

# Physician Assistants: A Risk-Benefit Analysis

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Physician assistants (PAs) can benefit physicians' practices by performing various medical duties involving care and treatment of patients. However, physicians who supervise PAs can potentially face liability for the acts and/or omissions of these PAs.

This article explores the role of PAs, the various types of liability that may occur, and how to minimize the risks associated with such liability.

## The General Benefits of Utilizing Physician Assistants

Physician assistants provide a number of benefits to the practices that employ them: they allow such practices to service more patients by performing many of the same functions as a physician; they free up the time of physicians to treat conditions that may be beyond the capabilities and qualifications of PAs; and they can increase patient satisfaction by spending more time with patients, and by seeing patients more quickly.

In the office and hospital settings, PAs can improve physician-patient communication, which can translate into improved patient care. In the office, they can triage and return telephone calls, review test results, and contact other medical providers. Since PAs can provide more one-to-one time during patient encounters, they can use this time for both treatment and to educate patients about health, lifestyle choices, and/or proper pre-operative and discharge instructions.

## What Medical Duties May Physician Assistants Perform in an Office and Hospital Setting?

Physician assistants may perform tasks delegated by supervising physicians. These tasks must be appropriate to the PAs' education, training, and experience and be within the ordinary practice of the supervising physician.<sup>1</sup> Supervision of PAs is considered continuous, but physicians are not required to be physically present when PAs are providing services.<sup>2</sup> PAs may have more than one supervising physician, but one clearly designated supervising physician must be available at all times.<sup>3</sup>

Physician assistants are dependent practitioners who must work under the supervision of licensed physicians who are then considered by New York State courts to be legally responsible for the acts and/or omissions of the PAs.<sup>4</sup>

Guidelines issued by the New York State Department of Health specifically define those acts which can be performed by PAs as follows:<sup>5</sup>

1. **Evaluation** – Obtain a detailed and accurate history from each patient, perform an appropriate physical

examination, delineate problems, and record/present data.

2. **Monitoring** – Assist supervising physicians in conducting rounds in acute and long term inpatient settings, provide care in office-based and ambulatory care settings, develop and implement patient management plans, and record progress notes.
3. **Diagnostics** – Perform and/or interpret, at least to the point of recognizing deviations from the norm, common diagnostic procedures used to identify disease processes.
4. **Therapeutics** – Perform routine procedures such as injections, immunizations, suturing and wound care; manage simple conditions caused by infections or trauma, assist in the management of more complex illnesses and injuries; take the initiative in the evaluation of patients and initiation of therapeutic procedures in response to life-threatening situations; and supervise and direct blood testing to determine blood alcohol or drug levels relative to potential violations of the Vehicle and Traffic Law.<sup>6,7</sup>
5. **Counseling** – Instruct/counsel patients regarding compliance with prescribed therapeutic regimens, normal growth and development, family planning, emotional problems of daily living, and health maintenance.
6. **Referral** – Facilitate and refer patients to other health-related practitioners and community health and social services agencies, when appropriate.<sup>5</sup>
7. **Medical Orders** – Write medical orders, including those for controlled substances, for inpatients under the care of their supervising physi-

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1. Public Health Law § 3703, Education Law § 6542(1).

2. Education Law § 6542 (2), 10 N.Y.C.R.R. § 94.2 (a).

3. Reference Information: Registered Physician Assistant, New York State Department of Health, (February 2014) at Section D. Accessed at [http://www.health.ny.gov/professionals/doctors/conduct/physician\\_assistant.htm](http://www.health.ny.gov/professionals/doctors/conduct/physician_assistant.htm) on February 19, 2014.

4. Marchisotto v. Williams, P.A., et. al., 11 Misc. 3d 1089 (A), (N.Y. Sup. Ct., 2006).

5. Reference Information: Registered Physician Assistant, New York State Department of Health, (February 2014) at Section B. Accessed at [http://www.health.ny.gov/professionals/doctors/conduct/physician\\_assistant.htm](http://www.health.ny.gov/professionals/doctors/conduct/physician_assistant.htm) on February 19, 2014.

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6. Public Health Law § 3702 (2).

