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Supervision, Guidelines Key to Managing MLP Risk

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Despite the fact that more midlevel providers (MLPs) are working in today's practices, the number of lawsuits involving them isn't disproportionate at this time. However, given the increasing numbers and demand for MLPs, as well as the variety of systems within which they practice, claims frequency and severity would be expected to increase. The purpose of this article is to explore physicians' liability exposures for the MLP, namely the physicians assistant (PA) and the nurse practitioner (NP) while suggesting strategies for managing those risks.

Hire MLPs with proper credentials

Physicians who hire MLPs must make sure that all activities conform to Federal and State rules, regulations and policies of all facilities in which they will work. Permission should be obtained to conduct necessary background checks. The MLPs credentials should be verified with original sources.

Call the relevant state licensing board or professional association and verify that the applicant graduated from an accredited program, is currently licensed by the state in which he/she will be practicing and holds current certification by the appropriate national certification board. Likewise, the re-credentialing process should be appropriate and timely.

When MLPs are employed correctly, there's less of a chance for things to fall through the cracks, patient satisfaction is increased, and supervising physicians have more time to concentrate on more complicated cases. The entire relationship between the doctor and other health providers should be clearly spelled out with written job descriptions and practice protocols that indicate the type of patients to be seen and the level of treatment to be provided.

> ***Ask the medical board about diagnosing and prescribing rules and the amount of supervision required. The definition of "supervision" varies by state.***

Clearly define the MLPs role, conditions and complaints appropriate for first-level care, and those cases the MLP must refer back to the supervising physician. Contact your state Medical and Nursing Boards to obtain specific regulatory guidance with regard to MLPs.

Although functions may be similar, there are regulatory differences between Physician Assistants (PAs) and Nurse Practitioners (NPs). The scope of each MLPs practice is dictated by state law, and the variance can be significant. In addition, the definition of "supervision" may vary by state. Some states may allow PAs to prescribe controlled substance; others do not. Likewise NP prescription privileges vary by state.

Supervising or collaborative requirements also vary by state, and by whether the MLP is a PA or NP. For example, some states require NPs to have a written collaborative agreement with a physician; some require more communication with the PA and the physician.

Some states mandate that NPs follow detailed clinical protocols, and there may be rules regarding physician accessibility, chart reviews, and conferencing. States also regulate the number of MLPs a physician can supervise. Ask the medical board for specific regulatory guidance prior to hiring an MLP particularly if you plan for them to practice in the hospital setting.

Remember, too, that the supervising physician should have training, be board certified or have hospital admitting privileges in a specialty appropriately related to the MLPs area of practice.

[1] MAG Mutual Insurance Company, Atlanta, Georgia 2007

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Accessing your State Medical/Nursing Boards

State	Website	Medical Board	Nursing Board
Alabama	http://alabama.gov	334-242-4116	334-242-4060
Florida	www.doh.state.fl.us	850-245-4131	850-245-4125
Georgia	http://www.sos.state.ga.us/plb/	404-656-3913	478-207-1640
N. Carolina	www ncgov.com/NCAgency.aspx	919-326-1100	919-782-3211
S. Carolina	www.11r.state.sc.us	803-896-4500	803-896-4550
Tennessee	http://www.state.tn.us/health/	615-532-4384	615-532-5166
Virginia	http://www.dhp.state.va.us/	804-662-9908	804-662-9909

Supervise seriously, or pay the price

The biggest malpractice risks occur when MLPs practice beyond their level of training and wait too long to contact the physician. These providers are to **extend – not replace**, a physician's services. As risk management consultants, we caution physicians against allowing too much MLP autonomy.

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In the past five years, MAG Mutual has seen an increase in the number of claims involving physicians due to faulty performance by a midlevel provider.

In each of these cases, the MLP made significant decisions on his/her own without consulting the physician, resulting in delayed or missed diagnoses of cancer, heart attack and DVT, as well as prescribing errors.

The experiences of others are oftentimes our best sources of information. The following summaries of recent lawsuits are attributable to haphazard supervision by physicians:

Case 1

A 2-year-old boy with a high fever and upper respiratory infection was seen by an MLP. X-rays confirmed the MLPs diagnosis of pneumonia in both lungs. The boy's parents wanted him hospitalized, but instead the MLP prescribed antibiotics and sent the family home. The next morning, the boy went into acute respiratory failure and died before he could be brought to the hospital.

The experts reviewing the case felt he should have been hospitalized right away and started on IV antibiotics. Nurses at the hospital may have spotted the earliest signs of respiratory distress. The MLP never consulted with her physician employer. This case was settled for a large amount.

Case 2

During a routine physical on a 45-year-old man, physicians discovered a heart murmur. An EKG revealed a bicuspid aortic valve and mild to moderate regurgitation. No one warned the patient that, because of the increased risk of infection, he should be given prophylactic antibiotics prior to dental procedures. Shortly after a root canal, the patient developed flu-like symptoms.

He was seen by a MLP, who noted his cardiac and dental history in the chart. The patient's health deteriorated over the next two months and he eventually died.

The physician, whose custom was to review only the patient's chief complaint and the MLPs recommendations, did not carefully examine the chart and overlooked the patient's risk for bacterial endocarditis. This case was settled for a large amount.

Case 3

While a patient's regular physician was on vacation, the MLP saw a longtime patient for upper respiratory infection symptoms that may have been viral or bacterial. The patient insisted on an antibiotic. The MLP was unable to find the chart because the patient had been worked into the schedule at the last minute. She asked the patient about allergies, documented NKA, but didn't get a full medication history. She wrote a prescription for trimethoprimsulfamethoxazole.

The physician's partner signed off on the chart on his way out the door. The patient turned out to be allergic to sulfa drugs and died four days later of pseudomembranous colitis.

