

September/October 2000

Working with

PHYSICIAN ASSISTANTS & ADVANCED PRACTICE NURSES

by Lauren Raspberry, JD, from an article written in July 1996 and revised by Barbara Rose, Managing Editor



Editor's note: TMLT policyholders are increasing the use of mid-level practitioners to assist in the delivery of health care services. Non-physician practitioners are now utilized across a broad spectrum of medical specialties. This article addresses key issues physicians should be informed about when working with these allied health care professionals.

The Physician Assistant (PA) and Advanced Practice Nurse (APN), also referred to as a mid-level practitioner, a physician extender, and a non-physician practitioner, are increasingly providing health care services in a variety of settings. A PA is a person who is a graduate of a physician assistant or surgeon assistant program accredited by the American Medical Association, and who has passed the PA national certifying examination. In Texas, the practice of PAs is regulated pursuant to the Texas

Medical Practice Act, and is based on physician supervision. An APN is a registered nurse who has completed an advanced educational program of study and who has received authorization from the Texas Board of Nurse Examiners (BNE) to practice in an advanced nursing specialty and role recognized by the BNE. APNs may include, but are not limited to, nurse anesthetists, nurse midwives, nurse practitioners, and clinical nurse specialists.

What kinds of services may a PA perform? The Texas State Board of Medical Examiners (BME) defines the PA's scope of practice to include the provision of "medical services that are delegated by the supervising physician . . . in any place authorized by a supervising physician." BME regulations specifically list the medical services a PA may provide which include, but are not limited to, obtaining a patient's history, performing a physical examination, ordering and performing diagnostic and therapeutic procedures, forming a working diagnosis and treatment plan, monitoring effectiveness of treatment, assisting at surgery, patient counseling and education, and making appropriate referrals. In certain practice settings, a PA may obtain and distribute pharmaceutical samples, and sign prescription drug orders. A PA's scope of practice, however, is limited to delegated medical services within his/her education, training and experience.

What services are permitted for an APN? A similar list of specific services which may be provided by an APN has not been developed. BNE regulations simply provide that the scope of practice of an APN includes the provision of "a broad range of personal health services, the scope of which shall be based upon educational preparation, continued experience and the accepted scope of

professional practice of the particular specialty area."

What is the general rule on delegation to non-physicians? The Texas Medical Practice Act provides that "a person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons acting under the physician's supervision any medical act which a reasonable and prudent physician would find is within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed by the person to whom the medical act is delegated and the act is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine." Neither the Medical Practice Act nor the BME rules authorize the exercise of independent medical judgment by PAs or APNs, and the supervising physician remains responsible to his/her patients for acts performed under the physician's delegated authority.

What are the supervision requirements for PAs? Texas law determines that a PA may provide "medical services that are delegated by the supervising physician." A PA must have continuous supervision by a licensed physician who has registered with the BME as the PA's supervising physician. A physician is limited to supervising the equivalent of three full-time PAs. The BME regulations provide that "continuous supervision" does not require the constant physical presence of the supervising physician at the place where the PA is performing services at the time the services are performed. However, a means of telecommunication must always be available. The PA and supervising physician must also develop mechanisms

physician assistants & advanced practice nurses (continued)

which provide medical authority in certain instances, such as standing delegation orders, standing medical orders, protocols, or practice guidelines.

What about supervision of APNs? The APN functions independently as to the performance of nursing acts but requires medical authority for the performance of medical acts. Texas law provides little or no guidance as to the distinction between nursing and medical acts. The law is also nonspecific with regard to what level of supervision is required for medical acts, other than to state that medical authority may be provided through protocols, policies, practice guidelines or other orders. Protocols, policies and practice guidelines, when used, should be jointly developed and signed by the APN and "appropriate physician(s) and must be reviewed at least annually."

