

## This quarter's focus is: **Mitigating Risks: Lessons learned from Medical Malpractice Closed Claims Involving Physician Assistants and Advanced Practice Nurses**

In 2019, CRICO, a leading professional liability insurance company, performed a review of closed medical malpractice claims over a ten-year period.<sup>1</sup> One area examined was the frequency of claims that involved as a contributing factor the care provided by either a Physician Assistant (PA) or Advanced Practice Nurse (NP). This study was completed in part to determine if the expanding role of the NP/PA, up until 2018, triggered an increase in medical malpractice allegations against the NP or PA.<sup>2</sup>

**The claims were carefully analyzed by specific contributing factors. Examples of some of the claims are as follows:**

- “A 36 y.o. female diagnosis of cervical cancer was delayed when her NP failed to order a Pap smear.”
- “A 37 y.o. male presenting with a finger laceration required extensive hand surgery and suffered lingering functionality issues due to complications from the PA's attempt to close the wound with sutures — with no attending involvement and no hand specialist called.”
- “A 28 y.o. female suffered extensive bleeding after undergoing incision and drainage of a vaginal cyst performed by the NP, who did not seek a consult with the physician on site.”<sup>3</sup>

**The pertinent findings noted that over 50% of the claims occurred in an ambulatory setting. The largest area of vulnerability was shown to be diagnostic-related errors that led to a severe outcome (permanent injury or death). This was seen equally in both PA and NP claims. A closer retrospective look revealed areas of exposure such as<sup>4</sup>:**

- failure to establish a differential diagnosis;

- failure to appreciate and reconcile relevant signs and symptoms;
- failure to order or a delay in ordering additional testing to include consults/referrals;
- failure to follow up on findings in a timely manner; or
- failure to effectively communicate the patient's condition with the supervising physician.

The study noted no findings to suggest that a PA or NP increases a physician's risk for a professional liability claim. In the next 8-10 years, while employment for physicians is projected to increase at a rate of 7%, there will be a significant surge in the employment of both PAs (33%) and NPs (26%), a rate much faster than other occupations.<sup>5</sup> Not only is the sheer number of NPs and PAs increasing into the health care environment, so is the scope of practice and push towards autonomy. This increase is not limited to primary care. JAMA published a study in 2018 that noted a 20.3% increase of usage of PAs and NPs over a ten-year period in specialty practices. The specialties that grew at the most rapid rate were: Neurology (52.4%), Plastic Surgery (62.9%) and Dermatology (35.6%).<sup>6</sup> With this predicted rapid expansion in all specialties, there will undoubtedly be a great deal of pressure on both the PA /NPs and the health system to establish better infrastructures for information processing and communication.<sup>7</sup> Currently, the Florida Board of Medicine requires that physicians supervise the care provided by PAs and NPs.<sup>8</sup> The level of supervision varies with physicians being off site or overseeing more than one PA/NP at a time. Whether this requirement will change is unclear, however, as the PA/NP roles becomes more autonomous and perhaps re-defined, it is important to establish appropriate safeguards specific to the PA/



NP's level of supervision as required within each specialty or setting.<sup>9</sup>

In summary, lessons learned from closed claims reviews can be a valuable tool when setting up risk management plans.

## PRACTICE TIPS FOR MITIGATING RISK INCLUDE<sup>10</sup>:

### Organization level/physician level for supervision of PA/NP:

- Establish clear policies and procedures related to scope of practice.
- Develop appropriate competency guidelines to include training and education. A mutual understanding is important, but for consistency and avoidance of miscommunication, a formal process is critical.
- Oversee prescriptive practices and identify high-risk medications.
- Perform care review audits on a routine basis.
- Monitor adverse events, and identify trends related to not only potential competency issues but also the interaction between the the supervising physician and mid-level provider.
- Present clear guidelines to both the physician and mid-level providers specific to expectations as members of the same team.
- Define parameters for the management of emergencies.

### Physician Assistant/Nurse Practitioner level practice tips:

- Understand the boundaries of the specific scope of practice related to assigned role
- Establish clear criteria for communications and a consistent way of messaging this information with a supervising physician.
  - How should routine issues be addressed versus urgent issues.
  - Are there certain issues that may trigger additional oversight.
- Maintain updated records or supervising physicians with the Florida Board of Medicine.
- Inform patients about the role of the NP or PA and their rights.

- 1 Hoffman, Jack & Wang, Fangyu, An analysis of 110,000 medical professional liability (MPL) claims from across the United States that were identified during the time period from 2008 and 2018. From the analysis of these claims, CRICO noted 82,945 claims where physicians were named individually. From those claims, there were less than 1,400 over that same time period where an NP or PA was named individually. See 2019 Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis.
- 2 Hoffman et al, Investigating MPL Vulnerability for the Institutions that Employ and Insure NPs and PAs. Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis, 2019.
- 3 Hoffman et al, See page 24.
- 4 Hoffman et al, See page 23.
- 5 Health care jobs nationwide are predicted to grow by 14% [<https://www.bls.gov/ooh/healthcare/home.htm>]; <https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm#tab-6>.
- 6 Employment of Advanced Practice Clinicians in Physician Practices, JAMA Internal Medicine; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6126674/?report=printable>.
- 7 Physicians, NPs and PAs: Where's This All Going? <https://www.medscape.com/features/content/6006318>.
- 8 <https://flboardofmedicine.gov/licensing/physician-assistant-licensure/>.
- 9 <https://www.medscape.com/features/content/6006318>.
- 10 Hoffman et al, See page 25.

Newsflash by: Beth W. Munz, Esq., CPHRM  
©FBOG HEIC/SIP, January 2020

