Pennsylvania Bar Institute
A Day on Health Law
October 23, 2018

# Successful Integration and Use of Advanced Practice Professionals

Robin Locke Nagele

Stephanie Carol Sher

www.postschell.com

## Overview

- Expanding Role of Advanced Practice Professionals (APPs)
- Challenges to the Traditional Practice Model
- Hypotheticals
- Takeaways
- Checklists

www.postschell.com

## Growth of APP Practice in the U.S. – Nurse Practitioners

- There are more than 234,000 NPs licensed in the U.S.
- Overall employment of NPPs is projected to grow 31 percent from 2016 to 2026, according to the Bureau of Labor Statistics.

Distribution, Top Practice Setting and Clinical Focus Area by Area of NP Certification

| Area of Certification | Percent | Top Practice Setting | Top Clinical Foci |
|---|---|---|---|
| Acute Care | 6.6 | Hospital Inpatient Clinic (28.8%) | Surgical (17.1%) |
| Adult+ | 16.2 | Hospital Outpatient Clinic (16.6%) | Primary Care (37.9%) |
| Adult-Gerontology Acute Care | 2.1 | Hospital Inpatient Clinic (38.4%) | Surgical (14.8%) |
| Adult-Gerontology Primary Care+ | 4.5 | Hospital Outpatient Clinic (21.4%) | Primary Care (48.0%) |
| Family+ | 62.4 | Private Group Practice (20.9%) | Primary Care (50.0%) |
| Gerontology+ | 2.3 | Long-Term Care Facility (21.3%) | Primary Care (49.5%) |
| Pediatric - Primary Care+ | 4.8 | Hospital Outpatient Clinic (22.4%) | Primary Care (59.3%) |
| Psychiatric/Mental Health - Adult | 1.8 | Psych/Mental Health Facility (20.0%) | Psychiatric (97.6%) |
| Psychiatric/Mental Health - Family | 2.4 | Psych/Mental Health Facility (31.6%) | Psychiatric (100.0%) |
| Women's Health+ | 3.5 | Private Group Practice (17.4%) | OB/GYN (74.7%) |

AANP, "NP Fact Sheet," https://www.aanp.org/all-about-nps/np-fact-sheet (last visited Jan. 22, 2018); U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, https://www.bls.gov/ooh/healthcare/nurse-anesthetists-nurse-midwives-and-nurse-practitioners.htm (last visited Jan. 22, 2018).

www.postschell.com

## Growth of APP Practice in the U.S. – Physician Assistants

**Table 9: Number of PAs by Principal Clinical Practice Setting**

| Practice Setting | Number | Percent |
|---|---|---|
| Office-based private practice | 38,377 | 42.2% |
| Hospital | 35,400 | 38.9% |
| Federal government facility/hospital/unit | 5,302 | 5.8% |
| Community health center | 3,073 | 3.4% |
| Rural health clinic | 2,038 | 2.2% |
| Urgent Care* | 1,553 | 1.7% |
| Public or community health clinic (non-federally qualified) | 1,245 | 1.4% |
| Occupational health setting | 953 | 1.0% |
| School-based or college-based health center or school clinic | 853 | 0.9% |
| Extended care facility/nursing home | 659 | 0.7% |
| Behavioral/mental health facility | 449 | 0.5% |
| Ambulatory surgical center | 351 | 0.4% |
| Rehabilitation facility | 293 | 0.3% |
| Free clinic | 239 | 0.3% |
| Home health care agency | 118 | 0.1% |
| Hospice | 10 | <0.1% |
| TOTAL | 90,913 | 100.0% |

- There are over 115,500 certified PAs in the U.S.
- U.S. Bureau of Labor Statistics anticipates a growth of 37% from 2016 to 2026 (the total percent change for all occupations during the same time period is 7%).

National Commission on Certification of Physician Assistants, Inc., "2016 Statistical Profile of Certified Physician Assistants: An Annual Report of the NCCPA," (April 2017), https://prodcmsstoragesa.blob.core.windows.net/uploads/files/2016StatisticalProfileofCertifiedPhysicianAssistants.pdf ; U.S. Department of Labor, Bureau of Labor Statistics, https://www.bls.gov/ooh/healthcare/physician-assistants.htm (last visited Jan. 22, 2018).

## Expanding Role of APP Practice – Triple Aim

1. Quality:
   - Outcomes studies show primary care services by APPs are equivalent to that of physicians.
2. Access:
   - APPs are filling gaps in services, e.g., underserved areas and populations.
3. Cost:
   - APPs create efficiencies to address increased patient volume and work flow

## Expanding Role of APP Practice – Value-Based Purchasing

- Role of APPs in improving quality metrics
- Evolution of team-based care
- Integrated, patient-centric model
- Expanding capabilities to reach more patients with outpatient and preventive care, reducing hospitalization and ED use

