Navigating Risk in the Sea of Change

The APP Will See You Now

As the role of advanced practice providers continues to grow and expand, so do the associated risks with their practice.

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Presenters

Gretchen Kilbourne, BSN, MSN, PhD, RN, CPHRM

Anthony Abeln, Esq.

William N. Smart, Esq.

Please refer to the Presenters' Bios available on the table and online for more information

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How does amplification of APPs affect health care delivery?

It helps the bottom line!

It expands access to care!

It puts patients at risk!

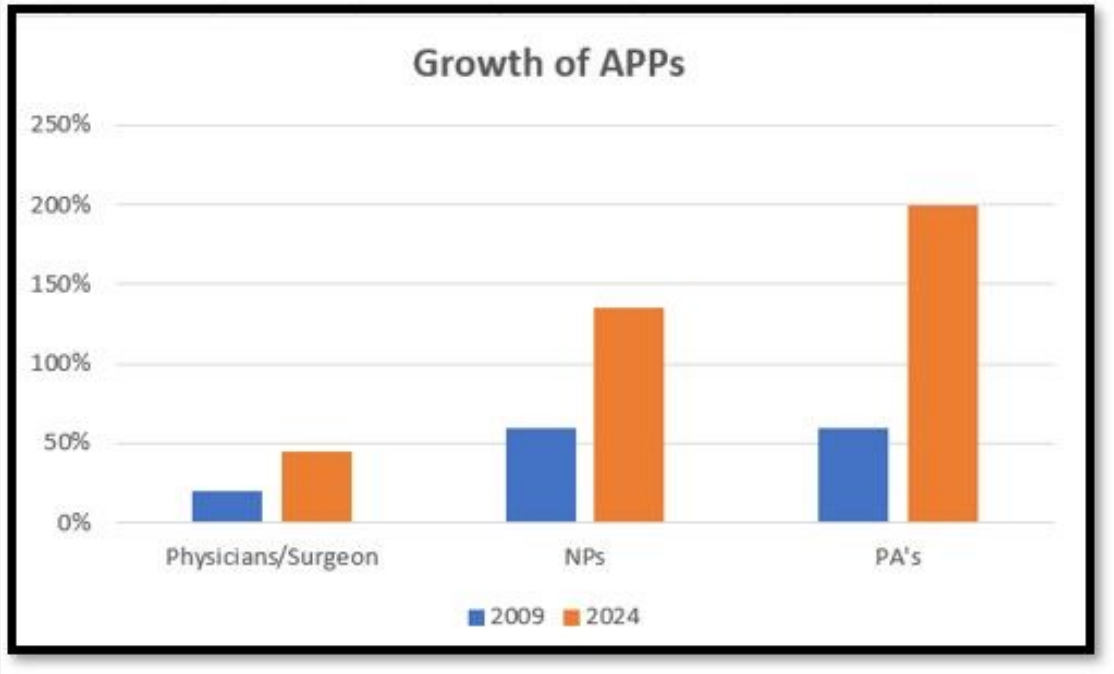
It diminishes the value of physicians!

Agenda

- Data on Growth of APPs Over Time
- Expanding Legal Scope of Practice For NPs and PAs
- Drivers of Change
- Implications for Risk Management
- Strategies for Mitigation
- Defense of APP Care in Litigation

