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Malpractice Insurance Options for Your Physician Assistant

MALPRACTICE COVERAGE FOR PHYSICIAN ASSISTANTS

Managing your malpractice exposure, the impact on adding a PA to your organization. You are listening to ReachMD, The Channel for Medical Professionals. Welcome to The Clinician's Roundtable.

I am Lisa D'Andrea, your host and with me today is 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's Business Practice and Legal Guide." Today, we will be discussing how to manage a malpractice exposure when adding a PA to your organization.

LISA D'ANDREA:

Hi Michele, welcome to ReachMD.

MICHELE ROTH-KAUFFMAN:

Hi Lisa.

LISA D'ANDREA:

Michele, the use of PAs in medicine has not only increased, but has expanded to every specialty. What is the malpractice exposure when a medical group hires a physician assistant?

MICHELE ROTH-KAUFFMAN:

Because physician assistants are dependent practitioners, a group does open themselves up to some additional liability regarding the employed physician assistant. The supervising physician and any substitute supervising physician are responsible for the acts of the physician assistant who is in their employ.

LISA D'ANDREA:

Does a medical group need to increase or change their malpractice coverage when they employ a physician assistant?

MICHELE ROTH-KAUFFMAN:

The physician assistant will need to have their own coverage and that could be done in a number of ways. The physician assistant could be placed on the corporate policy, they could be placed on the physicians' policy as a rider, or the physician assistant can have their own personal liability insurance, and usually we recommend that the physician assistant has the same coverage as the supervising physician or 1 million per occurrence, every 3 million in aggregate.

LISA D'ANDREA:

When should a PA obtain independent coverage and what are the pros and cons of obtaining an individual policy for the PA?

MICHELE ROTH-KAUFFMAN:

I always recommend to PAs that they obtain their own coverage and the benefit is that mainly for the PA because the PA then has their own independent policy and will have their own lawyer to represent them should they become involved in a malpractice action and usually the costs aren't that different than putting the PA on corporate policy or as a rider onto the policy.

LISA D'ANDREA:

If the PA has their own coverage, would the practice still be responsible for adding the PA to their group policy?

MICHELE ROTH-KAUFFMAN:

If the PA has their own personal coverage, they will not necessarily have to add them onto the policy for an individual rider. They may want to include the PA if they have an umbrella for the policy, that way the PA could be covered under the umbrella as well.

LISA D'ANDREA:

What if the PA policy limits are less than the judgment awarded? Are the assets of the physician assistant at risk and would the excess be the responsibility of the physicians' policy?

MICHELE ROTH-KAUFFMAN:

The physician assistant's assets could be at risk. It's not often that personal assets are used in judgments. We really haven't seen that in malpractice actions; however, the possibility is out there. In the instance where you have a PA and there is a judgment against the PA, whether or not the supervising physician's liability insurance would then cover any portion of that award, would depend on if the supervising physician was found negligent.

LISA D'ANDREA:

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

MICHELE ROTH-KAUFFMAN:

I am not aware of any case and that's again because a physician assistant is actually acting as an agent of the physician, which makes the physician liable for the physician assistant's action; however, there have been very few actually malpractice actions that have been brought against PAs. The data in the National Practitioners' Databank currently shows that PAs have been responsible for 1,130 malpractice payments, which is 0.38% of all malpractice payments that have been made. So, it's less than 5% of malpractice payments that have been made. So, that's a very small number of malpractice actions against practicing PAs. They found that the diagnosis-related payments have a median payment of $150,000 and that treatment-related awards have a median payment of $ 50,000. So, really PAs as a whole have not generated a lot of malpractice actions.

LISA D'ANDREA:

Many group practices share PAs. How do you practices cover the PA when they work 50% for one part of the group and 50% for another part?

MICHELE ROTH-KAUFFMAN:

Are you talking about 2 separate groups?

LISA D'ANDREA:

Yeah, I am talking about, you know, a lot of multispecialty practices that are broken into independent?

MICHELE ROTH-KAUFFMAN:

Okay, so they are independent.

LISA D'ANDREA:

Mmm, hmm.

MICHELE ROTH-KAUFFMAN:

That again will be a case where you would probably be best with a PA, who has their own malpractice coverage, their own policy, that would save you from having to have multiple policies, would save from group A having to purchase a policy for the PA and group B having to purchase a policy for the PA, so the PA has her own policy, is or her own policy that policy then covers the PA, okay? And when they are working with group A, the supervising physician would be responsible for the PA when they are seeing that supervising physician's patients When the PA is in group B, the supervising physician from group B is then responsible for the PA's action.

