
SUPERVISION OF NURSE PRACTITIONERS

More and more psychiatrists are considering supervising nurse practitioners, both in the context of hiring a nurse practitioner for their private practices or being asked to work with a nurse practitioner in a clinic or other facility setting. This trend is expected to continue, as utilization of allied healthcare professionals can be an effective solution to the problem of limited psychiatric resources. As with all practice arrangements, psychiatrists need to be aware of the potential malpractice risks when entering into a supervisory arrangement with a nurse practitioner, as well as how to minimize and manage those risks.

What Are the Liability Risks Associated With Supervision of Nurse Practitioners?

While the specific activities that constitute supervision by a psychiatrist vary from state to state, a psychiatrist's potential liability for the actions of the nurse practitioner does not; a psychiatrist will almost certainly be named as a defendant in any lawsuit alleging malpractice against a nurse practitioner whom the psychiatrist is supervising. Depending upon individual state law, the plaintiff/patient may try to impute negligence upon the psychiatrist on two grounds:

- *Vicarious Liability/Respondeat Superior.* Vicarious liability is based upon the legal doctrine of respondeat superior, which literally means "let the master respond." Provided that the nurse practitioner was found to have committed the act of negligence within the scope of his or her employment (i.e., engaging in an act to further the business of the psychiatrist) the psychiatrist may also be found liable. This can occur even though the psychiatrist's own care of the patient or supervision of the nurse practitioner was above reproach.
- *Negligent Supervision.* Each state's laws have provisions regarding the supervision of nurse practitioners by physician(s). Should an error occur on the part of the nurse practitioner the plaintiff will undoubtedly look at whether there were any lapses in oversight to support an allegation of negligent supervision.

The bottom line is that adequate supervision is necessary to protect the psychiatrist from liability for the nurse practitioner's actions or inactions.

What Can Psychiatrists Do To Manage the Liability Risks?

In general, the best way to minimize liability is to establish and follow appropriate guidelines for the nurse practitioner's practice, supervision, and review.

- Understand Your State's Statutory and Regulatory Requirements

The first step in establishing such guidelines is having a very clear understanding of what is required by the state's nursing board as well as your licensing board. The scope of the nurse practitioner's practice, including prescribing authority, is defined by each state, either by the legislature and/or nursing board regulations. States vary in the extent to which a nurse practitioner's practice is regulated and in the degree of supervision required. A few states treat the nurse practitioner as a truly independent practitioner, requiring no supervision or collaboration; some states regulate the relationship extensively; and other states are somewhere between the two extremes. The majority of states require some supervision or at least formal collaboration subject to specific regulatory requirements.

The topics of state regulation of nurse practitioners include, but are not limited to, the following:

- Limiting the number of nurse practitioners a physician may work with at the same time
- Requiring a physician to be registered as a supervising/ collaborating physician
- Specifying the frequency for on-site visits by the physician
- Stipulating the content of written practice agreements and written protocols between nurse practitioners and supervising/collaborating physicians

Psychiatrists should contact their state's Board of Nursing or visit their websites to determine the specific requirements in their states.

Psychiatrists should make a similar inquiry of their state licensing board. Many states' definitions of "unprofessional conduct" or "professional misconduct" specifically include supervision or supervision-related activities which could subject the physician to discipline. For example:

- Failing to properly supervise (New York)
- Failing to delegate properly (New York)
- Entering into or continuing in a collaborative agreement that fails to meet generally acceptable standards of medical practice (Colorado)

Specific Risk Management Strategies

Consider the following *before* agreeing to work with a nurse practitioner:

- Review and discuss all applicable statutes and regulations with the nurse practitioner.
- Verify the nurse practitioner's education, training, licensing, credentialing, and employment history.

