

## Advanced Practice Professionals

### What's the Risk?

The doctrine of respondeat superior—let the master answer—refers to a legal principle of vicarious liability that holds an individual or entity responsible for acts or omissions of another person. For example, a physician may not cause injury to a patient but has an employment or supervisory relationship with the person who acts negligently, such as an advanced practice professional (APP). APPs include physician assistants (PAs), certified nurse midwives (CNMs), certified registered nurse anesthetists (CRNAs), and nurse practitioners (NPs). Advanced practice registered nurses (APRNs) include NPs, CRNAs, and CNMs. Common allegations involving APPs include failure of the physician to supervise adequately, failure to follow supervisory/collaborative agreements, allowing the APP to practice beyond the scope of the supervisory/collaborative agreement, and failure to monitor and consult the physician when needed.

Supervisory and collaborative relationships can potentially involve both the supervising/collaborating physician and the APP in medical professional liability litigation. A physician who does not effectively collaborate with and/or supervise an APP or who unwittingly delegates tasks outside the APP's scope of practice may be named in a lawsuit. Lack of communication, poor documentation of communication between the APP and the supervising/collaborating physician, and failure to maintain up-to-date plans for supervision or collaborative practice agreements are issues that often surface in claims involving APPs.

Coverys closed claims data from 1/01/2014 through 12/31/2018 show that APPs were involved in only 3% of closed claims in the office/clinic location. The most frequent APP-related allegations (53%) involved diagnosis-related issues, such as history and physical evaluation, diagnostic/laboratory test ordering, and referral management. Clinical judgment was the top risk management factor identified in 42% of these claims; risk management concerns identified patient assessment and diagnosis of clinical conditions. The second-most frequent APP-related allegations involved medical treatment. While supervision of APP clinicians is often identified as a concerning issue, it was present in less than 1% of these closed claims.

For specific recommendations on reducing the risk of vicarious liability, refer to [Vicarious Liability & Ostensible Agency](#).

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### When Is This Risk an Issue?

As the number of APPs practicing in the United States continues to grow to meet increasing healthcare demands, an increasing number of physicians will inevitably take on supervisory and/or collaborative roles. Physician awareness and education in respect to their supervisory/collaborative responsibilities and the APP's scope of practice (including prescriptive authority) are key components of safe practice.

### Supervision Versus Collaboration

To supervise is to professionally oversee and accept responsibility for the medical services an APP provides. Supervision may be direct or indirect, depending on the type of services involved, state-specific regulations, organization/practice policies, the supervising physician's comfort level, and the APP's experience, comfort, and scope of practice. Direct supervision requires the supervisee to be physically on-site and readily available, whereas indirect supervision typically requires the supervisee to be physically on-site or readily available by electronic communication.

The specific role and scope of practice of the APP depends on licensure and state-specific laws and regulations. For example, PAs are considered dependent providers and therefore are to function under the supervision of a duly qualified licensed physician. The physician is ultimately responsible for ensuring that every patient receives high-quality care.<sup>1</sup> Practices that employ APPs must develop and implement plans of supervision to clarify roles, responsibilities, and expectations for both the APP and the supervising physician. Written supervisory agreements will aid in clarification and expectations of both the APP's role and the supervising physician's responsibility.

Collaboration refers to the process in which the APP works with a physician in a joint effort to provide patient care. The difference between supervision and collaboration is subtle but important to appreciate. Collaboration suggests a peer-like partnership in which decisions are discussed and mutually agreed upon. Supervisory relationships are more hierarchical and dependent. Depending on state requirements, APRNs may practice independently, in a supervised capacity, or in collaboration with physicians. Apart from state-specific requirements, the organization employing an APRN may require collaboration or supervision as a condition of employment. Practices that employ APRNs in dependent roles should develop and implement a supervision plan that clarifies roles, responsibilities, and expectations for both the APRN and the supervising physician. Collaborative practice agreements are useful to clarify responsibilities and expectations when APRNs are hired to serve in an independent capacity, regardless of whether the APRN care delivery model is independent, collaborative, or co-managing with a physician.

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For more information regarding the NP's state practice environment (full practice, reduced practice, and restricted practice) see <https://www.aanp.org/advocacy/state/state-practice-environment>.

### Supervision and Collaborative Practice Agreements

When entering into a supervisory/collaborative relationship with an APP, it is important to define their role. Supervision plans and/or collaborative practice agreements are formal written documents that detail the agreement between APPs and physicians. Components of a well-designed supervision plan and collaborative practice agreement include clearly defined descriptions of the:

- Practice setting – Examples include an outpatient clinic (with or without inpatient privileges), an urgent care facility, and an anticoagulation clinic.
- Scope of practice – APPs may perform any procedure that formal education and/or additional training has prepared them to perform and that their professional license permits, a concept known as scope of practice. Scope of practice varies by state, so it is crucial to check state regulations and the appropriate state licensing board for guidance on scope of practice limits.

It is important to recognize that the organization employing APPs may limit the scope of practice. For example, an APP may have advanced training in a particular specialty and may be permitted by state law to perform certain tasks, but if the appropriate supervisory/collaborative relationship is not in place and/or if the practice does not have appropriate support staff and/or equipment for a particular procedure, then privileges may not be extended for those tasks.