7. Vehicle and Traffic Law § 1194 (4)(a)(1).

cian, without a countersignature. Supervising physicians and/or the hospital may delineate situations in which PAs' orders must be countersigned. However, a countersignature is not required prior to the execution of PAs' orders.<sup>8</sup>

8. **Prescriptions** – Prescribe medications, in both the office and hospital settings, including controlled substances in Schedule III – V, if these tasks have been delegated by a supervising physician.<sup>9</sup> Currently, PAs may not prescribe any controlled substance in Schedule II.<sup>10</sup> Prescriptions may only be written for patients who are under the care of the supervising physician.<sup>11</sup> Prescriptions for non-controlled medications written by PAs must be placed on a supervising physician's prescription form, which must include: the name, address, and telephone number of the physician; the name, address, and age of the patient; and the date upon which the prescription was written.<sup>12</sup> Prescriptions for controlled substances listed in Schedules III – V may be written on prescription forms issued to PAs. PAs must include the printed name of the supervising physician, their own printed and signed name, the initials RPA or RPA-C, and their New York State registration number.<sup>13</sup> When prescribing controlled substances, PAs must also comply with the New York State Prescription Monitoring Program (I-STOP Law).<sup>14</sup>



### **What Duties May Physician Assistants Not Perform?**

Physician assistants are prohibited from performing radiological procedures, practicing optometry,<sup>15</sup> and signing death certificates. Further, PAs may only act as a first assistant for surgical procedures which do not present unusual hazard to life based on individual patient risk factors and complexity of the procedure.<sup>16</sup>

### **What Types of Liability Do Supervising Physicians Have for Physician Assistants?**

Supervising physicians have direct liability for their own actions, which can include negligent supervision. Supervising physicians' direct liability results when it is proven that injury to a patient is a result of physicians' negligent supervision, rather than the actions of a PA. Therefore, super-

vising physicians may be liable even if PAs are not found to be negligent.

Factors to be considered when courts assess whether physicians have provided appropriate supervision of PAs include: the presence or absence of physicians; which responsibilities are delegated to PAs; the presence or absence of medical records; and the maximum number of PAs a physician may supervise. New York State regulations allow the supervision of four PAs in the office setting, and six PAs in the hospital and correctional facility settings.<sup>17</sup> Supervising physicians who fail to provide adequate supervision for PAs may also face allegations of professional misconduct.<sup>18</sup>

Supervising physicians or hospitals may face direct liability for allegations of negligent hiring if the individuals who hired PAs knew, or should have known, that the PAs were unqualified or otherwise unfit to perform the professional services they were assigned to perform. Physicians or hospitals may also be held liable if the hiring individuals fail to use due diligence, prior to hiring PAs, to ascertain if they are

8. Public Health Law § 3702 (1).

9. Public Health Law § 3702 (3).

10. 10 N.Y.C.R.R. § 94.2 (e)(5).

11. 10 N.Y.C.R.R. § 94.2 (e)(1).

12. 10 N.Y.C.R.R. §94.2(e)(1).

13. 10 N.Y.C.R.R. § 94.2 (e)(3),(4).

14. Public Health Law § 3343-a.

15. Reference Information: Registered Physician Assistant, New York State Department of Health, (February 2014) at Section B. Accessed at [http://health.ny.gov/professionals/doctors/conduct/physician\\_assistant.htm](http://health.ny.gov/professionals/doctors/conduct/physician_assistant.htm) on February 19, 2014.

16. 10 N.Y.C.R.R. § 405.12 (a)(3). The addition of Public Health § 3703 does not override 10 N.Y.C.R.R. § 405.12. The new legislation is not intended to expand or limit the scope of practice of a physician assistant. E-mail opinion Walter Ramos, R.N., J.D., State Department of Education Board for Medicine, April 14, 2010.

17. Clinical settings: Public Health Law § 6542 (2). Hospitals: 10 N.Y.C.R.R. § 405.4 (e) (1)(ii)(a). Correctional facilities: Public Health Law § 6542 (5).

18. 8 N.Y.C.R.R. § 29.2 (a)(5).

