

NURSE PRACTITIONER'S
**BUSINESS
PRACTICE AND
LEGAL GUIDE**

Sixth Edition



CAROLYN BUPPERT

NURSE PRACTITIONER'S BUSINESS PRACTICE AND LEGAL GUIDE

Sixth Edition

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Preface

This text contains the answers to many questions asked of me in my 25 years of practice as an attorney. I specialize in legal issues affecting nurse practitioners. The questions came from nurse practitioners, employers of nurse practitioners, hospital and nursing facility executives, student nurse practitioners and their professors, other attorneys, bureaucrats, and legislators conducting hearings about bills that addressed nurse practitioners.

Nurse practitioners frequently ask questions such as these:

- A physician (or hospital or group) wants to hire me to do [fill in a particular healthcare service]. Can I legally do that?
- An insurance company refuses to pay the bill for a patient's visit with me. What can I do?
- A hospital bought my group's practice. The hospital is not sure what to do with me. How can I help the administrators understand what nurse practitioners can offer?
- What should be covered in my employment contract?

- Can I incorporate in a business with physicians?
- I have been working in a trauma center for 4 years. Now, I hear that my notes need to be cosigned by a physician. Is that true?
- An Internet-based pharmacist refuses to fill a prescription I wrote because I am not a physician. I have the legal authority to prescribe in my state. What can I do?
- I have been working without a contract. Now, the company wants me to be on call 3 nights a week. Do I have to do it?
- I am writing a paper for my “nurse practitioner role” class on legislative issues affecting nurse practitioners. What are these issues?
- How can I get on a health plan’s provider panel?
- A group wants to pay me a base salary plus a percentage of billings over \$250,000. Is this reasonable?
- What does “incident to a physician’s professional services” mean?
- How do I start my own practice?
- I know nothing about how billing is done. Can you tell me how to get reimbursed for my services?

Legislators and bureaucrats frequently ask such questions as these:

- How is a nurse practitioner different from a registered nurse?
- Which states allow nurse practitioners to practice independently?
- How does a nurse practitioner know when to consult a physician?
- Does a physician have to supervise everything a nurse practitioner does?
- In how many states can nurse practitioners write prescriptions?

Employers of nurse practitioners frequently ask such questions as these:

- I want the nurse practitioner to see my hospitalized patients. Can we get reimbursed for that?
- How can we get paid by Medicare for patient visits to the nurse practitioner?
- We want to put nurse practitioners in nursing homes. What can the nurse practitioner do? Admit patients? Perform the yearly visit? Perform illness-related visits? Recertify?
- Who is liable if the nurse practitioner makes a mistake, the nurse practitioner or the physician?

Other attorneys ask such questions as these:

- A nursing home I represent has hired a nurse practitioner to do administrative work and to see

patients. How can we bill for his or her services?

- My clients want to start a network of nurse practitioner practices. What can you tell me about that? Do you know anything about [fill in any state] law on nurse practitioners?

Some of the questioners have become clients, and I have done the necessary legal research to answer their questions and completed the necessary legal documents to carry out their plans. Others will now benefit from the work done for those clients.

Nurse practitioners who read this book will have a solid knowledge base to use, whether it be in developing an employment relationship, undertaking a business venture, giving testimony before a state legislature, composing a letter to an insurance company about an unpaid bill, teaching at a school of nursing, or serving as president of a state or national organization. My hope is that once nurse practitioners have this base of knowledge about the business of health care and the legal foundation on which nurse practitioners function, they can hasten the advancement of their careers.

Chapter 1: What Is a Nurse Practitioner?

Individuals who have never experienced the care of a nurse practitioner (NP)—whether they are physicians, journalists, lawmakers, bureaucrats, lobbyists, or new patients—often request clarification about just who NPs are and what they do.

It is their combination of the skills of both a physician and a nurse that seems to confuse people. Yet it is that combination of skills that makes an NP unique.

Definition of Nurse Practitioner

The term *nurse practitioner* has been given a variety of definitions.

- According to a state NP organization, “Nurse practitioners are registered professional nurses who are prepared, through advanced graduate education and clinical training, to provide a range of health services, including the diagnosis

and management of common as well as complex medical conditions to individuals of all ages.”¹

- According to a national NP organization, “NPs are quickly becoming the health partner of choice for millions of Americans. As clinicians that blend clinical expertise in diagnosing and treating health conditions with an added emphasis on disease prevention and health management, NPs bring a comprehensive perspective to health care.”²
- A board of nursing defines an NP as follows: “A nurse practitioner (NP) is an RN [registered nurse] who has earned a separate license as an NP through additional education and experience in a distinct specialty area of practice. Nurse practitioners may diagnose, treat, and prescribe for a patient’s condition that falls within their specialty areas of practice. This is done in collaboration with a licensed physician qualified in the specialty involved and in accordance with an approved written practice agreement and protocols. Nurse practitioners are autonomous and do not practice under the supervision of the collaborating physician.”³
- According to federal law, “Nurse practitioner means a nurse practitioner who performs such services as such individual is legally authorized to perform (in the state in which the individual

performs such services) in accordance with state laws and who meets such training, education, and experience required as the Secretary has prescribed in regulations” [42 U.S.C.A. § 1395x(aa)(5)(A)].