LISA D'ANDREA:

If you are just joining us, you are listening to The Clinician's Roundtable on ReachMD, The Channel for Medical Professionals. I am Lisa D'Andrea and I am speaking with Michele Roth-Kauffman from Gannon University, Physician Assistant, Attorney, and author of the Physician Assistants' Business Practice and Legal Guide. We are discussing how to manage your malpractice exposure when adding a physician assistant to your organization.

Michele, if the physician group is paying for the policy and a PA leads the practice, what happens to the policy and does the PA need to purchase tail coverage?

MICHELE ROTH-KAUFFMAN:

Again, it depends upon if the PA has her own individual policy or if the PA is on a rider on the supervising physician's policy. If the PA is on the rider, then the PA has 1 of 2 options. If that rider is going to continue, they may have the option of not purchasing tail, but again, they are in the situation where the PA would need to have proof on a yearly basis that policy is still continuing and ongoing and that the PA is covered. If the PA is leaving the group and that policy is going to be discontinued or they are not under a corporate policy, it would depend whether or not a policy is in a current policy or claims made policy.

LISA D'ANDREA:

Does the practice need to purchase additional coverage for prior acts of the PA?

MICHELE ROTH-KAUFFMAN:

No, no. The PA would be solely responsible for any prior acts. The supervising physician would only be responsible for the acts of the PA while the PA is under the supervision of that physician and seeing that physician's patient.

LISA D'ANDREA:

So, there is never possibility that a supervising physician will be named in a law suite for the actions that a PA performed at a second job or a new job or while moonlighting.

MICHELE ROTH-KAUFFMAN:

That's correct because that supervising physician would not be acting in a supervisory capacity in those instances. The PA would have

a different supervising physician at each of those employment places.

LISA D'ANDREA:

Is there any reason for a PA to have double coverage at all here?

MICHELE ROTH-KAUFFMAN:

From the PA's perspective, again, always having an individual policy is best for the PA.

LISA D'ANDREA:

And for the practice, it sounds like.

MICHELE ROTH-KAUFFMAN:

I guess for the practice it's really a wash because as long as the PA is covered in some sense, then the practice is protected. They just want to make sure that the PA does have coverage.

LISA D'ANDREA:

If a doctor employs a PA, what should be written in the employment agreement regarding malpractice?

MICHELE ROTH-KAUFFMAN:

In most instances, the physician's group provides the malpractice coverage to the PA, so it's actually more of a negotiating point for the physician assistant how that happens, but they want to make sure that the PA is covered again at the same level of the supervising physician. You don't want to have an instance where you have a supervising physician who has 1 million, 3 million aggregate and you have an employed physician assistant, who has 500,000, 1.5 coverage. Unless you have a situation where your physician assistant is only doing patient education, is not ordering, diagnosing, and writing out prescriptions; if you're really limiting what your PA is doing, then you might consider that, but if you are going to have a PA functioning in say a primary care setting where they are going to have their own patient load, the physician's group wants to make sure that that PA has the same coverage as the physician.

LISA D'ANDREA:

So, if the coverage right now is less for your physician assistant, you should increase it to be the same as the supervising physician.

MICHELE ROTH-KAUFFMAN:

Correct.

LISA D'ANDREA:

In addition to malpractice coverage, what other actions should a medical group institute to reduce their risk of a malpractice exposure for the physician assistant?

MICHELE ROTH-KAUFFMAN:

Again, due to the fact that we are dependent practitioners, the supervising physician is always going to be held responsible for the PA's actions. The supervising physician is going to want to adequately supervise and educate their PA. So, depending upon the PA's experience and how long they work together, the amount of supervision will probably change over time. When the PA is new, the supervising physician may want to see every patient, set that PA-Cs, and then over the time as they become more comfortable, the PA may start seeing more patients on their own and then go to the supervising physician in instances where they need some additional help with the patient or they are not sure about what's going on with the patient. In all practices, probably the number one thing that needs to be done is to have good documentation because 35%-40% of all medical malpractice actions that come forward cannot be defended because the documentation is inadequate. So, they want to make sure that the physician assistant and obviously everyone in the group has very good documentation that's going to hold up, 3 to 5 years later when this case finally comes to court and that's the only thing that we have to look at is the documentation in the chart.

LISA D'ANDREA:

I would like to thank my guest, Michele Roth-Kauffman for coming on the show.

I am Lisa D'Andrea and you have been listening to The Clinicians Roundtable on ReachMD, The Channel for Medical Professionals. Please visit our website at www.reachmd.com, which features our entire library through on-demand pod casts or call us toll free with your comments and suggestions at 888MD XM157 and thanks for listening.

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