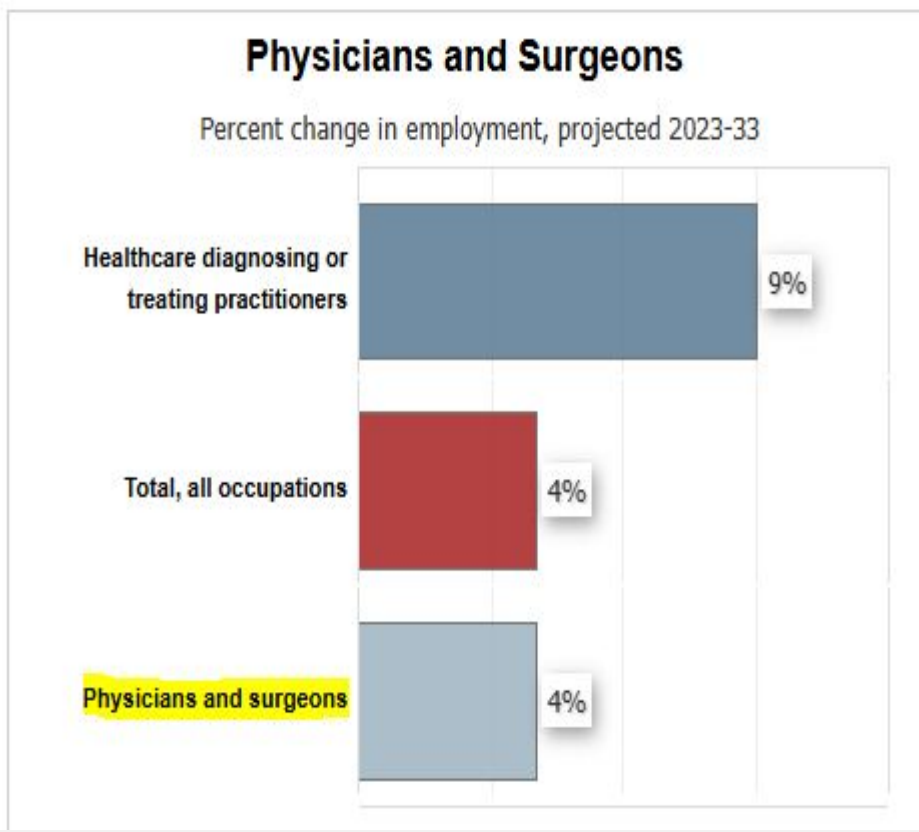
Growth of APPs

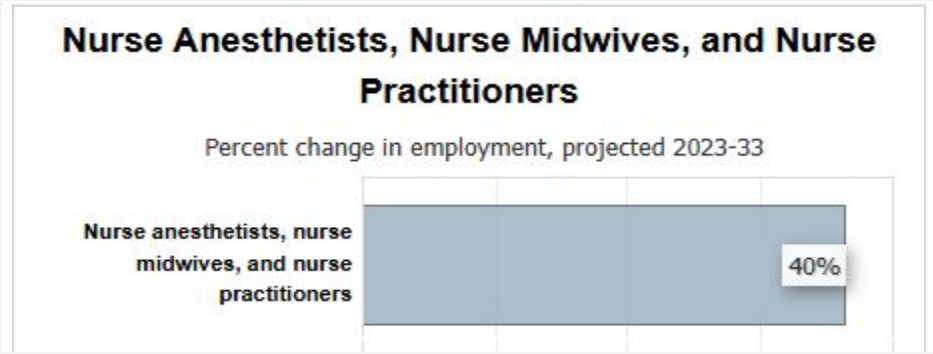
2009 - 2024 (U.S. Bureau of Labor Statistics)

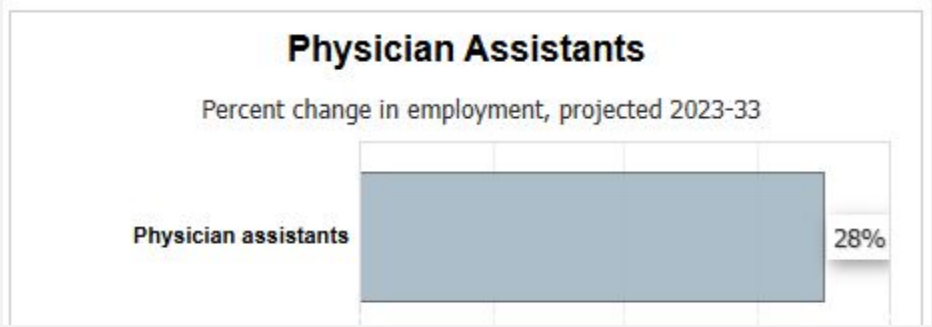


Roughly 25% of health care visits delivered by nurse practitioners and physician assistants.