- In California state law, “nurse practitioner means a registered nurse who possesses additional preparation and skills in physical diagnosis, psych-social assessment, and management of health-illness needs in primary health care and who has been prepared in a program conforming to board standards as specified in Section 1484” [CAL. CODE REGS. tit. 16, § 1480(a)].

For state-by-state definitions of the term *nurse practitioner*, see [Appendix 1-A](#).

An NP, by Any Other Name . . .

Other designations sometimes given to NPs include physician extender, mid-level practitioner, nonphysician practitioner, and advanced practice nurse. For a state-by-state listing of official terms for NPs, see [Appendix 1-B](#).

Physician Extender

The term *physician extender* is used by physicians’ associations and publications aimed at the physician market and usually refers collectively to

NPs, clinical nurse specialists, nurse anesthetists, nurse midwives, and physician assistants.

Mid-Level Practitioner

The term *mid-level practitioner* is used by some physician groups, some states, and the federal government in the Code of Federal Regulation sections dealing with Drug Enforcement Administration (DEA) registration. The DEA defines a mid-level practitioner as follows:

The term mid-level practitioner means an individual practitioner other than a physician, dentist, veterinarian, or podiatrist, who is licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices to dispense controlled dangerous substances in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, healthcare providers such as nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants who are authorized to dispense controlled

substances by the state in which they practice.

Citation: 21 C.F.R. § 1300.01(b).

Some state laws provide a definition of mid-level practitioner. For example, in Minnesota, “Mid-level practitioner’ means a nurse practitioner, nurse midwife, nurse anesthetist, advanced clinical nurse specialist, or physician assistant” [MINN. STAT. § 144.1501(f)].

Nonphysician Practitioner

The term *nonphysician practitioner* is used by the Centers for Medicare & Medicaid Services and Medicare administrative contractors. Here is the definition from one administrator’s website:⁴

For Medicare purposes, the term nonphysician practitioner (NPP) includes:

- Nurse practitioner or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Social Security Act, who is working in collaboration with the physician in accordance with State law

- Certified nurse–midwife, as defined in section 1861(gg) of the Social Security Act, as authorized by State law
- A physician assistant, as defined in section 1861(aa)(5) of the Social Security Act, under the supervision of the physician

Advanced Practice Nurse

Advanced practice nurse is an umbrella term used by some states and some nursing associations to cover, collectively, NPs, clinical nurse specialists, nurse–midwives, and nurse anesthetists. NPs differ from other advanced practice nurses in that they offer a wider range of services to a wider portion of the population. Other advanced practice nurses compare with NPs in the following ways:

- *Nurse anesthetist*: Narrow range of services (preoperative assessment, administration of anesthesia, management of postanesthesia recovery) to a narrow base of patients (people having anesthesia).
- *Clinical nurse specialist*: Medium range of services (consultation, research, education, administration, coordination of care, case management, direct care within the definition of a registered nurse) to a narrow patient base (people under the care of a medical specialist).

- *Certified nurse–midwife*: Narrow range of services (well-women gynecologic care, management of pregnancy and childbirth, antepartum and postpartum care) to a medium-sized base of patients (childbearing women).
- *Nurse practitioner*: Wide range of services (evaluation, diagnosis, treatment, education, risk assessment, health promotion, case management, coordination of care, counseling) to a wide base of patients, depending on area of certification; a family nurse practitioner can have a patient base of any age, gender, or problem.

Services Provided by NPs

NPs may perform any service authorized by a state nurse practice act. Some nurse practice acts are so broad as to allow any service agreed on by an NP and a collaborating physician. Generally, NP services include:

- Obtaining medical histories and performing physical examinations
- Diagnosing and treating health problems
- Ordering and interpreting laboratory tests and X-rays
- Prescribing medications and other treatments
- Providing prenatal care and family planning services
- Providing well-child care and immunizations

- Providing gynecologic examinations and Pap smears
- Providing education about health risks, illness prevention, and health maintenance
- Providing counseling regarding the need for compliance with a diagnostic and/or treatment plan, course of illness, side effects of treatment, and/or prognosis
- Coordinating care and case management

Typically, an NP has the following duties and responsibilities:

- Conducts comprehensive medical and social history of individuals, including those who are healthy and those with acute illnesses and chronic diseases
- Conducts physical examination of individuals, either comprehensive or problem focused
- Orders, performs, and interprets laboratory tests for screening and for diagnosing
- Prescribes medications
- Performs therapeutic or corrective measures, including urgent care, tertiary care, or critical care
- Refers individuals to appropriate specialist nurses, physicians, or other healthcare providers
- Makes independent decisions regarding management and treatment of medical problems