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Malpractice Coverage for Physician Assistants

When should a physician assistant carry their own malpractice insurance? You are listening to ReachMD, the Channel for Medical Professionals. Welcome to the Clinician's Roundtable. I am Dr. Lisa D'Andrea, your host and with me today is Dr. Michele Roth-Kauffman, physician Assistant and Attorney. She is the Department Chairperson for the Physician Assistant Program at Gannon University in Erie, Pennsylvania and the author of the physician Assistant Business Practice and Legal Guide. Today we will be discussing when physician assistant should carry their own malpractice insurance.

DR. LISA D'ANDREA:

Hi Michele, welcome to ReachMD.

DR. MICHELE ROTH-KAUFFMAN:

Hi Lisa.

DR. LISA D'ANDREA:

Michele, I am a PA. Why should I buy malpractice insurance if I am already covered by my employer?

DR. MICHELE ROTH-KAUFFMAN:

I always recommend that PAs carry their own malpractice insurance because then they themselves are protected. They will have an attorney assigned to them personally and that attorney will be looking out for their best interest.

DR. LISA D'ANDREA:

Can a PA have just an individual plan or with the practice still have to carry a policy on them as well?

DR. MICHELE ROTH-KAUFFMAN:

No. The PA carry their own policy and have the practice reimburse them for the cost and that's actually how I recommend PAs carry

their own coverage. That way, again the PA has an attorney who will be assigned to them from their malpractice career. If they are under a rider or under a corporate policy, they will have one attorney assigned to the case and that attorney whether it's a group or an individual practice, that attorney is looking out you know possibly a little bit more so for the supervising physician rather than the PA because its ultimately the supervising physician who is paying that attorney's fees.

DR. LISA D'ANDREA:

Are there any reasons why a PA would want to have double coverage from the employer as well as their own policy?

DR. MICHELE ROTH-KAUFFMAN:

Again, I always recommend that the PA carry their own policy and that again because they will have their attorney representing them it's a negotiation point with the practice. The policy may or may not cost more to carry an individual policy as opposed to being a rider on the policy, and actually I would tell PA if the policy is a little bit more expensive then try to negotiate that into your contract that they buy the policy for you, otherwise, if they just refuse to do that, personally I would be willing to pay the difference to have my own policy and have that own security.

DR. LISA D'ANDREA:

I have heard that if the PA has independent coverage that will increase the likelihood that the PA sued and therefore should always go under the medical group's policy. Is that true?

DR. MICHELE ROTH-KAUFFMAN:

No. Not necessarily. The most important indicator of whether or not a patient is going to sue a provider goes back to the relationship with that provider. So if a person has a strong relationship with their patient, they are less likely to be sued and PAs overall have not had a whole lot of malpractice action brought against them and a lot of that is because the PA spends a lot time with their patients and they develop that for poor with their patients. I don't think the patient is not going to make a decision to sue a practitioner based upon whether or not that person has their own liability insurance. The attorney basically is going to look into what is available out there because for an attorney it's very much a business decision whether or not they take a case from the patient. Its extremely expensive to go forward with an malpractice action. You are probably talking 30,000-40,000 at minimum to go forward with a malpractice action so an attorney has got to weigh that as to whether or not they are going to take this patient's case. So regardless of whether the PA has their own policy or if is under a corporate policy, if there is a good case and there is a policy, they are going to take case, and as a PA I wouldn't want to not have coverage in the event that there is a good case and I become involved in that case and that's just too risky, you are just opening yourself wide open to your personal asset.

DR. LISA D'ANDREA:

Is there any time that the PA's assets would be at risk, and who can they prevent that?

DR. MICHELE ROTH-KAUFFMAN:

You know, honestly assets were always at risk. Until recently there haven't been very, very high awards brought against PAs, the median awards for payment, for diagnosis related around 150,000 dollars for PAs and the treatment related payments are about 50,000, and that makes up almost 80% of all cases brought against PAs. There have been a couple of cases just recently where there has been about 3 million dollars awarded against PAs and their supervisors, those cases are still in the appeal process. So the awards are going up and whenever the award ends up being more than your malpractice coverage, your assets are always at risk. There has not been cases out there either against MDs or against midlevel practitioners where they have sought to obtain personal assets from these people as a result of malpractice actions, but there is always that fear out there that as these claims continue and that the awards keep becoming higher and higher that could result, but at this time, it really has not been seen.

DR. LISA D'ANDREA:

Well how can I protect my assets, if I am married, should everything go in my husband's name?

DR. MICHELE ROTH-KAUFFMAN:

You know actually your assets are protected if they are in both your names, but anything that would be in your name alone, you know, say your retirement plan, that those assets takes a still get out, and other than being able to have your joint assets, that's a protection, but there are certain things that you won't be able to hold jointly and you certainly can't, your future earnings, they could attack to your future earnings, there is really no way for you to protect those things.

If you are just joining us, you are listening to the Clinician's Roundtable on ReachMD, the Channel for Medical Professionals. I am Dr. Lisa D'Andrea and I am speaking with Dr. Michele Roth-Kauffman from Gannon University, Physician Assistant, Attorney, and Author of the Physician Assistant Business Practice and Legal Guide. We are discussing when physician assistant should carry their own malpractice insurance.

