



Common Legal Issues to Watch Out For In Pediatric Practices

PCC UC Seminar 2015
San Francisco, CA

Agenda

This talk will focus on the following:

- Use of Non-Physician Providers: Understanding Nurse Practitioner and Physician Assistant Requirements
- Protecting Your Practice: Why Your Practice Needs an Employee Handbook and Tips on Drafting
- Case Law In Action: Stark/Anti-Kickback and HIPAA
- Merger Models: Super Groups / Integrated Practices

What You Need To Know About Using Non-Physician Providers

(Physician Assistants and Nurse Practitioners)

Nurse Practitioners and Physician Assistants

- Increasing number of practices exploring how to effectively incorporate and utilize Physician Assistants (PAs) and Nurse Practitioners (NPs) to utmost advantage
- Scope of practice and physician supervision rules vary state by state
- Rules can be vague, makes it difficult to determine exactly what requirements apply to each, particularly if employ both in same practice
- Specific agreements required for each
- State nursing board procedural requirements for approval of NP and PA agreements

Nurse Practitioners

Nurse Practitioner scope of practice (varies state by state) but generally includes:

- Independently diagnose and treat patients
- Some states recognize NPs as primary care providers
- Authority to prescribe medications without physician involvement
- Order physician therapy
- Sign workers compensation forms
- Sign death certificates
- Sign handicap parking permits

Physician Assistants

Physician Assistant scope of practice (varies state by state) but generally includes:

- Take patient's history
- Physical examination
- Perform developmental screening examinations
- Initiate requests for common lab studies
- Clinical procedures i.e. wart treatment, suturing
- Identify normal/abnormal findings

Physician Supervision: NPS

Physician supervision of NPs (varies state by state)

- Collaborative role
- Physician and NP develop written protocols or procedures within NP's scope of practice/specialty
- Immediate availability by phone or email
- Incident-to rules
- Can develop protocols requiring daily/almost daily contact and review of chart entries, or NP consults physician as-needed
- Primary Collaborating Physician

Physician Supervision: PAs

Physician supervision of PAs (varies state by state):

- More oversight required than for PAs
- Almost daily personal contact between Physician and PA
- Immediate access at all times by phone or email when not in office
- Primary Supervising Physician with alternate, others supervising physicians, Primary has sole medical-legal responsibility
- Co-sign chart entries

Written Agreements

Written agreements (varies state by state):

- For both: Employment agreement, outlines terms such as compensation and benefits, should be internal document only to protect employee's privacy concerns
- For PAs: Additional agreement needed to outline scope of practice, time/place/manner of physician supervision
- For NPs: The employment agreement can also cover the collaborative protocols/procedures between NP and Physician, internal document, retain in case of audit

Regulatory Bodies

Approvals needed from regulatory agency (varies by state):

- For PAs: Application to register as Primary Supervising Physician along with supervising physician agreement
- For NPs: Prescriptive Authority Application/Agreement
- State Nursing Board ("Board")
- Board usually processes on FIFO basis, estimate at least 6 weeks from submittal
- Can petition Board to amend things such as NP collaboration protocols or PA chart entry co-sign requirements (reduce the number)

Billing & Credentialing

- Do you need to credential and contract NPPs?
- Can you bill charges out under a supervising physician?
- Where does 'incident-to' billing come in?

Protecting Your Practice: What You Need To About Employee Handbooks and Why You Should Update Yours Now

Employee Handbook

Why have one:

- Every employee receives same information about workplace rules and policies
- Employees know what is expected of them
- Valuable legal protection if an employee later challenges you in court
- Provides guidelines for managers to follow to ensure consistency and equal treatment of employees

Employee Handbook

What should go into one:

- Introduction/Set the tone
- Pay and Salaries
- Benefits
- Harassment
- Code of Conduct, Safety
- Hours/Employee classifications i.e. exempt, non-exempt
- Electronic communications i.e. social media

Employee Handbook

Things to watch out for:

- Promises of continued employment (contradicts at-will status)
- Rigid progressive discipline policies, depending on state may undermine at-will status
- Policies that are overly broad in prohibiting employees from saying anything to discredit practice (may run afoul of NLRB laws)
- Cell phone, computer, internet usage – HIPAA, no expectation of privacy, malpractice concerns

Employee Handbook

- Review and update annually so remain current and compliant with local, state and federal regulations
- Ensure all employees review and sign an acknowledgment to that effect
- Keep it accessible to employees, i.e. in a designated file area, so employees/managers can easily refer to it as needed
- Draft it so it is inclusive of all your policies rather than have separate ones outside of the handbook

