Employing Advanced Practice Providers: Balancing Benefits and Potential Malpractice Risks

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Advanced practice providers (APPs)—mainly nurse practitioners (NPs) and physician assistants (PAs)—can be found in a wide variety of specialty areas and clinical settings, including hospitals, outpatient clinics, and rural community centers. The APP is an important and integral member of the healthcare team, assisting physicians in providing a wide range of healthcare services.

Practices and hospitals that employ APPs can experience many benefits; however, employers of APPs should consider implementing effective risk management measures to help ensure that the benefits of using APPs are not at the expense of increased liability exposure.

The role of APPs has broadened substantially since the first training programs were created in response to a physician shortage approximately 40 years ago. The number of PAs in the United States has increased 36.4% over the last five years1, and the number of NPs has doubled in the past 10 years2. APPs now perform both routine and complicated medical services for hospitals and medical practices across the country.

An APP is often covered under the physician's or hospital's malpractice insurance policy under vicarious liability coverage. APPs can be held directly liable for their own acts or omissions, but, in addition, under the legal theory of vicarious liability, physicians and hospitals can also be held liable for the actions of their employees, including APPs. Therefore, the physician or hospital is often named in malpractice claims involving their APPs.

According to closed claims data compiled by The Doctors Company and the PIAA, most malpractice claims attributed to APPs can be traced to clinical and administrative factors that potentially could have been identified and remedied by the employing physician or hospital, including:

• Operating outside of the APP's scope of practice,
• Inadequate physician supervision of the APP,
• Absence of written protocols,
• Deviation from written protocols, and
• Failure and delay in seeking referral or physician collaboration.

The following is an example of a claim involving an APP:

A 53-year-old female underwent a laparoscopic cholecystectomy, which was performed without incident by the insured general surgeon. The surgeon saw the patient three days post-op, noting that she was doing well and had no complaints other than the expected incisional pain. The patient was next seen at five days post-op by the surgeon's PA. The PA noted an obvious infection at the umbilical surgical wound. He obtained a culture (which was later proved to be Klebsiella) and started the patient on Levaquin, an antibiotic. The patient returned four days later and was reevaluated by the surgeon, who noted that the wound still looked infected, with the presence of drainage. The surgeon felt that the patient had cellulitis, continued the antibiotic, and advised her to return if needed. A week later the patient returned and was seen by the PA. She complained of recent onset of nausea, vomiting, and diarrhea and had a temperature of 103 degrees. Although the PA noted that the wound still appeared infected, because the patient's abdomen was not tender and no masses were felt, he diagnosed the patient as having a “superficial wound infection” and “gastroenteritis.” The PA told the patient to continue the Levaquin and prescribed Phenergan for the nausea and vomiting. Three days later, the patient was admitted through the ER with an acute abdomen. She underwent exploratory surgery and was diagnosed with an intrahepatic abscess. The patient then developed disseminated intravascular coagulopathy, continued to deteriorate, and expired several days later. Suit was filed against the insured, the PA, and the insured's medical practice. The primary issue was the failure to diagnose and treat the intrahepatic abscess. Defense experts could not support the PA's failure to properly assess the patient when she presented with obvious clinical signs of infection. The PA was criticized for failing to consult with the surgeon. The surgeon, who signed off on the PA's medical management of the patient, was held vicariously liable for the acts of the PA and directly negligent for his inadequate supervision of the PA.

To help decrease liability risks, the employing physician or hospital should have a written policy outlining the APP's scope of practice. This policy should be signed by the APP and other staff members annually. In putting together this policy, it is important to know the laws in your state that govern the scope of practice of APPs. For example, supervision of an NP by a licensed physician is not required in certain practice settings in some states, which allows NPs to practice independently. Although supervision may not be required, most NPs practice under the guidance of a licensed physician. PAs, however, are only allowed to practice under a supervising physician.

Other suggestions to decrease liability risks include:

• Ensure that all newly hired APPs undergo orientation with the practice or hospital.
• When scheduling appointments, staff should inform patients when they are being scheduled with an APP. If that patient requests to see his or her physician, the staff should provide the patient with that option.
• Make certain APPs wear identification that indicates their name and their job title.
• Develop treatment guidelines and clinical triggers for physician consultation. Meet with the APPs regularly to discuss their roles and expectations within the practice, and document these meetings.
• Regularly review the charts, including prescription monitoring, of patients seen by the APPs.
• Make sure that all staff members, including APPs, have adequate professional liability coverage. For nonemployed APPs, liability coverage should be equal to what the physician or practice carries.