- Contact the Nursing Board to inquire about any administrative complaints or lawsuits that may have been filed against the nurse practitioner.
- Verify the nurse practitioner's professional liability coverage. The nurse practitioner should have the same professional liability insurance coverage limits as you do.
- Check your professional liability insurance policy and contact your Underwriter to notify him of the supervision arrangement.
- Be aware that there is no universal agreement on what constitutes "supervision." Know what you are agreeing to. Know what is expected of you before you sign a contract or agreement to be a supervisor and before signing-off on a form as a supervisor. Check with the various organizations that may be involved, such as the patient's insurance company, facilities where you and the nurse practitioner practice, and Medicare/Medicaid, to understand their definitions of supervision and supervisor.
- Be trained and experienced in the same area of practice as the individual you are supervising. You will be held to the standard of care for that practice area.
- Do not supervise relatives, close friends, employers, or patients. Dual relationships can impair your objectivity and professional judgment and should be avoided. Supervision of patients would almost certainly be considered unethical.
- Understand the requirements for and implications of your signature on orders and other documents, especially for a patient that you have not seen. As the signing physician, you must ensure that the level of your involvement is accurately reflected on the document. One way to ensure this is to annotate the signature. For example, you might add "Reviewed by," "Chart reviewed/patient not seen by," or "Under the supervision of" before your signature.
- Ensure that the nurse practitioner who will be prescribing on his own has complied with statutory, regulatory, and payer requirements and has obtained his own DEA number and prescription pads.
- Ensure that the nurse practitioner is aware of his professional code of ethics.

Develop a written agreement prior to supervision, even if not required to do so under state law. A formal agreement should help to promote communication, set parameters, clarify responsibilities and expectations, establish procedures, and limit ambiguity. Some states require a written agreement for supervisory relationships and even require a review of the agreement by the respective licensing boards involved. Any agreement should be strictly followed so that the standards of the agreement are not violated. Specific elements to consider having in a written agreement include, but are not limited to, the following:

- frequency and type of supervision and record review,

- notification by the nurse practitioner of any changes in his professional status, such as an investigation or disciplinary action by professional licensing board and or professional certifying organizations, complaints by patients, etc.,
- loss or limitation of license,
- change in insurance coverage,
- your requirements for notification of material changes in the status of patients (emergencies, crises, side effects, etc.), and
- information to be given to patient about the respective roles of the physician, nurse practitioner, and the patient other, as indicated by the state's statutes and rules.
- Consult with personal legal counsel for state specific requirements, for assistance with the agreement, and for information about financial and billing matters.
- Know that no legal document can totally eliminate your risk for liability from a supervisory relationship. Should the supervisory relationship ever be questioned, the substance of the relationship will be considered as well as any formal agreement.

Tailor your involvement to the nurse practitioner's education, training, and skills, as well as the clinical needs of the patient. Simply meeting your state's requirements for supervision may not be sufficient.

- Do not make assumptions about the nurse practitioner's knowledge; assess his skills carefully. Document internal training and continuing education. Make sure that the nurse practitioner knows his limits and knows when to ask for help (i.e., it is important that the nurse practitioners not wait too long to contact you with important clinical information about a patient or other critical issue.)
- Ensure on-going communication between yourself and the Nurse Practitioner.

This is especially critical with regard to crisis and emergency situations. If at anytime there are materials changes in a patient's status (including, but not limited to, suicidality or homicidality), the nurse practitioner should notify you immediately. There have been cases where the nurse practitioner made significant decisions without informing the physician, who didn't know of the problem until he was named as a defendant in a lawsuit.

Educate the patient about the supervisory relationship. Ensure that the patient understands that the nurse practitioner is not a psychiatrist.

- Document your supervision including the dates of each supervision meeting, the duration of in-person supervision, and an ongoing record of the total number of hours of supervision to date.

- Ensure that in the event of your non-availability, another psychiatrist is available to cover your supervisory responsibilities with the nurse practitioner.
- Evaluate the nurse practitioner on the basis of actual performance and reasonable standards.

Remember that you are responsible for ensuring that the nurse practitioner performs responsibly, competently, and ethically. If at any time and for any reason, you determine that the nurse practitioner is not providing services commensurate with the standard of care, develop and implement a plan for remediation. You may want to consider putting the remediation plan in writing. Such a step could help with communication and compliance and could also be used to provide a defense of your actions should they ever be questioned. If the nurse practitioner is unable to provide appropriate care, patients may need to be seen by you or another competent health care professional until the nurse practitioner is able to resume appropriate care.

Additional Resources:

AMA Guidelines for Integrated Practice of Physician and Nurse Practitioner (Policy H-160.950), available at www.ama-assn.org.

APA Guidelines for Psychotherapists in Consultative, Supervisory, or Collaborative Relationships With Nonmedical Therapists

APA Guidelines for Physician Signatures

APA Ethics Opinion 5-J regarding supervisors' signatures when the supervisor has not examined the patient



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