Can writing prescription orders be delegated to a PA or APN? Texas law allows a physician to delegate the carrying out or signing of prescription drug orders to PAs and APNs in certain situations. A physician may only delegate the signing of a prescription to a PA or APN who has been designated with the BME by the delegating physician. For delegation at the physician's primary practice site, the physician must provide continuous supervision which conforms to what a reasonable, prudent physician would find consistent with sound medical judgment and based on the education and experience of the PA or APN. A physician's ability to delegate prescriptive authority at the physician's primary

practice site is limited to three PAs or APNs or their full-time equivalents. In addition to delegation at the physician's primary practice site, the regulations allow a physician to delegate prescriptive authority to PAs and APNs at a site serving medically under-served populations, or at a licensed hospital or long-term care facility when the physician's practice is facility based. BME regulations provide limits on the number of practitioners an individual physician may supervise and set forth specific requirements regarding supervision at these alternate sites.

Does employment of non-physician practitioners increase physician liability? Vicarious liability is liability for the negligence of another person solely by virtue of one party's relationship to the negligent actor. Generally, an employer is vicariously liable for actual damages caused by the negligence of an employee acting within the course and scope of his/her employment. This means a physician could be vicariously liable for mistakes and errors in professional judgment made by an employed PA or APN in the course of rendering treatment to a patient. Liability could also be imposed for the physician's own negligence for failure to supervise the mid-level practitioner or for negligence in hiring the PA or APN. Liability for negligent supervision may be imposed even if you are not the employer of the PA or APN. The Medical Practice Act was amended in 1995, partially in response to concerns of physicians utilizing mid-level practitioners, and specifically addressed a physician's

liability with regard to prescriptive authority. The Act, as amended, provides that a physician is not liable for the acts of a PA or APN solely on the basis of delegating prescriptive authority unless the physician has reason to believe that the practitioner lacked the competency to perform the acts.

What are some of the risk management techniques a physician can utilize to protect himself/herself and the non-physician practitioner? Before hiring a physician extender, carefully consider how the practitioner will be utilized within your practice and determine whether this is consistent with the permissible scope of practice under existing law. Thoroughly investigate the background and credentials of any applicant to determine their qualifications for the position and competency to perform the expected duties. Develop written protocols or practice guidelines, with input from the practitioner, and devise a schedule for annual review. The protocols should address the steps to be taken when a situation arises that the PA or APN is not qualified to handle. In addition, obtain professional liability insurance coverage for the practitioner that applies to all locations where he/she may provide services. Make sure PAs and APNs are properly identified to patients and that patients understand they may always request to see the responsible physician.

For more information, please visit the following web sites:

- www.bne.state.tx.us/r221.htm
- www.tsbme.state.tx.us/rules/193.htm

Update on TMLT's continuing medical education policy



by Lesley Lopez, Education Coordinator

As a review for our policyholders, the following is an excerpt from our *Risk Management Policy and Procedure Manual* outlining TMLT's policy on educational courses and discounts. Please review the following and keep these three main points in mind.

- To qualify for the 3 percent discount, an ACCME approved course must be at least three hours in length.
- Beginning January 1, 2001, physicians will be required to take new or revised courses each year to qualify for a discount.

- Discounts are applied at renewal to the upcoming policy period.

Risk management education discount

The risk management education discount is a 3 percent reduction of premium not to exceed \$1,000, and is awarded for CME courses in management of risk that are at least three hours in length. The discount is awarded **per course**, not per hour. A physician may take two CME courses per year and qualify for a maximum 6 percent discount, not to exceed \$2,000.

Effective January 1, 2001, a physician cannot receive credit for the same

Risk management hot topics

The Risk Management Department at TMLT has received a significant number of calls recently from our insured physicians regarding two issues of concern. One issue involves the desire to terminate the physician/patient relationship. The other issue arises when physicians receive phone calls from attorneys representing a patient in a claim against another defendant. By Barbara Rose, Managing Editor

Termination of the physician/patient relationship

While both physician and patient have the right to terminate the relationship, the playing field is not level, as is often the case. Physicians need to follow a process of proper documentation and adequate notice to avoid potential civil liability with a claim of patient abandonment. The medical-legal literature does not clearly define what constitutes proper documentation and suitable notification. Where appropriate, the physician should verbally advise the patient of his/her decision and document that advice in the record. In every case, he/she should send a regular mail and certified letter, return receipt requested, with the notice. Place a copy in the patient's record. The time limit for finding another physician will depend on several factors, e.g., physician specialty, size of community, and availability of other practitioners. The patient should be given a reasonable amount of time to find a new physician. The current physician should

remain available for acute and emergency care until that time. Enclose an authorization for release of the medical record and advise the patient to designate his/her new physician as soon as determined, sign the form, and send it to your office promptly. Indicate in the termination letter that the record will be copied and forwarded to the physician as soon as possible.