Projected Increase 2023-2033

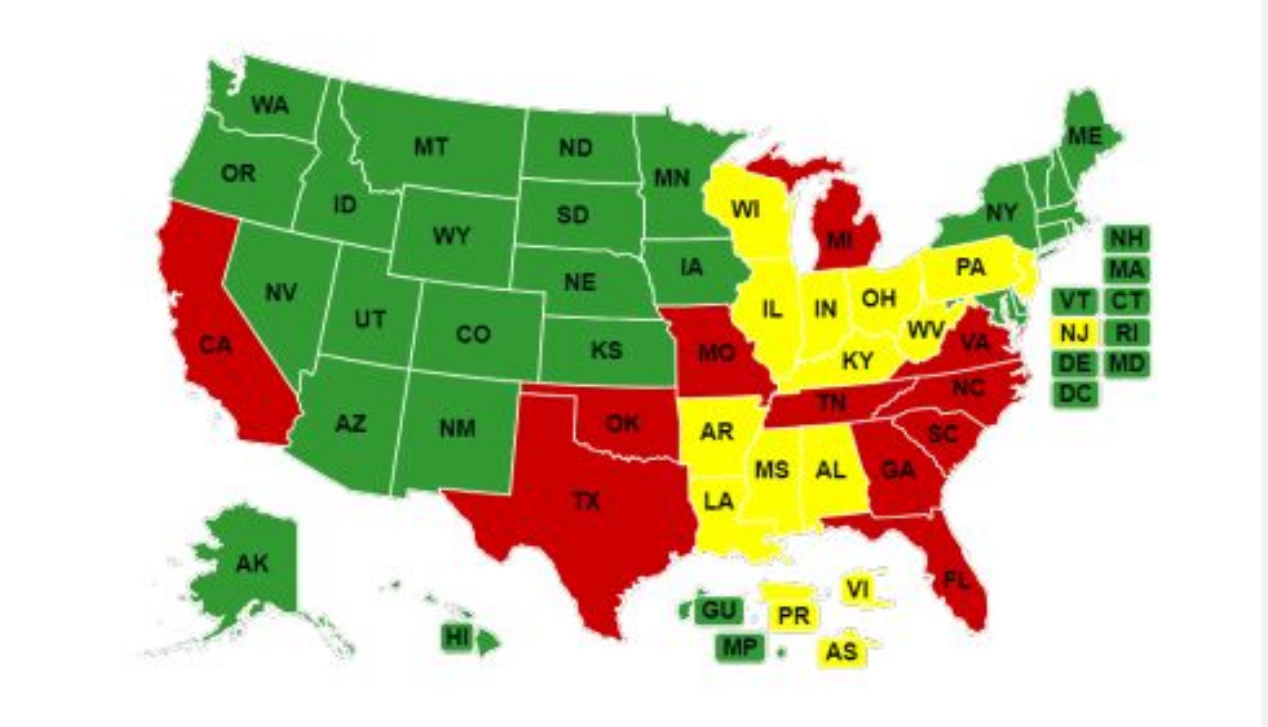






Expanding Practice Authority (NPs)

- All New England States now “Full Practice States” for NPs



Expanding Practice Authority (NPs)

- May ***independently*** evaluate patients; diagnose, order and interpret diagnostic tests; and initiate and manage treatments, including prescribing medications and controlled substances.
  - MA Limitations
- Can Serve as Medical Directors in Some States
- Initial 2-3 Years of Supervision (except NH, RI)

Expanding Practice Authority (PAs)

- PAs Moving from Paradigm of "Supervision" to "Collaboration"
  - To supervise is to professionally oversee and accept responsibility for the medical services an APP provides.
  - To collaborate suggests a peer-like partnership in which decisions are discussed and mutually agreed upon.
- Care Collaboration Agreements.
- "Physician Associates"?

What's Driving These Changes?

- Physician shortages
- Increases in patient demand
- Changing models of healthcare delivery
- Vertical integration of healthcare systems
- Increased costs

What do Physicians Think about all of this…?

From the Massachusetts Medical Society in Opposition to Proposed Legislation Eliminating Supervisory Requirements for PAs….

- "While physician assistants play a critical role in the health care system, physician-led, team-based care — including physician assistants — is the optimal model for achieving the best patient outcomes," association President Dr. Hugh Taylor said.
- "Supervisory requirements are not merely administrative constraints, they are essential to protecting patient safety and to ensuring patients have access to physician-led care teams."

Implication for Risk Management

Quality of Care: Education & Training

NPs

- Nurse Practitioner (NP) programs generally last two to three years, however, some NPs can get their degree in as little as 18 months after becoming an RN and online-only programs are available.
  - NPs are trained in the advanced practice of nursing where they focus in a specialized role (i.e. neonatal NP or critical care NP).
  - NPs adhere to a patient-focused nursing model of practice.
  - Programs incorporate supervised clinical practicums.
  - Requires Master's Degree and passing a board certification exam
  - Sitting for the board certification exam requires 500 clinical hours.
  - NPs must meet certain clinical hours and CE credits to qualify for recertification; they only take recertification exam every 5 years by choice or if they don't meet certification requirements.
  - Primary Care is the most common setting for NPs as approximately 70% of NPs deliver primary care services (AANP).