Because APPs can be full partners with physicians in malpractice litigation, it is...
MEMBER MATTERS

AMCNO Past President Named to First Year Cleveland Board

AMCNO Past President, Dr. Laura David, was selected by the AMCNO Board of Directors to represent the AMCNO on the First Year Cleveland Board. First Year Cleveland is an initiative aimed at reducing infant mortality in Cleveland and Cuyahoga County and the board includes representatives from the City of Cleveland, Cuyahoga County, area health systems and organizations and the philanthropic community. Their purpose is to reduce infant mortality and its disparities in Cleveland and Cuyahoga County.

The overall infant mortality rate—babies who die before their first birthday—in Cuyahoga County is 8.1. In Cleveland it is around 13. Cuyahoga County is one of nine Ohio communities engaged through the Ohio Department of Medicaid to identify innovative projects that connect at-risk women and infants to quality health care and care management.

First Year Cleveland has been awarded more than $2.9 million from the Ohio Department of Medicaid and the plan is to utilize this funding to support the following:

• Centering Pregnancy – a unique program that provides prenatal care and birth-related information and support to pregnant women in a group setting.
• Home Visiting Programs – through partnerships with MomsFirst, the Ohio Infant Mortality Reduction Initiative and other programs, first-time mothers receive valuable knowledge and support in the areas of prenatal care, breastfeeding, safe sleep and family planning.
• Local Fatherhood Initiatives – support and funding to target and teach new fathers how to care for their new babies.

Dr. Ronan Factora is Appointed to the SMBO

Governor John Kasich recently announced several state appointments, including AMCNO Cleveland Clinic Foundation group member Ronan M. Factora, MD, to the State Medical Board of Ohio.

Dr. Factora’s term began August 12 and will end March 18, 2019. He is part of the staff at the Center for Geriatric Medicine at the Cleveland Clinic Medicine Institute, as well as Program Director for the Geriatric Medicine Fellowship and Co-Director of the Aging Brain Clinic. He is Associate Professor of Medicine at the Cleveland Clinic Lerner College of Medicine of Case Western Reserve University. Dr. Factora is also a diplomat of the American Board of Internal Medicine.

After receiving his medical degree from The Ohio State University, College of Medicine and Public Health, he completed his internal medicine residency at Montefiore Hospital, University of Pittsburgh Medical Center, and his geriatrics fellowship at the Cleveland Clinic.

Additional Member News:

Brian Harte, MD, has been selected to serve as the new president of Cleveland Clinic Akron General and the Southern Region. He began his new position on Sept. 26. Dr. Harte has been working with the Cleveland Clinic since 2004, where he has served in numerous leadership roles. For the last three years, he has been serving as president of Cleveland Clinic Hillcrest Hospital. Prior to that, he was the president of Cleveland Clinic South Pointe Hospital.

James Hekman, MD, has been appointed as Medical Director for the new Cleveland Clinic Lakewood Family Health Center, where he will focus on achieving world-class ambulatory and emergency department care. He will also work with the Lakewood community to encourage wellness through educational talks, health fairs, community volunteerism and partnering with local organizations. In 2014, Dr. Hekman was appointed as a Clinical Assistant Professor with the Cleveland Clinic Lerner College of Medicine.

Joan Papp, MD, received an Emergency Medicine Basic Research Skills Grant for her project, “Take-home naloxone rescue kits following heroin overdose in the emergency department to prevent opioid overdose related repeat ED visits, hospitalization and death.”

Michael Steinmetz, MD, has been named Chairman of the Department of Neurosurgery at Cleveland Clinic. In this role, Dr. Steinmetz will lead a team of neurosurgeons devoted to the most advanced surgical treatments for patients with neurological disorders and injuries, according to Cleveland Clinic. He will also oversee the administrative and academic activities of the Department of Neurosurgery and continue to serve in a leadership role in The Center for Spine Health.

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imperative that medical practices and hospitals design purposeful measures to reduce risks. Employers of APPs should work with their APPs to initiate meaningful changes that will potentially protect the healthcare team from liability risks, reduce adverse events, and promote patient safety.

To read more case studies about employing APPs and for detailed risk management checklists, download The Doctors Company’s guide to an APP preventive action and loss prevention plan at http://ow.ly/OxqBm.

References


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The guidelines suggested here are not rules, do not constitute legal advice, and do not ensure a successful outcome. The ultimate decision regarding the appropriateness of any treatment must be made by each healthcare provider in light of all circumstances prevailing in the individual situation and in accordance with the laws of the jurisdiction in which the care is rendered.