More info at in Viewpoint at:

<https://www.theverdengroup.com/view-point/>

Case Law In Action

How HIPAA and Anti Kickback / STARK Regulations are Being Applied

Stark / Anti-Kick Back

Stark/Anti-Kickback (AKS):

OIG Fraud Alert – Physician Compensation Arrangements

- OIG recently settled with 12 individual physicians who entered into questionable medical directorship and office staff arrangements
- Settlements presumably included entities paying those compensation arrangements as well

Case Law Updates

Fraud alert did not cover new ground regarding Stark/AKS laws. The arrangement was questionable for a number of reasons including:

- Taking into account the value or volume of referrals;
- Not reflecting fair market value;
- Failing to actually provide services required by the agreement;
- Arrangements that covered other physician financial responsibilities i.e. reimbursement for office staff salaries.

Case Law Updates: HIPAA

HIPAA/HITECH:

- Parkview Health System, Inc.
 - Parkview settled potential violations of Privacy Rule, and as part of the settlement agreed to pay \$800,000 and adopt a corrective action plan
 - OCR received complaint from retiring physician who had transferred to Parkview medical records for approximately 5000 to 8000 patients
 - Parkview employees left appx 71 cardboard boxes of medical records on the driveway of physician's home, who lived near a public road and shopping venue
 - Parkview had notice that physician not home at the time

Case Law Updates

HIPAA/HITECH:

Anchorage Community Mental Health Services

- ACMHS agreed to pay \$150,000 and adopt a corrective action plan as part of its settlement, report compliance over 2 year period
- Malware discovered on the company's server compromised the ePHI of appx 2,700 individuals
- According to the investigation, ACMHS did not follow its Security Policy, security incident occurred as a result of company failing to address/protect against basic risks, i.e. not regularly updating their IT resources

Staying Compliant with HIPAA

1. *Fully secure all PHI and EMR.*

- Establish one password to get access to the data, and designate a compliance officer on your staff (if you haven't yet) to safeguard the password. Adjust the password frequently, ideally with random password generation software, and use two-factor authentication for access.

2. *Creation/development of protective policies.*

- Institute management policies to make it less likely that patient health information gets into the wrong hands. Notify all personnel that any instances of entry into the EMR database are logged and monitored, and supply appropriate training as needed.

Staying Compliant with HIPAA

3. *Simple and timely patient access.*

- HIPAA requires that patients be able to review their EMR whenever they desire. The PHI software you use should be able to allow patients to establish user accounts. Usernames and temporary passwords can be supplied to all patients immediately, both for compliance and efficiency.

3. *Noncompliant disposal of hard-copy PHI.*

- HIPAA places significant focus on digital communications, but controlling paper copies of EMR is critical as well. You want to either have all paper documents under lock and key, accessible only to the appropriate staff members, or keep all the paperwork at a fully secured external location. Shredding of any paperwork for disposal should either be conducted in-house, with extreme care, or through an expert third party.

Merger Models:
Super Groups / Independently
Clinically Integrated Networks

Super Groups

What You Need To Know:

- What are they
- Are they legal
- How do you form
- What are the benefits
- Where do you start

Super Groups

What are they:

1. Group of practices under one umbrella company or corporation
2. Operating as a single entity
3. Under one tax ID number

Super Groups

Are they legal?

Yes!

- Need to be mindful of anti-trust concerns always with large numbers of physicians coming together
- Provided that: (a) Not taking advantage of patients and (b) dominating the market, should be ok with few issues or concerns to create new group

Super Groups

How do you form one?

Structure is not complicated but requires 2 major ingredients:

1. Similar philosophies and willingness to adhere to common governance structure; and
2. Use an appropriate legal structure for new entity, i.e. Limited Liability Company versus Professional Corporation
3. Unified technology platform to allow clinical integration

Super Groups

What are the benefits:

- Retain autonomy while achieving efficiencies of scale
- Increased leverage when dealing with other institutions
- Academic advantages such as combined research and outcome studies
- Increased purchasing power
- Reduction in certain costs i.e. malpractice insurance, payroll, health insurance benefits

Super Groups

Where do you start:

- Talk to colleagues
- Bring in experienced legal counsel
- Employ an accountant
- Consider a consultant
- Many details to figure out when bringing practices together in a new entity but starting with a solid partnership, legal and accounting framework, will ensure a successful venture with any new super group

Q & A

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