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capable of performing the duties to which they will be assigned.<sup>19</sup>

Supervising physicians also have vicarious liability, even if they acted appropriately, for the actions of the PAs they supervise.<sup>20</sup> Vicarious liability is an “attachment of responsibility to a person for harm or damages caused by another person in either a negligence lawsuit or criminal prosecution. Thus, employers of PAs who injure someone through negligence while in the scope of employment (doing work for employers) are vicariously liable for damages to injured persons.”<sup>21</sup>

The most common form of vicarious liability is respondeat superior (“let the superior respond”). Under this theory, if PAs perform negligent acts and it is determined that supervising physicians could have controlled their activity, supervising physicians can be found liable. Additionally, patients must reasonably believe that PAs had the authority to act on behalf of the supervising physicians.<sup>22</sup> Under this legal theory, physicians do not have to be present or even aware of the patient encounter.

Findings of vicarious liability may still be possible against supervising physicians, despite the dismissal of PAs from a lawsuit.<sup>23</sup> If a supervising physician has terminated the employment of a PA, a claim can still be pursued against a super-

vising physician, based upon the theory of vicarious liability. Therefore, a PA does not necessarily have to be a named defendant for the lawsuit to solely focus on the supervising physician, based upon the theory of vicarious liability.

### **How to Minimize Supervising Physicians' Risk of Liability for Physician Assistants**

1. Every practice or hospital employing PAs should have comprehensive protocols and policies that outline what conditions PAs may handle independently and what requires consultation with a supervising physician. These protocols may include:
  - a. limiting the number of times a patient sees a PA without seeing a supervising physician and
  - b. specifying the types of illnesses or conditions that must only be handled by the supervising physician.
2. It is important to discuss the protocols and policies with PAs to confirm that they both understand and will comply with them. Both supervising physicians and PAs should sign a document to confirm their understanding of, and agreement with, the terms of employment, including compliance with all policies and protocols.
3. Supervising physicians must be readily available and approachable. PAs should always have reliable contact information for supervising physicians. Additionally, PAs should never be afraid to approach supervising physicians with questions and/or concerns, no matter how trivial the question may seem. Fear of disturbing physicians or of being made to feel inadequate can deter PAs from seeking consultation. Thus, the patient may not receive appropriate treatment and/or be incorrectly diagnosed.
4. Meetings should be regularly scheduled between supervising physicians and PAs to discuss cases and how they were handled. This can be ben-

eficial and educational, as well as promoting interactive relationships between supervising physicians and their PAs. When specific cases are reviewed, PAs may greatly benefit by learning to recognize which symptoms and conditions should be discussed with supervising physicians.

5. Supervising physicians should regularly check the work habits of PAs. One way to do this is to ask patients who have seen a physician assistant several times about their experiences. Physicians can also observe PAs as they provide treatment and obtain histories from patients.
6. Supervising physicians should perform and document periodic evaluations (at least annually) of all PAs as well as regular reviews of a sampling of the medical records.
7. PAs must document in the patient's medical record any recommendations made by supervising physicians after any consultation.
8. All continuing education activities should be attended by both PAs and the supervising physicians. This keeps current their knowledge and skills. Continuing education assists the PAs in recognizing the significance of findings discovered during a physical examination that is beyond their expertise. This should prompt communication between PAs and supervising physicians.
9. It is important to be diligent in hiring, training and supervising PAs. In order to minimize the risk of being sued for the negligent hiring of a physician assistant, supervising physicians must use due care during the hiring process. PAs must have the education, training and certification required by law, and physicians should verify these from a primary source. A criminal background check should also be performed. Supervising physicians should also obtain written permission from PAs to contact and speak with all past supervising physicians, even those not listed as references.

19. Page, Alexandra E., MD, Liability Issues with Physician Extenders, AAOS Now, March 2010. Accessed at <http://www.aaos.org/news/aaosnow/mar10/managing6.asp> on February 20, 2014.

20. Page, Alexandra E., MD, Liability Issues with Physician Extenders, AAOS Now, March 2010. Accessed at <http://www.aaos.org/news/aaosnow/mar10/managing6.asp> on February 20, 2014.

21. Law.com Legal Dictionary/vicarious liability. Accessed at <http://dictionary.law.com/Default.aspx?selected=2223> on March 3, 2014.