## Expanding Role of APP Practice – Changing Regulatory Landscape

- State licensure laws expanding scope of practice of many categories of APPs, e.g.,:
  - Nurse Practitioner (NP), Certified Nurse Midwife (CNM), Certified Registered Nurse Anesthetists (CRNA), Clinical Nurse Specialists (CNS), Clinical Pharmacy Specialist (CPS), Physician Assistant (PA).
- Varying degrees of independence/dependence
  - Requirements of collaboration, supervision, practice protocols, Board approval, Board filing requirements, etc.

www.postschell.com

## Challenges to the Traditional Practice Model

- Traditional Model:
  - Physician-centric, clear lines of authority
- Emerging APP Models:
  - Physician-directed, team-based care with APPs having the primary patient relationship.
  - Patient-centered care, with APPs having the primary patient relationship, and physicians providing "specialty care" on an as-needed basis.

www.postschell.com

## Challenges to the Traditional Practice Model - Issues that Arise

- Who is responsible for the patient?
  - In the outpatient setting?
  - In the inpatient setting?
- What does "collaboration/delegation/supervision" mean?
  - What degree of authority/ responsibility does the collaborating/ delegating/supervising physician have for patient care?
  - How is it exercised?
- What is an APP's status on the medical staff and what rights does he/she have?
- How does the model change when the APP has prescriptive authority?
- How are APP services billed?

www.postschell.com

## Hypo. No. 1 – Dr. Lee/PA Mayer

Dr. Lee has a successful primary care practice. He maintains four offices, staffed primarily by PAs. He spends one day per week in each office, and when he is out of the office he is readily available to his staff by phone and email. He contacts you for legal advice after receiving a demand letter from a local malpractice attorney, representing Patient RS who was hospitalized and sustained permanent injuries following a severe allergic reaction to Penicillin. Patient RS is not Dr. Lee's patient, but pharmacy records indicate that Patient RS's prescription for Penicillin was called in to the pharmacy by PA Mayer.

- ***What is Dr. Lee's potential exposure and what additional facts do you need to fully evaluate it?***

## Hypo. No. 1 – Dr. Lee/PA Mayer (cont.)

When interviewed, PA Mayer explains that Patient RS is a close friend. He called from home with a nasal infection after the last blizzard and asked for a favor, since he could not make it into Dr. Lee's office to be seen. PA Mayer said she questioned Patient RS over the phone about his symptoms and allergies, and he denied all allergies. PA Mayer says she has never done anything like that before, she was just trying to help out her friend. Dr. Lee tells you that PA Mayer is one of his most reliable PAs and that he has complete confidence in the quality of care that she provides.

- ***What legal advice do you give to Dr. Lee regarding PA Mayer?***

## Hypo. No. 1 – Dr. Lee/PA Mayer (cont.)

Dr. Lee tells you that when he set up his practice 4 years ago, he made sure that he filed with the state collaboration/ supervision agreements for all of his APPs, including PA Mayer, and that he put comprehensive policies and procedures into place at each of his offices. He would like your advice regarding what he needs to do to going forward to "tighten up" his policies, procedures and practices, and remain legally compliant.

- ***What legal advice do you give Dr. Lee regarding his Practice?***

## Hypo. No. 1 – Dr. Lee/PA Mayer (cont.)

Dr. Lee then tells you that he has been billing PA Mayer's services (and those of his other PAs) under Dr. Lee's own billing number, and asks you if that presents any legal issues.

- ***What legal advice do you give Dr. Lee regarding his billing for PA Mayer?***

## Hypo. No. 2 – RHS Bylaws

Regional Health System (RHS) operates hospitals in Pennsylvania (PRH) and Maryland (MRH). Each hospital has its own governing body and medical staff but RHS would like to create Medical Staff Bylaws that are consistent across hospitals to the maximum possible extent. RHS is now working through various issues pertaining to APPs, and comes to you as legal counsel for advice on the following questions:

- ***Should the Hospitals create an "APP" Category of the Medical Staff?***
  a) *Should APPs be permitted to participate in committees and other governance functions?*

## Hypo. No. 2 – RHS Bylaws (cont.)

- ***Should the Hospitals permit APPs to obtain clinical privileges?***
  a) *Should APP privileges be defined on a departmental basis or on a hospital-wide basis?*
  b) *Who conducts OPPE and FPPE ?*

- ***Should an APP Committee be established?***
  a) *Who serves on it and what are its functions?*
  b) *Who does an APP Committee report to?*
  c) *What is its relationship to other Medical Staff committees (e.g., credentials) and/or departments (e.g., department of surgery)?*

## Hypo. No. 3 – NP Sims

NP Peter Sims maintains a primary care practice with no collaborating physician. He has privileges at Regional Hospital (RH) and has a written agreement with Dr. Carl Emerson by which Dr. Emerson is designated as attending physician for her patients in the hospital. Sims' patient, Zeke Hart, presents to the MRH ER with complaints of chest pain and identifies Sims as his primary care provider.

- ***Who does the ED Physician contact?***

The patient is admitted to the internal medicine service to rule out pneumonia versus MI.

