Using Physician Extenders

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You breathe a deep sigh of relief after learning that you were not the treating provider of a patient who came into your urgent care center and had an unexpected bad outcome. The patient was seen by your mid-level provider who works on opposite days from you in your center.

As documented in the medical record, the patient sounds benign: a 28-year-old female who presented with continued sinus symptoms after failing one course of amoxicillin. She was afebrile, had a slight headache, and complained that her vision was a bit "off." No rash was evident and her neurologic exam was written as WNL. Your only criticism was that visual acuity and a fundoscopic exam were not documented. According to her significant other who came to pick up her medical records, she started taking the new prescription the very same day of her visit with the physician extender yet continued to decline. Two days later, she presented to the emergency department with altered mental status and was ultimately diagnosed with cavernous vein thrombosis.

Although you feel badly for the patient and her family, you know you won't be held liable for her bad outcome because you were not actually the one who treated her. Consequently, you are completely shocked when you are named in the medical malpractice suit and cited by your medical board for failure to supervise your mid-level provider.

The number of physician assistants (PAs) and nurse practitioners (NPs) has grown tremendously over the last decade. These physician extenders (PEs) provide an incredibly valuable service treating millions of patients who likely would have had to wait extended periods to be seen by a physician. Most analysts agree that under the Affordable Care Act, at least 30 million more Americans will be eligible for health insurance. Thus, given the additional number of patients, the use of mid-level providers will be even more prevalent and necessary than today.

Currently there are more than 85,000 trained and certified PAs in the United States and more than 155,000 practicing NPs. PAs can prescribe in all 50 states but they can only work under the supervision of a licensed physician. In 18 states plus the District of Columbia, NPs can work independently but they may need a formal collaborating agreement with a medical doctor.

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Before engaging with or employing a mid-level provider, it's important to review your state supervision statutes and to notify your medical malpractice carrier to ensure that you are covered for claims of negligent supervision. Generally speaking, when a mid-level provider is sued, so too will the physician be named for a claim of negligent supervision. Physicians ought to remember the legal truism that "although you can delegate responsibility, you cannot, under the law, delegate liability."

The good news is that PAs and NPs are less likely to get sued than are their physician counterparts. These data come from a 2009 study by the Federation of State medical boards, which looked at claims data from 1991 through 2007. During that period there was, on average, 1 payment for every 2.7 physicians

as compared with 1 for every 32.5 certified PAs and 1 in every 65.8 NP.[1] However, in a review of closed claims by the Physician Insurers Association of America, the average unadjusted to present value indemnity payment was $174,871 for physician-extender suits that also named a physician. This amount was greater than the amount when only a physician was named.

Causes of Action with Physician Extenders

Generally, in order to successfully file a lawsuit, the patient and physician must have established a prior physician-patient relationship. However, many states have expanded the nature of this relationship in order to capture the negligent acts of on-call and attending physicians while supervising medical students, residents, and physician extenders.

Vicarious Liability: Under this cause of action, the physician is responsible for the negligent acts of employees or contractors under his or her control. This is also called *respondeat superior* or let the master answer. The bright line test is whether or not the employer directs and controls the actions and performance of the employee. The Maryland appellate court in 1957 established the following criteria for determining whether a master servant relationship exists:

1. Did the employer select and hire the employee?
2. Does the employer pay the employees' wages?
3. Does the employer have the power to terminate the employee?
4. Does the employer control the employee's conduct?
5. Is the work of the employee part of the regular business of the employer?

Negligent Supervision/Hiring: Liability on the part of the physician can also be imputed under a negligent supervision or negligent hiring cause of action. Even if the physician extender is not found to be negligent, the supervising physician can retain liability for negligent hiring and negligent supervision.

Mitigating Your Risk

Before hiring a physician-extender, the employer should ensure that the candidate has the appropriate level of training and certification necessary to perform the required duties. If an employer fails to exercise reasonable care in the hiring process, a cause of action for negligent hiring may ensue. The following eight areas should be addressed before employing a physician extender:

1. Review and application of the relevant state statutes
2. Delegation of responsibilities and duties as supervising physician
3. Review of the education and training of the physician extender
4. Determination of the appropriate setting in which the physician extender works
5. Confirmation of skills and knowledge during a mandatory proctoring process
6. Understanding of the collaborative nature of physician extender and physician interactions
7. Delineation of scope of practice and methods of communication
8. Signatures of both the physician and the physician extender on documents outlining the nature of their relationship

Many physician extenders are reluctant to call the supervising physician when they have questions or concerns. Therefore, establishing specific and well delineated medical protocols removes this common barrier and can help minimize risk.

Physician extenders should always address themselves using the title PA or NP. Nametags should also clearly delineate the title and role of the medical provider and under no circumstances should patients be led to believe that they have been seen by a physician when they are actually being seen by a physician extender.

Conclusion

It is imperative that physicians and physician extenders check their state statutes regarding supervision and collaboration requirements. Lawsuits involving physician extenders will likely increase as their scope of practice expands and as more and more patients receive primary, urgent and emergent care from highly trained PAs and NPs. ■

Reference

1. Hooker R, Nicholson J, Tuan L. Does the employment of physician assistants and nurse practitioners increase liability? *Journal of Medical Licensure and Discipline.* 2009;9:6-16. http://www.paexperts.com/Nicholson%20-%20Hooker%20Article.pdf Accessed September 14, 2013.

Key Points

- Before hiring, ensure that your practice is knowledgeable about the reporting and supervising requirements.
- Understand the three causes of action: Respondeat Superior, Negligent Supervision, and Negligent Hiring.
- Draft clear guidelines for the appropriate use of physician extenders.
- Check training, prior experience, and work history on all physician extenders.
- Ensure that the supervising physician is meeting state-mandated supervising duties.
- Have clear titles (PA, NP) on name badges and while making introductions. Do not let patients believe that they are being seen by a physician when an extender is the treating provider.