

The Scope of Practice and Medical Professional Liability



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Healthcare delivery in the United States has undergone numerous changes over the past 10 to 15 years, and its metamorphosis continues. These changes have created new medical professional liability (MPL) risks for physicians and other healthcare providers. Although scope of practice is not a new concept, it is an increasingly important and evolving issue regarding MPL risk.

The Patient Protection and Affordable Care Act (PPACA) became the law in March 2010. One of its major goals was to improve healthcare access, and in order to reduce the rising cost of healthcare, incentives to shift healthcare delivery from the inpatient hospital setting to the outpatient and office setting came into play. This change ushered in new demands on physicians and the health system in general. Additional system strains became inevitable due to the increasing number of people obtaining health insurance coupled with an existing physician shortage.

The American Association of Medical Colleges (AAMC) estimates the United States will face a physician shortage of approximately 122,000 physicians by 2035. This deficiency is partly due to an aging population, physicians leaving the practice of medicine, and higher rates of chronic diseases. The existing and anticipated physician shortage has propelled advanced practice providers (APPs) – formerly referred to as mid-level providers, physician extenders, or non-physician clinicians – into an increasingly important role to fill the physician gaps in patient care. Incorporating APPs into all fields, especially primary care, has helped to alleviate the pressures associated with physician shortages.

Physician assistants and nurse practitioners predominately encompass this group. Although they carry the collective reference of APP, their approach to healthcare delivery, as well as the degree of liability for physicians utilizing their expertise, varies. With respect to the scope of practice, these changes in the provision of healthcare create another layer of risk for physicians.

Recent data suggests there are more than 270,000 nurse practitioners and over 131,000 physician assistants currently practicing. Their scopes of practice are different from that of physicians. In addition, physicians should be aware there must be well-defined responsibilities for their employees, such as medical assistants, reception staff, telephone intake, etc. Although this is not a new MPL issue, the scope of practice liability is evolving.

Scope of practice is broadly defined as healthcare services that a physician or other healthcare practitioner is authorized to perform. Responsibilities are based on education, training, experience, and demonstrated clinical competency. Scope of practice is also defined by professional state licensing boards, registration, and/or certification and describes procedures, actions, and processes practitioners are permitted to undertake in terms of their professional licenses.

The APP's scope of practice will also differ depending on their state of licensure. Nurse practitioners may have full, reduced, or restricted practice privileges. States allowing full practice privileges do not require physician supervision, whereas the restricted privilege model requires a greater deal of physician governance. The law usually requires a supervisory agreement when the physician is required to monitor the nurse practitioner. Physician assistants, conversely, tend to require closer management by their supervising physician. The state board of licensure outlines the degree of supervision necessary for each of these professionals. Physician assistants are required to have some degree of supervision from a physician in all 50 states, and in supervisory states, a practice agreement is required. Some states require a designated physician to review all the physician assistant's charts, while other states require only limited review.

Each state defines what the APP is permitted to do with regard to patient care. The APP's scope can include performing histories, physical exams, ordering and performing diagnostic and therapeutic procedures, developing and implementing treatment plans, formulating a working diagnosis, counseling patients, assisting with surgery, and making referrals to specialists. These professionals are authorized to prescribe medicines in all 50

states. If the APP goes beyond the allowed scope of practice, the supervising physician can be held legally responsible, and it is the physician/employer's responsibility to monitor the APP as state law requires. Be clear that in supervisory states, physicians may be liable for their APP's medical malpractice even though they personally did not provide the service that is determined to be beyond the APP's scope.

To avoid risk, physicians should ensure that *all* employees at *all* levels have appropriate training, supervision, and expertise, and it should be clear what level of responsibility pertains to each employee's job description, including APPs. Checking the legal requirements for your state's supervision and scope of care is paramount to preventing a professional liability issue. Physicians need to check the scope of practice laws within their individual states and when moving to practice in a different state. Do not let unqualified staff, i.e. medical assistants, receptionists, techs, etc., handle patient issues. All job descriptions should be in writing and documented. Ultimately, responsibility for patient care and outcome falls on you, so do not shirk your supervisory responsibilities. Regularly monitor those who are interfacing with your patients – hire, delegate, and supervise carefully to ensure best practices are performed in your office. You must have a low tolerance level if you discover unqualified staff have handled patient problems without your knowledge.

The use of APPs will continue to increase as the physician shortage escalates. The careful use of APPs will allow physicians to concentrate on seeing the acutely ill patients, and the combination will allow the collective healthcare arena to care effectively for more patients needing medical assistance. However, because the APP's scope of practice varies from state to state, the physicians and employers need to be aware of any limitations placed on their individual scopes of practice to avoid medical liability.

See state-by-state APP governing regulations [here](#).

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