Questions about particular procedures may arise if the APP and supervising/collaborating physician do not formally address the APP's responsibilities.

- Patient management strategy – Physician oversight of APP practice may be viewed on a continuum. The following summarize the different approaches to patient management:
  - Independent management – APRNs may be permitted to independently manage their own panel of patients in states that allow such. Practices that employ APRNs and permit them to practice independently must remember that the physicians are still liable for the care provided under the doctrine of vicarious liability.
  - Collaborative management – This strategy should also be limited to APRNs. In a collaborative arrangement, the APRN provides patient care according to a defined scope of practice, periodically consults the collaborating physician on an as-needed basis, and participates in scheduled patient care reviews.
  - Co-management – In this strategy, physicians and APPs share the patient load. Every patient is periodically seen by a physician regardless of the APP's type of license. This

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model facilitates collaboration and supervision, as the physician is as knowledgeable about the patient as the APP.

- Supervised management – This strategy is always used with PAs and may be used with APRNs, particularly when they are new to the profession and/or the practice. Supervisory management varies in intensity, depending on state requirements and the preferences of the practice's physicians. For example, the supervising physician may be required to review and co-sign all of the care provided by the APP, a sample of the care provided, or predefined types of patient care situations. The results of medical record reviews should be documented, shared with the APP, and maintained in a quality review file. In addition to reviewing and co-signing charts, the physician and APP should participate in regularly scheduled case reviews.
- Privileges – Just as hospitals use privileges to specify the tasks and procedures physicians are permitted to perform, practices should develop privileges for APPs. Establishing guidelines for requesting consults and referrals and performing procedures may help improve care processes within the practice. The privileges section of the agreement should also address the APP's permitted participation in obtaining and/or documenting informed consent, conducting pre-procedure history and physicals, and preparing discharge summaries.
- Credentialing – Just as physicians are credentialed, APPs must also be credentialed. All healthcare providers, including APPs, should be properly credentialed to minimize risk exposure. Failure to properly credential physicians and APPs may likely result in increased liability exposure to the medical practice. For additional information, please see [Credentialing](#).
- Prescriptive authority – Address prescriptive authority regarding controlled substances. Clarify whether the APP is permitted to dispense sample medications and/or starter doses.

Finally, the supervision plan/collaborative practice agreement should clearly address physician roles and expectations, including:

- Identification of a primary supervising/collaborating physician and at least one secondary physician who will provide coverage when the primary physician is not available.
- Availability – whether the supervising physician is required to be available in the practice, on the campus, or by telephone.
- Quality review – the expectations for physician participation in chart and case reviews and the APP's annual performance appraisal.

## Delegation

The delegation process includes assigning or transferring responsibilities for the performance of a task or specific activities to another person, while retaining accountability for the outcome.

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This means delegating the right responsibilities and tasks to the right person (considering scope of practice/licensure/specialty), as well as effective communication between the supervising/collaborating physician and the APP. When considering which tasks to delegate to an APP, it is important to recognize that while the task itself may be delegated, the supervising/collaborating physician retains responsibility for any liability arising from the APP's performance of the task. Accordingly, the supervising/collaborating physician should not delegate tasks to an APP that are outside the physician's own training, experience, and/or specialty.

### Prescriptive Authority

While APPs have prescribing privileges in all 50 states, regulations do vary, so it is important to become familiar with the laws and regulations that are applicable in your state. Familiarity with the federal Drug Enforcement Administration (DEA) regulations is also important. The DEA Office of Diversion Control maintains a table titled Mid-Level Practitioners Authorization by State. This table is available at

<https://www.deadiversion.usdoj.gov/drugreg/practioners/index.html>.

### How Can I Reduce Risk?

Physicians can utilize a number of steps to reduce the risks associated with adding APPs to a practice, including credentialing, defining scope of practice, outlining the role of the supervising/collaborating physician, and understanding and defining prescriptive authority.

## Hire Appropriately

### Screen and credential APPs

- Screen APP candidates to ensure that they have the necessary credentials and capabilities. Ensure that the APP's patient care responsibilities and level of supervision are consistent with what the practice and providers are willing to accept.
- Evaluate the APP's history of compliance with practice policies and treatment protocols, ability to perform assigned tasks and responsibilities, proper completion of patient treatment orders and documentation, and negative/positive feedback from patients and staff members. Refer to [Credentialing](#) for more specific recommendations on implementing a credentialing process.

### Be aware of state-specific APP supervision requirements

- Identify state-specific supervision/collaboration requirements for each type of APP the practice intends to use and incorporate them into the office's hiring

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### Hire Appropriately

#### Use supervision plans or collaborative practice agreements

#### Address the supervising/collaborating physician's responsibilities

practices, plans of supervision/collaborative practice agreements, and policies and procedures.

