

Navigating Scope-of-Practice Risks for Advanced Practice Providers

Laura M. Cascella, MA, CPHRM

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Healthcare continues to change at a rapid pace, and the need for more healthcare providers in both primary and specialty care persists. A recent study notes that the United States will face a shortage of between 37,800 and 124,000 physicians by 2034.¹ The driving forces behind this shortage are population growth and the aging U.S. population. Other factors — such as the number of doctors nearing retirement age, burnout, and limits on medical school enrollment and residency funding — also are contributing to the existing and anticipated physician shortage.²

The medical community is not alone in this predicament. When it comes to dental care, almost 70 million Americans live in areas that the U.S. Department of Health and Human Services (HHS) has designated as “Health Professional Shortage Areas.”³ Although recent workforce projections for 2017–2030 suggest that the United States will have an adequate supply of dentists, the demand for general dentists may exceed the supply, and national projections “may mask a potential mal-distribution of providers and supply–demand disparities at the state and local level”⁴

To accommodate these changes and demands, the healthcare community continues to evolve its workforce and care delivery models. Advanced practice providers (APPs) — such as nurse practitioners (NPs), physician assistants (PAs), certified registered nurse anesthetists (CRNAs), and dental therapists (DTs) — play a significant role in the team-based care paradigm, helping fill gaps in provider availability and accessibility and providing quality care to patients. APPs practice in various care settings and specialties and across all patient populations.

Yet, as the number of APPs has grown, so too has the frequency of malpractice claims in which they are implicated as defendants. Depending on the circumstances, malpractice suits may

name APPs independently or with doctors, practice groups, and/or facilities as codefendants. Further, doctors who supervise APPs might be held vicariously liable if a provider is negligent, even if the doctor never saw the patient.

From a risk management perspective, the clinical risks associated with care are largely the same for doctors and APPs; however, the expanding nature of alternative workforce models and ongoing changes in healthcare require greater awareness of the potential risks and liabilities associated with collaborative care.

A top risk concern for APPs and the doctors with whom they work is scope of practice. Practicing beyond scope of training has been noted as one of the common reasons that APPs and their employers are sued.⁷

Alternative Workforce Models in Dentistry

APPs are still an emerging concept in U.S. dental care, although they are common abroad. Thirteen states authorize the practice of dental therapy, and more states are contemplating legislature to increase access to oral healthcare.⁵ Depending on state law, dental APPs may work under remote, indirect, or general supervision of dentists to provide preventative and routine restorative services.⁶

How Scope of Practice Is Defined and Regulated

Scope of practice refers to the functions that healthcare providers are permitted to perform as licensed professionals — such as diagnosing, treating, and prescribing. If a patient's needs fall outside of a provider's scope, the provider has a duty to refer the patient to a qualified healthcare professional for further care.

Although the concept may seem straightforward, scope of practice remains an ongoing concern for APPs — likely because of the complexity surrounding how it is defined and regulated. Various stakeholders are involved in setting the parameters related to APP scope of practice, including professional associations, states, practices/healthcare organizations, and patients.

Professional Associations

A number of national, state, and specialty-focused professional associations represent APPs in the United States, such as the American Association of Nurse Practitioners (AANP), the

American Academy of Physician Associates (AAPA), the American Association of Nurse Anesthetists (AANA), the American Dental Hygienists Association (ADHA), and more.

Many of these organizations have developed guidelines to outline scope-of-practice standards and competencies for their respective professions. These guidelines serve as a foundation for establishing the responsibilities and functions of clinical practice that APPs are qualified to perform after meeting certain educational, professional, and licensing requirements. Additionally, some guidelines delineate the specific knowledge, skills, and abilities necessary for specialty practice (e.g., competencies for APPs working in emergency care, cardiology, oncology, etc.).

The scope-of-practice and competency guidelines that professional associations develop are valuable references that help establish standards of care, but they do not necessarily define legal scope of practice. Instead, the functions that APPs are legally permitted to engage in are regulated at the state level.

States

State legislatures and licensing boards establish the laws and regulations that govern APP scope of practice in each individual state. These entities determine the extent of services — such as diagnosing, treating, and prescribing — that APPs can legally perform. The National Governors Association explains that states “are responsible for ensuring, through licensure and certification, that health care professionals provide services commensurate with their training.”⁸

Because regulation occurs at the state level, APPs’ scopes of practice differ from state to state. Some states have very detailed statutes and regulations, while others offer more general scope-of-practice parameters. This variation can present problems for APPs who want to move to a different state or practice in more than one state. Further complicating this issue is the expansion of telehealth services, for which licensing variations and restrictions are a known barrier.⁹

Telehealth and COVID

Federal and state policies eased some telehealth licensing restrictions during the COVID-19 pandemic, but these policies may not extend past the end of the public health emergency.

State laws also might address other aspects of APP practice, including prescriptive authority, Medicaid reimbursement, standards of practice, and requirements for licensure, supervision, collaboration, and/or education. Failure to understand state laws related to these areas can put both APPs and those with whom they work at increased risk.

Further, remember that “APP” is a collective term that covers many different types of providers. The scope of practice for one APP profession will differ from others, even within the same state. Understanding the differences between provider roles and scopes is imperative, particularly in practices employing more than one type of APP or in situations in which APPs are providing coverage for each other.

Healthcare Organizations

Beyond professional association guidance and state regulations, doctors and healthcare organizations that utilize APPs may choose to further define their responsibilities through organizational policies and protocols.