When deciding whether or not to terminate a physician-patient relationship, consideration should be given to the patient's medical status and needs. As examples, pregnant patients, patients in a post-op recovery period and patients undergoing a continuous course of treatment, might need assistance in making sure that continuity of care is not disrupted. Generally, once established, the physician-patient relationship continues as long as medical treatment is required, unless the physician or patient terminates it.

Contacts from plaintiff's attorney

When physicians receive any calls from attorneys representing a patient or another party or potential party to litigation with a claim against another physician, caution is the key. There is no such encounter as "a few quick questions," "a need to clarify your relationship with the patient," or "verification of your notes in the record." TMLT advises that our policyholders not engage in these one-on-one exchanges with attorneys without first contacting a representative of the claim department.

Beware of security or complacency in thinking it harmless to answer a few questions because the claim is not against you. Physicians have on many occasions talked with an attorney under these circumstances and subsequently been added to the suit. There are times when physicians have been recorded without their knowledge.

Notify the claim department if you receive requests of this nature. Let our staff research the situation, and follow their guidelines.

course more than once, unless the course has been revised or updated. New or revised courses must be taken each year to qualify for the CME discount.

Discounts are applied to the upcoming policy period. If more than two qualifying risk management courses are taken per year, they can be applied for discount to the following policy period *only* again to the maximum 6 percent.

Outside activities

TMLT does offer the risk management discount for activities other than those sponsored by TMLT or jointly sponsored by TMLT and TMA. Specialty specific risk

management courses are recommended. Criteria qualifying outside programs for the risk management discount are as follows:

- the organization offering the activity is approved by the Accreditation Council for Continuing Medical Education (ACCME) to sponsor continuing medical education for physicians
- the activity has been designated as a CME activity
- the activity is at least three hours in length
- the activity contains substantial risk management content

- the physician submits the course materials, objectives, length, and outline to the TMLT risk management education coordinator for review and approval.

Please contact TMLT's Risk Management department at 800-580-8658, ext. 5908 if you have further questions regarding our educational policy.



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Inside INSURANCE

Insurance for non-physician practitioners

by Marshall Wyatt, Senior Underwriter

In medicine today, there are more practitioners than ever before. The influences of managed care and economic pressures are modifying the way health care is delivered such that physician extenders have a growing role in the delivery of care, and this trend is expected to continue.

Trial attorneys have recognized this development, and when it is expedient to do so, have begun to circumvent the physician. When pursuing compensation for their clients, attorneys now actively examine the continuity of care from beginning to end and target every party that was involved in rendering care. Mid-level practitioners who were previously ignored when legal action arose now rightfully fear that they, along with the physicians who provided care to the patient, are more likely to be involved in litigation. Since

mid-level practitioners are not covered by TMLT under the doctor's policy, securing and/or requiring insurance for mid-level professionals is beneficial for several reasons:

1. Protection of the practitioner's personal assets is desirable. Many do not have the financial resources to personally bear the cost of judgments/litigation. Legal costs for defense, even for claims without merit, can be significant; often far exceeding the annual premium of a policy.

2. Coverage of ancillaries by the same organization that insures the physician facilitates a comprehensive, common defense in the event of a claim. This can also be important in the defense of the physician.

3. As doctors' office practices expand into non-traditional activities, mid-level practitioners will be called upon more often, and this generates more potential for claims to occur.

TMLT's sister company, Texas Medical Insurance Company (TMIC), can provide coverage for ancillary medical professionals at a reasonable cost. In addition, TMLT's Risk Management Department can assist physicians with identification of exposure issues found in a physician's practice and can recommend action plans to address and ameliorate many areas of risk.

If you are interested in details regarding professional liability insurance for non-physician practitioners, contact TMLT at (800) 580-8658.