- The American Medical Association (AMA) Advocacy Resource Center provides a resource for the PA scope of practice. See <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/arc-public/state-law-physician-assistant-scope-practice.pdf>.
- The American Association of Nurse Practitioners (AANP) provides a State Practice Environment resource. See <https://www.aanp.org/advocacy/state/state-practice-environment>.
- See the AANP Practice Information by State <https://www.aanp.org/practice/practice-information-by-state>.
- Outline the APP's scope of practice in a supervision plan or collaborative practice agreement. Ensure that the plan/agreement addresses the practice setting, the APP's scope of practice (including identification of the most common medical problems or conditions the APP is likely to be encounter), patient management strategy, credentialing, privileges, prescriptive authority, and primary and secondary supervising/collaborating physicians.
- Require the APP and all supervising/collaborating physicians to sign and date the plan/agreement and provide them with a copy, as requested.
- Review and revise plans of supervision/collaborative practice agreements every two years (at the time of re-credentialing, as applicable) and as needed with regulatory, supervision, or scope of practice changes. See [PA Supervisory Agreement](#) and [APRN Collaborative Agreement](#).
- Require supervising/collaborating physicians to be credentialed and/or board certified in the same area of practice as the APP. For example, a dermatologist should not supervise an APP who is providing family medicine care.

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### Hire Appropriately

- Educate primary and secondary supervising/collaborating physicians about their role in the supervision/collaboration process.
- Ensure that all primary and secondary supervising/collaborating physicians are willing and competent to oversee APPs. Supervising/collaborating physicians should have some experience supervising the practice of APPs, medical students, or residents, as well as good communication skills and a willingness to collaborate.
- Institute regularly scheduled clinical care reviews between the supervising/collaborating physician and the APP. Clinical care reviews should include general chart reviews and specific case reviews. See [Supervisory Physician Medical Record \(MR\) Review Tool](#).
- Establish a mechanism for physicians and APPs to document case and chart review results. Store clinical care documentation by provider with other quality and risk data to reduce the risk of discovery.
- Specify the clinical coverage requirements for both the APP and the physician. Although a physician may provide coverage for an APP, as a general rule, the APP should not cover for a physician unless another physician is available to provide backup for the APP.
- Establish the number of supervised/collaborative relationships permitted per physician. This limit will depend on the APP's type and scope of practice, licensure, and experience, as well as the experience and the comfort level of the supervising/collaborating physicians. Some states, such as Texas, Georgia, and California, specify supervision ratios.
- See the AMA physician assistant scope of practice at <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/arc-public/state-law-physician-assistant-scope-practice.pdf>.

### Define Prescriptive Authority

#### Comply with prescriptive practice regulations

- Be familiar with and strictly adhere to state laws and regulations governing the prescriptive practices of APPs. For example, while all APPs will have general authority

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## Define Prescriptive Authority

- to write prescriptions, specific controls may be placed on writing prescriptions for scheduled drugs and dispensing sample or starter doses.
- The DEA Office of Diversion Control maintains a table titled Mid-Level Practitioners Authorization by State at <https://www.deadiversion.usdoj.gov/drugreg/practioners/index.html>.
- Require proof of registration for scheduled drug prescribing** • Ensure that APPs with prescriptive authority have valid registrations from the DEA and, as applicable, from the state public health department or equivalent agency.
- Review prescriptive practice** • Include APP prescriptive practices in scheduled clinical care and MR reviews. Evaluate compliance with scheduled drug prescribing policies and DEA requirements.

## Delegate Appropriately

- Delegate the right task** • Ensure that delegated tasks are within the supervising/collaborating physician's own scope of practice.
- Ensure that delegated tasks are within the APP's scope of practice.
- Delegate under the right circumstances** • Ensure that an appropriate supervision plan/collaborative practice agreement is in place.
- Ensure that an established mechanism is in place for APPs and supervising/collaborating physicians to communicate timely.
- Ensure that patients are aware that their care may be provided by someone other than a physician.
- Delegate to the right person** • Ensure that the APP has the documented education and competency to perform the patient care services being delegated to them.
- Provide the right direction and evaluation** • Use clinical guidelines, protocols, and treatment plans as appropriate.
- Encourage APPs to seek guidance and provide guidance when requested.



### Delegate Appropriately

- Evaluate the effectiveness of clinical care provided by APPs on a regular basis – at least quarterly if patients are not co-managed.
- Evaluate clinical decision-making (assessment, diagnosis, and treatment), using MR reviews and case discussions.

### Determine if an Act Is Within APP Scope of Practice

#### Practice within scope

- Determine if an act is within an APP's scope of practice. Use the following process to determine if an act is within an APP's scope of practice (All answers must be yes. If the answer is no, it is a hard stop.):
  - Is the act consistent with licensing body rules, regulations, and guidance statements?
  - Is the act in accordance with the organization's policies and procedures and supported/directed by a protocol as appropriate?
  - Do they possess the documented clinical knowledge and clinical skills necessary to perform the task?
  - Would a reasonable and prudent APP perform this task in this situation?
  - Are you prepared to accept accountability for performing the task and the outcome?

#### References:

1. American Medical Association. Allied Health Professions: Physician Assistants H-35.989. AMA PolicyFinder. <https://policysearch.ama-assn.org/policyfinder/detail/35-989?uri=%2FAMADoc%2FHOD.xml-0-2996.xml>. Updated 2017.