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Risk Management Considerations for Joint Protocols Between Advance Practice Nurses and Collaborating Physicians

Editor’s note: The following article expands upon a previously published Risk Review Online which appeared several years ago. We are revisiting the topic as we still frequently receive inquiries from physicians who are being asked to sign joint protocol agreements with APNs.

The use of Advance Practice Nurses (APNs) in the physician office setting can greatly enhance patient access to care, practice productivity, and provide a cost effective means of delivering quality healthcare. APNs are trained to take in-depth histories and physical exams, perform certain procedures and may have prescriptive authority. However, New Jersey, like many other states, requires APNs who seek to prescribe or order medications or devices to have a joint protocol or collaborative agreement with a physician. This agreement does not mean that the physician must be physically present whenever the APN sees patients, but rather establishes how the APN and physician relationship will be operationalized.

The Division of Consumer Affairs, which oversees the Board of Nursing and the Board of Medical Examiners in New Jersey, has established regulations for the joint protocol between nurses and collaborating physicians. Collaboration is the ongoing process by which an APN and physician engage in practice consistent with agreed upon parameters of their respective practices. Joint protocol is an agreement or contract between an APN and a collaborating physician that conforms to the standards established by the Division of Consumer Affairs. The joint protocol must be signed by the APN and the physician, maintained on the premises of every office in which the APN practices, and updated and reviewed at least annually to reflect changes in the practice, skills of the APN and reference materials containing practice guidelines or accepted standards of practice.

Required Elements

Additionally, the content of a joint protocol must address:

1. The nature of the practice, the patient population and settings in which the APN will practice
2. Any particular circumstances for which, prior to prescribing, a specific examination is to be performed or a definitive diagnosis made
3. The recordkeeping methodology used in the practice
4. A list of categories of medications appropriate to the practice
5. Specific requirements with respect to the record of medications prescribed or dispensed (i.e. dosages, frequency, duration, instructions for use, and authorizations for refills)
6. Any medical conditions or findings within the nature of the practice that require direct consultation prior to prescribing or ordering of medications or devices
7. The frequency and methodology with which to ensure periodic review of patient records
8. Identification of the means of communication between the APN and the collaborating physician, as well as a description of arrangements which will assure that the collaborating physician or peer coverage is accessible and available
9. Procedures for the use of medications in emergency situations
10. Identification of reference materials containing practice guidelines or accepted standards of practice

Risk Management Considerations

- Physicians who employ or contract with APNs can take specific steps to minimize risk. Care should be taken when hiring, collaborating with, or supervising to be sure that the APN has the training and certification he/she claims to have. Negligent
selection can be asserted if the physician knows, or has reason to know, that the APN is incompetent or unfit to perform required duties.

- The employment of APNs may increase a physician’s liability if that employee is allowed to work beyond his/her scope of practice. On the other hand, a physician who agrees to collaborate with a self-employed APN is less likely to be found directly liable for any negligence on the part of the APN. Therefore, care should be given to language in the agreement that implies that the physician will be responsible for the “direct supervision” of the APN, except as required by law and/or regulation, or when the safety of the patient is at issue. While supervising physicians may be liable for the mistakes of a supervised APN under certain circumstances, they are not necessarily liable for every action or inaction of a supervisee. Failure on the part of the supervising physician to respond, or to be available, or to provide adequate training to the APN may be grounds for assuming liability for actions or omissions of supervisees. However, should an APN fail to consult or refer when necessary, it is most likely the APN, not the physician, would be liable for any injury sustained by a patient.

- Before signing a joint protocol, a collaborating physician should consider the physician-APN relationship in the specific situation, and review the state’s nurse practice act and state law authorizing physicians to delegate medical work.

- Be familiar with the educational background and professional credentials of the individual and ask for verification of their malpractice coverage as well as verification of their license to practice.

Additional Resources:

State Board of Medical Examiners: Statutes and Regulations  
http://www.state.nj.us/lps/ca/bme/bmelaws.pdf  
(Section 13:25-6.6)

New Jersey Board of Nursing: Nursing Regulations  
(Section 13:37-8.1)

New Jersey State Nurses Association  
Suggested Template: Joint Protocols for Advanced Practice Nurses and Collaborating Physicians  
http://www.njsna.org/displaycommon.cfm?an=1&subarticlenbr=33