realized that treatment was not adequately helping the patient. Risk control recommendations:

- Use a validated and reliable assessment tool that could help improve the diagnosis and management/treatment assessment of depression in the primary care setting. One example is the Patient Health Questionnaire-9, which is available for adults and adolescents and also is available in Spanish.<sup>16</sup>
- Use methods other than medication for pain control.
- Refer the patient to a mental health specialist or pain management specialist, or both, when treatment modalities are not working.

#### *CASE SCENARIO: Adult Patient in an Addiction Facility*

An adult man was admitted to a treatment facility with a diagnosis of an addiction to heroin. The patient had been in and out of several addiction facilities without success. An FNP was assigned to treat the patient medically for diagnoses of alcoholism and bulimia. The FNP ordered laboratory tests, and the results supported the bulimia diagnosis. A meeting was held at the facility to discuss transferring the patient to a higher level of care. Before the transfer occurred, the patient "collapsed with a seizure" and cardiopulmonary resuscitation was performed, but the patient died. The emergency department admission record stated that the patient was being treated by a physician (naming the FNP) and was being treated at the addiction facility for an eating disorder. However, there was no documented medical treatment for bulimia while the patient was at the addiction facility under the FNP's care. The facility's license was revoked. The BON found that the FNP was practicing outside her SOP, which constituted an extreme departure from the standard of care and that the patient should have been transferred to an acute care hospital. Further, the BON found that the FNP should never have accepted treatment of the patient. The FNP's license was revoked. Risk control recommendations:

- When caring for patients with a substance misuse disorder, treat only direct medical problems within the FNP SOP, such as high blood pressure, infection, or diabetes; do not treat the addiction.
- Take a thorough history upon initial patient assessment to determine whether there are any signs or symptoms of an eating disorder, such as predisposition for perfectionism or compulsivity or mood intolerance and impulsivity along with addiction behavior.
- Order appropriate laboratory tests and report any abnormalities to a psychiatrist.
- Refer the patient for in-hospital treatment immediately if test results are extremely abnormal.

## Medical Malpractice and Disciplinary Insurance

The importance of buying individual professional liability insurance cannot be overemphasized.<sup>17</sup> This topic has been previously covered in the professional literature and at conferences and remains relevant today; in fact, it is essential. Any FNP providing patient care needs to ensure that he or she carries his or her own professional liability coverage that goes beyond employer-provided coverage. This insurance should provide for malpractice coverage as well as for legal defense of licensing and disciplinary actions. It also is important that this insurance allows the FNP to select his or her own attorney—someone who is familiar with FNPs, SOP issues, and licensing boards. The ability to select his or her own attorney is critical if the action could negatively affect the FNP's professional license and prevent him or her from seeing patients.

## Conclusion

The prevalence of mental illness is increasing in the US, while at the same time there is a decrease in psychiatric providers. The result is that FNPs are going to see a variety of patients with mental health care needs. As such, FNPs need to be familiar with their state's SOP when providing behavioral health services, including prescribing limits and when referrals to specialists are needed. They also should use best practices to help protect their licenses and avoid any disciplinary action by their BON. Finally, if an FNP finds that he or she has a passion for this care area, he or she should consider getting a psychiatric mental health NP certification—an excellent combination for an FNP committed to providing mental health services in a primary care setting.

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