22. Page, Alexandra E., MD, Liability Issues with Physician Extenders, AAOS Now, March 2010. Accessed at <http://www.aaos.org/news/aaosnow/mar10/managing6.asp> on February 20, 2014.

23. Pace v. Hazel Towers, 584 N.Y.S.2d 22, 22 (1st Dept, 1992).

# Case Study

## Professional Liability Coverage for Physician Assistants

In addition, when hiring PAs, physicians should confirm that the individuals have professional liability coverage with appropriate limits of liability should a lawsuit ensue. It is important to be aware that PAs who are insured by a MLMIC policy would have their coverage limited to those acts and duties which are within the scope of their employment by a MLMIC insured employer. Therefore, any contract between physicians and PAs must specify the scope of employment of PAs.

Case law has determined that physicians are liable for services provided by individuals for whom they are legally responsible (e.g., PAs). However, physicians' professional liability insurance does not provide coverage for those individuals.<sup>24</sup> Consequently, it is highly advisable that PA's obtain their own individual policy of insurance.

In summary, hiring PAs to treat patients has many advantages if they have the necessary education, training, and experience to perform those acts which are within the scope of practice of supervising physicians. However, it is also important that supervising physicians ascertain the competency of PAs, and obtain written verification of their education, training, and prior experience. It is also crucial to keep the lines of communication open so that PAs feel free to contact the supervising physicians, when needed, and ask for assistance. Finally, at least initially, supervising physicians should review PAs' documentation to check their diagnostic skills and initially have PAs request consultation for certain signs, symptoms, or conditions until the physicians are comfortable with their competence. This will act to mitigate physicians' risk of liability. ❖

24. *Cohen v. Medical Malpractice Ins. of N.Y.*, 868 N.Y.S.2d 14, 14 (1st Dept, 2008).

## *Negligent Post-Surgical Patient Care*

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This case involves the alleged wrongful death of a 43-year-old certified public accountant who was married with three children. At the time of his death, the decedent was earning \$130,000 per year. He died following surgery for the removal of a large cell neuroendocrine carcinoma of the right lower lobe of the lung.

The patient was initially seen by his primary care physician with complaints of chest pain and cough in January of 2008. A lung mass was noted on x-ray. A fine needle aspiration confirmed the diagnosis of cancer. The patient was referred to a surgeon for a surgical resection. The surgical group consisted of three physicians and four mid-level practitioners. Pre-operative clearance was obtained, and, in February of 2008, the surgeon performed a right lower lobectomy. There were no complications during surgery and the estimated blood loss was 200 cc. The patient did well immediately after surgery and throughout the night in the surgical ICU. During the night, 30 cc. of bloody fluid drained from the anterior chest tube and the posterior chest tube had 50 cc. of drainage.

In the morning, as the patient was assisted to a sitting position on the side of the bed, he became dizzy and was promptly returned to a lying position. The hospital's nursing staff noted the anterior tube had 200 cc. of drainage and the posterior tube had 500 cc. of bloody drainage. A PA from the surgical group examined the patient at 7:30 AM. This PA had recently been hired by

the surgical group. He had previously worked in an internal medicine office and had limited experience with surgical patients. He was not familiar with the post-operative treatment of thoracic surgery patients and admitted to being inexperienced with the complications which can and do sometimes occur in the immediate post-operative period. He also lacked familiarity with the type of tumor removed from the patient.

When the PA examined the patient, the patient's blood pressure was 90/62. Two boluses of 500 cc. of saline were given to him with slight improvement. At 9:00 AM, the PA called the operating surgeon. Documentation of this call contained no content other than the fact that the surgeon had been called. The chest tube drainage continued to increase, while the patient's hematocrit dropped to 22. In response to this, the PA ordered two units of blood to be given. At 10:00 AM the patient's blood pressure was 81/52. He continued to deteriorate. A code was called at 10:30 AM. Resuscitative efforts were unsuccessful. The patient was pronounced dead at 11:45 AM. An autopsy determined that the cause of death was post-operative bleeding with a right hemothorax.

It was apparent that the PA had been placed into a difficult and high-risk situation by the surgical group. He had to deliver care to a critically ill post-operative patient but lacked expe-

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