

Reducing Risk

A Publication on HealthCare Risk Management from Princeton Insurance

Risk Alert:

Physician Assistants Performing EMGs

If you are using, or considering using, Physician Assistants (PAs) to perform EMGs, please read the following.

JULY 2010 - On July 13, 2010, the Superior Court of New Jersey, Appellate Division, held that physician assistants are not legally authorized to perform needle electromyography (EMG) tests in New Jersey. Reversing a lower court decision, which held to the contrary, this ruling was the unanimous conclusion of the three-judge panel who heard the consolidated appeals in *Selective Insurance Company of America v. Rothman* (Nos. A – 5288 – 08T3, A – 5289 – 08T3 and A – 5290 – 08T3).

The Court's decision was based on the EMG statute (N.J.S.A 45:9-5.2(a)) which states, "A person shall not perform needle electromyography unless that person is licensed to practice medicine and surgery in this State...." While acknowledging that physician assistants are licensed to perform certain procedures, the Court emphasized that "they are not 'licensed to practice medicine and surgery'."

Finding the language of the EMG statute to be clear and unambiguous, the Court rejected evidence that the Board of Medical Examiners had arguably recognized that physician assistants may perform needle EMGs, noting that if the Board had in fact taken such a position, it would be inconsistent with the EMG statute.

Thus, the Court concluded that physician assistants are not legally permitted to perform EMG tests. Nor are they authorized to "assist" a duly licensed physician in performing that procedure if their assistance consists of "inserting the needle electrode into the muscle and recording the electrical activity. Under [the EMG statute], only a person licensed to 'practice medicine and surgery' can perform that procedure."

What this means for you and Princeton Insurance is that unless and until this decision is reversed by the New Jersey Supreme Court, physician assistants should not be permitted to perform EMGs. Doing so will violate the EMG statute and may constitute the unlawful practice of medicine without a license. It may also put your insurance coverage at risk, because, as you know, our policy

explicitly defines "covered professional services" as those services that are within the generally recognized and accepted scope of your specialty and excludes coverage for acts which violate any law, statute or regulation. Rest assured, however, that we will not utilize this decision to deny coverage to any insured for any claim based on an EMG performed by a PA prior to the date this decision was issued.

It is unknown whether this decision will be further appealed, or whether any legislative changes will be forthcoming. That said, however, the Appellate Division's ruling in this case is now the law with which all of us must abide and which will necessarily govern our coverage decisions concerning claims arising out of treatment provided since it was issued. Therefore, until the Supreme Court agrees to hear and reverses this decision, or until legislation is adopted which overrides it, we urge you not to allow PAs to perform EMGs.

This material is not to be construed as establishing professional practice standards or providing legal advice. Compliance with any of the recommendations contained herein in no way guarantees the fulfillment of your obligations as may be required by any local, state or federal laws, regulations or other requirements. Readers are advised to consult a qualified attorney or other professional regarding the information and issues discussed herein, and for advice pertaining to a specific situation.

For any questions regarding this topic or for information on other Risk Management topics, please contact our HealthCare Risk Services Department at 1-866-Rx-4-Risk (794-7475) or e-mail us at HealthCareRisk@PrincetonInsurance.com. For general professional liability information, go to www.PrincetonInsurance.com.