- ***Who does the H&P?***

www.postschell.com

## Hypo. No. 3 – NP Sims (cont.)

NP Sims arrives at the patient's bedside just as Dr. Emerson is ordering a cardiac cath. Sims questions this as being too aggressive, and recommends that they start with a chest x-ray.

- ***Who is responsible for the treatment plan?***

A loud argument ensues within hearing of staff and several patients. Dr. Emerson calls NP Sims a "moron" and pokes him in the chest. A family member, seeing this, complains to staff, resulting in an incident report naming both providers as having engaged in disruptive conduct. NP Sims, in turn files a complaint against Dr. Emerson for disruptive conduct.

- ***Who investigates the two sets of complaints and according to what protocols?***

www.postschell.com

## Hypo. No. 3 – NP Sims (cont.)

Investigation shows that this is the first such incident involving Dr. Emerson, who has an unblemished record after 10 years on staff. NP Sims has had privileges for 3 years, during which there have been 4 staff complaints against him for rude, offensive and intimidating conduct towards staff (one in a public setting); he has had prior education, warnings, and most recently, was required to complete anger management counseling.

- ***Do these facts impact how the investigations are conducted?***
- ***Do they affect the outcome for either Dr. Emerson or NP Sims?***
- ***What disciplinary actions may be appropriate for each?***
- ***Should legal counsel be concerned if the MEC recommends harsher discipline for NP Sims than for Dr. Emerson?***

www.postschell.com

## Hypo. No. 4 – PA Beck

Patient Joan Fried consults surgeon Eric Mason for elective breast reconstruction surgery following a bilateral mastectomy. At Visit 1, Dr. Mason comprehensively discusses the risks, benefits and alternatives to the surgery, including Options A & B surgical approaches. At Visit 2, Fried is seen by PA Ron Beck. They discuss some specific concerns about Options A & B that Fried was hesitant to discuss with Dr. Mason, and then Fried signs a surgical consent for Option A.

- ***Is the surgical consent for Option A valid?***

## Hypo No. 4 – PA Beck (cont.)

One week later Patient Fried arrives at the Hospital for surgery. The OR nurse discovers that the surgical consent is not on the chart. Dr. Mason is still doing another surgery when Fried is put under anesthesia. Hospital Policy dictates that consent must be obtained by the provider credentialed to perform the procedure. The OR Nurse calls you, as the attorney-on-call, for advice.

- ***What advice do you give?***

## Hypo. No. 4 – PA Beck (cont.)

Following surgery, Patient Fried develops a severe post-operative infection, leading to many months of hospitalization and rehab.

- ***Who is at risk for a claim alleging lack informed consent?***

During Patient Fried's lengthy hospitalization for the post-surgical infection, Dr. Mason orders a PICC line to be inserted for medication administration. PA Beck is credentialed to perform the PICC Line insertion. Prior to doing the procedure, he obtains Patient Fried's consent. A concerned nurse calls you to make sure the consent is valid.

- ***What advice do you give?***

## Takeaways

- Integrating APPs into existing structure (or creating new models) requires:
  - Knowledge of scope of practice of APPs
  - Understanding of physician collaboration, delegation and supervision requirements
  - Clear lines of patient care responsibility
  - Defined metrics for evaluating APP care
  - Definition as to where APPs fit in the medical staff/practice organizational structure.

## APP Checklist– Hospital

- Medical Staff Bylaws/R&R/P&P define:
  - Categories of APPs that practice at the hospital
  - Status of each category of APP
    - Medical staff member with clinical privileges *or*
    - Non-member that has certain practice privileges
  - Prerogatives and responsibilities for each APP
  - Credentialing/Privileging
    - Credentials committee versus special committee
    - Delineation of clinical privileges for each APP category (including prescriptive authority and requirements)
    - Hospital documentation requirements for licensure-board mandated agreements and filings

## APP Checklist– Hospital (cont.)

- Role & responsibility of supervising/collaborating physician
  - Admitting patients, conducting H&Ps, co-signing records & orders, overseeing care
- Peer Review
  - Who is responsible for primary surveillance of competence and professionalism: Department Chairs or special committee
  - Role of collaborating/delegating/supervising physician(s) in peer review oversight and discipline
  - Specific metrics used for OPPE and FPPE
  - Specific disciplinary, corrective action and fair hearing procedures if different from those for medical staff
- APP committee
  - Composition, function, procedures and reporting for that committee

## APP Checklist – Outpatient

- P&Ps define for each APP category:
  - Specific scope of practice and prescriptive authority
  - Requirements and procedures for filing supervising/collaborating agreement, and for periodic review/updating
  - Specific supervision and collaboration requirements for each APP category employed, including:
    - Designation of primary and secondary physicians, as required
    - Co-signature requirements on orders (including medication)
    - Co-signature requirements on medical records
    - In-person meeting requirements for supervision, collaboration
    - Methods of 24/7 contact (telephone, text, email, etc.)
    - Audit procedures and frequency
    - Maximum number of APPs per physician
  - Quality oversight and disciplinary procedures
  - Licensure board reporting requirements and procedures

www.postschell.com

## Questions

www.postschell.com