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The Many Levels of Supervision

Non-physician practitioners or physician extenders, as they are often called, are now common place in physicians' offices and have been for some time. They are an integral part of the private practice of medicine for the simple reason that they provide very skilled and useful services to the physician's practice and the patients that practice serves. They also provide a significant source of revenue which likewise augments the physician's income. In short, physician extenders are good for both patients and physicians.

Despite the many benefits that physician extenders provide, those benefits also come with conditions. One of those conditions is the requirements that physician extenders be appropriately supervised. It is the purpose of this article, therefore, to provide a brief introductory overview of the many different levels of the term supervision in the different settings that supervision takes place under both federal and state law.

Federal

At the federal level, the degree of required supervision will usually depend on the applicable federal program. Of primary importance, of course, is Medicare. For example, the Centers of Medicare and Medicaid Services (CMS) define three separate levels of physician supervision for hospital outpatient departments:

- a) **General Supervision** - the physician must be available by telephone to provide assistance and direction if needed.
- b) **Direct Supervision** - the physician must be "immediately available" and "interruptible" to provide assistance and direction throughout the performance of the procedure, but does not need to be physically present while the procedure is being performed.
- c) **Personal Supervision** - the physician must be in attendance in the room while the procedure is being performed.

In the office setting under Medicare Part B, the focus is frequently on services furnished "incident to a physicians' professional service." 42 C.F.R. § 410.26. Although there are a number of conditions of coverage that must be met under the "incident to" provision, the supervision condition is of paramount importance. Thus, to satisfy that condition, the federal regulations require the physician to be present in the office suite and "immediately available" to provide assistance and direction during the period of time the service is being furnished.

Finally, the role of physician extenders has also been expanded by the passage of the Patient Protection and Affordable Care Act in 2010. With the addition of more insured patients and the concomitant demand for health care services, physician extenders will play a larger and more

expanded role in the provision of those services. And that expanded role will necessarily involve more physician supervision of those physician extenders.

State

Physician extenders are also heavily regulated by the state where they practice. Indeed, state regulations are not only pervasive across the country; they are often very different between the states and even within the state itself.

For example, in Florida, a PA is any person who is a graduate of an approved program or its equivalent or meets standards by the applicable boards (i.e., the Board of Medicine or the Board of Osteopathic Medicine) and is licensed to perform medical services delegated by the supervising physician. Florida Statute § 458.347(2)(e).

As is clear from this definition, a PA in Florida can only work and carry out delegated health care tasks under the responsible supervision and control of a licensed physician. Indeed, the statutory definition specifically states that supervision means responsible supervision and control. Florida Statute § 458.347(2)(f).

This supervisory relationship is manifestly a two way relationship. It is, therefore, critical that a physician or physician group that utilizes PAs have a thorough and meaningful understanding of what that supervision entails.

Florida law is also quite clear that each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to perform. Thus, a family practitioner generally would not be authorized to supervise a PA in an ophthalmology practice. The legal significance of this requirement is, of course, paramount because the statute also provides that the supervising physician or physician group shall be individually (or collectively) "responsible and liable for the performance and the acts and omissions of the PA" being supervised. In addition, Florida Statute § 458.347(15) provides that "each supervising physician using a PA is liable for any acts or omissions of the PA acting under the physician's supervision and control." And, obviously, a supervising physician's failure to adequately supervise a PA under her control could also lead to a disciplinary action by the Florida Board of Medicine.

As is clear from the legislative intent statement at the beginning of the Florida Statute governing PAs, an important purpose is not only to encourage the use of PAs but also to encourage physician practices to utilize the skills of PAs to enhance physicians' efficiency in the practice of medicine. The statute specifically recognizes that properly trained PAs can result in more effective utilization of a physician's own skills by authorizing the delegation of health care tasks to qualified PAs.

The use of physician extenders makes sense for any number of reasons, both from a professional and financial point of view. But, because of the potential liability, physicians are well advised to know the supervisory requirements under their state regulations and follow them carefully.

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