The physician, his partner, the corporation, and the MLP were hit with a wrongful-death suit.

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Will hiring a midlevel provider increase your risk of being sued for malpractice? *(continued from page two)*

The physician's culpability is clear. In nearly every malpractice lawsuit involving an MLP, the physician, hospital, health plan, or clinic that employs the MLP will also be named as a defendant. Plaintiffs typically allege that the physician is liable for providing inadequate supervision.

If the MLP is your employee, you are responsible for their acts within the regular scope of their job, according to the legal doctrine of a respondent superior. You could also be held vicariously liable under the "borrowed servant" doctrine for providers who work for you as independent contractors. That might occur if the patient reasonably believes the MLP is acting as your agent or employee.

Direct liability could be imposed upon the physician for delegating the prescribing of controlled substances when the physician either knew or should have known that the MLP wasn't properly trained to prescribe such drugs. Any claim asserted by a patient arising out of the prescribing of a controlled substance will almost certainly be filed against the delegating physician.

Risk Management Strategies for Both Physicians and MLPs

By giving careful attention to each of these strategies, physician/supervisors can control much of the liability exposure related to employment of MLPs.

- Ensure the MLPs you hire have and maintain the proper credentials
- Clearly spell out the MLPs scope of practice; Set limits
- Limit the MLPs' clinical activities to the scope of clinical privileges granted to the supervising physician
- Mentor your MLP to ensure competency
- Conduct regular and periodic reviews of MLP activities and clinical responsibilities
- Don't penalize the MLP for seeking help; Encourage PA's and NP's to consult with their physician supervisors when they feel it appropriate – if there are questions, ASK!
- Make sure that office staff, on-call physicians and patients understand the MLP's role and limits
- All MLPs should wear name badge identification and ensure that patients are not misled into believing they are physicians
- Provide patients with a mechanism to access the physician, if necessary
- Supervise MLPs as required by state law
- Do not allow MLPs to perform clinical activities under any physician not authorized as a supervising/collaborative physician
- Review/update job descriptions, policy statements, practice protocols, collaborative and employment agreements on at least an annual basis
- The MLP and supervising/collaborating physician should develop and sign guidelines concerning prescriptive practices. At a minimum, the guidelines should:
  - Identify the supervising/collaborating physician
  - Identify the types of medications to be prescribed and any limitations
  - Define provisions for managing emergencies
  - Specify the frequency of reviewing prescriptions written for controlled substances.

If you plan to employ an MLP, contact MAG Mutual's Underwriting Department to ensure you have the appropriate malpractice coverage and limits.

MLP Performance Appraisal

Physicians should periodically review MLP's clinical competence, interpersonal skills and practice style to ensure that patients are being handled the way you prefer. A well-constructed evaluation form can help focus the performance review.

A normal review would result in most items being rated "satisfactory," with a few "excellent" and one or more "needs improvement." Items you find unacceptable require follow up and may lead to termination. Make the review a collaborative one with automatic buy-in from your midlevel colleague.

For a sample MLP Performance Appraisal form, an excellent source is *Medical Practice Forms: Every Form You Need to Succeed* by Keith c. Borglum and Diane M. Cate.

A Private Practice "Quality Improvement" Success Story

By: Reid Pearlman, Risk Management Consultant

A four-doctor pediatrics practice wanted to improve flu vaccination rates, especially for its asthma patients. Initially, they considered adding a chart stamp to prompt better follow-up by the lax parents.

However, after performing a random chart audit of asthma patients, they learned that the records often lacked the key elements necessary for effective disease management, namely an action plan, a school plan, confirmed flu vaccination and documented, solid patient education. Peak flow measures were also inconsistently taken and charted.

The practice's first reaction to these discoveries was hesitation. The physicians feared that productivity would suffer because they would have to bear the full burden of longer patient encounters and more detailed charting. The nursing staff resisted change because they feared being frustrated and overwhelmed by a new, untested process.

Despite these early concerns, the patient management process was refined by updating the encounter forms and having the MAs take peak flow measures. The patient education process was also improved by updating education materials and reinforcing the importance of routine follow-up.

Ultimately, the number of patient ER visits dropped significantly due to the more effective patient management that sprang from the initiative. More than that, however, the doctors and staff took ownership of the practice's processes. The practice finally took the program to the next level by receiving a grant to teach its chronic disease management method to two other groups of specialists in the area, family medicine and internal medicine physicians.

To read an unabridged version of this article and for more tips and tools to help you establish a QI process in your practice, visit our newest website link at: www.magmutual.com/risk/RMQuality_PatSaf.html.

Included on our website is ABIM's video, "Putting Quality into Practice: Physicians in Their Own Voices."

Get It... Before It Get's You

What is the 'it' we're referring to? Anything or anyone putting your practice in jeopardy. In order to properly manage risk in today's busy medical practice, you have to anticipate what those risks are.

Risk Management is preparing for the unexpected and/or preventing losses from happening. Your MAG Mutual Risk Management Consultants understand the liability perils of today's medical practice; how and why claims occur across medical specialties.

Invite us to assist you in evaluating and managing your professional liability risk. All of our Risk Management services and resources are at your fingertips. For more information about MAG Mutual's "value-added" services and resources, call us at 800-282-4882 or visit us online: www.MAGMutual.com.

MAG Mutual does not presume to establish any standard of care or establish rules for the practice of medicine. The particular patient-care strategies or range of patient-care strategies mentioned in this newsletter should be tempered by the physician's judgment. This publication is produced to inform you of issues relating to medical professional liability insurance and other matters of importance to physicians. Material given in this newsletter does not constitute legal advice or opinion. If you have questions in any of the areas discussed in this publication, you should seek a qualified legal opinion. ©2007 MAG Mutual Insurance Company.

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