DR. LISA D'ANDREA:

Michele are you aware of any malpractice cases where the physician assistant was held liable, but the supervising physician was not?

DR. MICHELE ROTH-KAUFFMAN:

I am not aware of any case out there. A scenario that I could see where a PA could be held liable without the supervising physician being held liable is this the patient PAacts outside of their scope of practice because PA are limited to their scope of practice, and if the supervising physician has limited the PA's scope of practice and the PA then steps outside the area I could see the PA being held liable without the physician being held liable.

DR. LISA D'ANDREA:

How about the reverse, is there ever a time where the supervising physician held liable and the PA is not?

DR. MICHELE ROTH-KAUFFMAN:

I guess I need to qualify that question. A PA would not be held liable for the actions of the supervising physician. If a PA is involved in

the case, say the PA has seen the patient and the physician has also seen the patient there could very well be a instance that the PA is not held liable because they have checked with the supervising physician, the physician has okayed the plan, so the physician supervise that PA and really made the decision to go forward with the treatment plan. So there I think there are instances where are a PA could be in a situation that they would not be held liable and the MD or DO could be held liable. Much less so in the opposite case where a PA is being held liable and that's because of the relationship. We are dependent practitioners; we are no independent practitioners and we have to have work with the supervising physician so the supervising physician is basically responsible for the PA's action.

DR. LISA D'ANDREA:

Lets talk about coverage limit? What you recommend for a PA who obtains an independent policy and what type of policy, a occurrence policy or claims made do you suggest?

DR. MICHELE ROTH-KAUFFMAN:

Its always best if you can get in a occurrence policy. Its becoming more and more difficult to obtain a current policies. The occurrence policy will cover you for any occurrence within that time frame so if you are covered from 2006 to 2008, so any person that you have seen during that time who brings an action you would be covered under that policy even if its brought in 2012. On a claim made policy, you are only covered for that time. So between 2006 and 2008, you are only covered for an action that is brought during that time. So if you leave your practice in 2009 and you saw a patient in 2006, you don't have that same policy, you are not covered unless you purchase a tail policy.

DR. LISA D'ANDREA:

So if I have my own individual or occurrence policy, I can take that from practice to practice and it will follow me and protect me?

DR. MICHELE ROTH-KAUFFMAN:

You can also take if you have your own individual claims made policy, you can also take those policies, that's another advantage of having your own policy, but if you have to change to policies, then if you had in the occurrence policy and you get a new occurrence policy, you do not have to buy tail. If you have an occurrence policy, you get a new claims made policy, you don't have to buy tail. But if you had a claims made policy and you are leaving that employer and you have to get a new claims made policy then you are going to need tail coverage for that time. Physician assistant should carry at least 1 million per occurrence, 3 million aggregate or have the same coverage that their supervising physician have.

DR. LISA D'ANDREA:

Well most hospitals and large facilities are claims made not occurrence policies. If a claim is made after the PA has left the practice who is responsible, the supervising physician or the PA?

DR. MICHELE ROTH-KAUFFMAN:

If the PA is being sued, the PA will be held responsible. You will need to have your own tail policy at that time. Now if you are working for a large corporation, they may have continued that policy. So if they have continued that policy, and there are still mid levels under that policy you may still be covered under their policy as a PA. However, you have to go back on a yearly basis to that hospital or to that physician employer and be sure that they still have the policy and that you are still covered. You would need to get proof in writing that that policy still exist and that you are still covered.

DR. LISA D'ANDREA:

Would it have to be a policy that has your name attached to it or just that they have PAs and NPs working for them?

DR. MICHELE ROTH-KAUFFMAN:

Right, it doesn't necessarily have to have your name, but you need to be sure that it would still be the same policy and that you are still covered under that policy, and it does get difficult because, you know, quite often hospitals and physicians do change their policies just because of the cost, so things continue to change, and if you are no longer at that hospital or if you are no longer at that practice it may not be of benefit to them, they are not going to worry so much about your coverage. It really falls back to you, as a PA to take that responsibility and make sure that you are covered and that might be something that would be good for you to discuss in your contract, you know, you would like this physician when you leave to then pay for your tail coverage.

DR. LISA D'ANDREA:

And PAs have lots of options for malpractice. Can you direct them to a place where they can get good information?

DR. MICHELE ROTH-KAUFFMAN:

The AAPA is probably one of the best places to go for information on insurance. If you remember the AAPA, they have AAPA sponsored individual policies and they are able to offer them in a group rate because of the number of members that there is for AAPA and they can also answer your insurance questions as well. If you have noticed that in the AAPA news they always have an insurance area that they answer questions that people send in. So really the AAPA is a great source for PAs to get information on insurance and even buy policies through the AAPA.

I would like to thank my guest, Michele Roth-Kauffman for coming on the show. I am Lisa Dandrea and you have been listening to the Clinician's Roundtable on ReachMD, the Channel For Medical Professionals. Please visit our website at ReachMD.com which features our entire library through on-demand podcasts or call us toll free with your questions and suggestions at 888 MD XM 157 and thanks for listening.