Decisions about scope of practice and decision-making might take into account an APP’s level of skill, years of experience, training, and the overall context of the care provided. For example, a healthcare organization may choose to have a more limited scope of practice for an APP who has just entered the workforce compared with an APP who has 20 years of experience. However, the scope of practice for both should comply with state laws.

Additionally, an APP’s involvement in a patient’s care may need to factor in not only the type of case, but also its complexity. Certain complications, comorbidities, and other factors may result in a situation that is beyond the APP’s training or competencies.¹⁰

For some APPs, such as PAs, a supervising doctor’s delegation decisions will help determine scope of practice. Delegated tasks must be within the APP’s legal scope of practice and consistent with the doctor’s own scope of practice. In these situations, the APP’s education and experience — as well as practice policy and state law — should help inform delegation decisions.

Patients

Patient consent also plays a role in defining scope of practice for APPs. Lack of patient awareness about the types of providers in a collaborative practice and the failure to inform

patients about who is providing their care can expose healthcare organizations to unnecessary liability.

Organizations should ensure that patients understand their provider options, are properly informed about APPs' professional roles in the practice, and are aware of providers' credentials. The American Academy of Family Physicians advises that information about the roles and qualifications of APPs should be:

- Specifically stated in practice advertisements and communications
- Made known to patients at the time that they make appointments
- Clearly and easily identifiable by patients during visits¹¹

The American Association of Orthopaedic Surgeons (AAOS) encourages practices to have name badges that indicate each provider's profession. AAOS also suggests that a doctor should introduce the APP to the patient, reassure the patient that the APP is a trusted professional, and explain the different provider roles.¹²

Written Protocols and Guidelines

Developing written guidelines and protocols for scope of practice can help clarify APPs' roles within your office or organization; delineate the responsibilities, duties, and functions that fall within each APP's scope; and serve as a reference for providers and staff.

Some states require the development of written guidelines and protocols as part of collaborative practice agreements, and some state medical boards must approve these documents.¹³

Guidelines and protocols may cover a range of topics and specify in detail:

- Accepted standards of practice, depending on the context of care, specialty, and patient population.
- Appropriate methods of communication between the doctor and APP (e.g., phone calls, electronic communication, and in-person consultations).
- The types of patients for which the APP can provide care.

- The circumstances that should trigger consultation with the doctor (e.g., specific symptoms, care not resulting in improvement after a certain number of visits, abnormal test results, and deviation from the agreed-upon standards of care).
- Documentation requirements for all care provided, including signature requirements.
- Protocols for examining, assessing, treating, and monitoring patients.
- Required processes related to tests and procedures.
- The appropriate method for managing test results.
- The APP’s prescriptive authority for controlled and noncontrolled substances, including the level of supervision or collaboration required.
- The resources and reference manuals that will serve as the basis for standards of care. The doctor and APP should mutually agree on these resources, and they should be easily accessible within the office.¹⁴

Collaborative Practice Agreements

A collaborative practice agreement is a written statement that defines the joint practice between a doctor and an APP and describes the parameters of the collaborative practice. Some states require these agreements for certain types of APPs.

When a collaborative practice agreement is used, the supervising doctor and the APP should mutually agree on the terms. The agreement helps clarify the roles and responsibilities of each provider and may include information about:

- Patient population and scope of practice
- Supervision and consultation, including availability of the supervising doctor
- Responsibilities and privileges
- Prescriptive authority
- Clinical practice guidelines
- Patient care coverage
- Performance and/or peer review

Sample collaborative agreements are available online, and some state medical associations might provide templates.

Protocols and guidelines will require periodic review and should be updated as state regulations or organizational policies change. Further, the development of these documents results in a duty

to adhere to the stated principles. Failure to adhere to your own protocols or guidelines could make defending a malpractice claim difficult.

Minimizing Risks Associated With Scope of Practice

APP scope of practice is complex and evolving; thus, it represents a liability concern for healthcare organizations utilizing these providers. However, various proactive strategies can help address scope-of-practice risks and potentially minimize liability:

- Research state statutes and regulations governing APP scope of practice to develop a clear understanding of what functions these providers can legally perform. Routinely monitor for changes in state laws related to scope of practice.
- Understand state requirements for collaboration, supervision, and the development of written guidelines and protocols for each type of APP in your organization.
- When developing guidelines related to APP scope of practice within your organization, make sure you fully understand the nature of APP advanced practice, clinical training, and education.
- Ensure that guidelines and protocols specifically define situations that should trigger consultation with the supervising doctor and appropriate methods of communication between providers.
- Routinely review guidelines and protocols to ensure they are current and relevant to APP practice as well as consistent with state laws and organizational policies.
- Delineate each APP's scope of practice in a collaborative agreement or employment contract. Use terminology that is consistent with the language that appears in state laws and practice acts.
- Confirm through oversight and supervision that APPs have the competencies included in their scopes of practice.
- Educate staff about APPs' roles within the organization so that staff members can provide patients with adequate and correct information.
- Make sure patients are aware of who is providing their care and understand their provider options.

In Summary

Scope of practice is an ongoing risk concern for APPs, supervising doctors, and healthcare organizations. Because of the variation in state laws concerning scope of practice — as well as other factors that play a role in determining APPs' roles and responsibilities — being cognizant of the specific laws and principles that guide APP practice parameters is essential.

A strategic approach to addressing scope-of-practice concerns involves developing a thorough understanding of state statutes and regulations, creating and implementing protocols and guidelines that address various issues related to scope of practice, educating staff about APPs' roles within the organization, and ensuring that patients understand who is providing their care.

Endnotes

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