PAs

- Physician assistant (PA) programs generally take two years to complete.
  - PAs receive broad general medicine education that allows them to work in any area of medicine.
  - PAs can obtain post-grad training in specific residencies and specialty certifications.
  - PAs focus on a disease – centered (medical) model of practice.
  - Programs require completion of clinical rotations in specific specialties.
  - Requires Master's Degree and passing a certification exam
  - PAs must pass a recertification exam every 10 years and complete 100 hours of CME every 2 years.
  - The most common work setting for PAs is in the hospital as approximately 39% of PAs work in the hospital setting (NCCPA).
  - 24% of PAs work in the primary care setting (AAPA).

Implication for Risk Management

Quality of Care: Training and Experience

- NPs/PAs may not be adequately prepared to provide equivalent care immediately following their respective post-baccalaureate programs
  - Growth in NP/PA programs and influx of recent graduates has introduced into practice APPs with limited hands-on experience
- Diversity and scope of an APPs prior experience enhances quality of care
- Consideration of the type of organization (i.e. community hospital vs. AMC) and resources available

Implication for Risk Management

Claims

- With decreasing numbers of physicians, APPs are assuming an increasing role in patient care
  - Coverys (2020) claims data from 2010-2019 reveals relatively few events involving APPs, but the count is rising and this trend is expected to continue as the population of APPs grows
  - CRICO (2023) claims data from 2012-2021 does not indicate an increase in the proportion of claims involving PAs or NPs
    - Data suggests that while PAs and NPs are involved in 8.4% of all cases, they are named as defendants in only 2.2%

Top Five Allegations for APP Events (Coverys, 2020)

- Diagnosis related (39%)
  - specifically involving patient assessment or ordering of diagnostic or lab tests
  - Cases involving a PA or NP were more likely to be diagnosis related than cases involving a physician
- Medication related (12.9%)
- Medical Treatment (12%)
- Obstetrics related (11.9%)
- Surgery/procedure related (11%)

Risk Mitigation

- Appoint excellent clinicians
- Ensure thorough orientation and onboarding with clear expectation setting
- Measure performance against the set expectations
- Provide regular feedback
- Have good support structures for physicians and APPs
  - This includes a strong Quality Assurance Process and Peer Review Committee with intentional APP representation

Defending APP Care in Litigation

- <u>Standard of Care</u>
  - Is the standard of care different for APPs and Physicians?
    - Relative to specialty, clinical setting, resources, etc.
    - Independent v. Dependent APPs
  - Use of APPs as experts.
  - How are APPs perceived by a jury?

Defending APP Care in Litigation

- <u>Scope of Practice</u>
  - Is the alleged negligent act within the appropriate legal scope of practice of the APP?
  - Have the instruction's policies been followed?
    - What guardrails are in place, if any?
      - E.g., ESI or chief complaint-based, for emergency or urgent care?
      - Does every patient need to be seen by a physician?

Defending APP Care in Litigation

- Physician Liability
  - Supervision v. Collaboration Agreements
  - Co-signing or Endorsing APP Care

Attestation:
I have reviewed and agree with the history, physical exam, medical decision making and plan for the patient as documented by the APC. As necessary, I have appended the note with my suggestions, comments or clarification to their assessment and plan in the note above.

Compare versions

Showing differences between versions effective [See Text Amendments] to August 5, 2022 and August 6, 2022 [current]

Total: 7 differences | 3 deletions · 4 additions | Key: ~~deleted text~~ added text | Highlights

N.H. Rev. Stat. § 328-D:12

328-D:12 Physician Liability.

~~This chapter~~ **A physician assistant is responsible for his or her own medical decision making. A participating physician included in a collaboration agreement with a physician assistant** shall not ~~be construed to relieve the responsible physician of professional or legal responsibility~~ **, by the existence of the collaboration agreement alone, be legally liable** for the ~~care and treatment of his patients~~ **actions or inactions of the physician assistant; provided, however, that this shall not otherwise limit the liability of the participating physician**.

Credits

Source. 1989, 290:1, eff. Jan. 1, 1990. **2022, 148:8, eff. Aug. 6, 2022.**

N.H. Rev. Stat. § 328-D:12, NH ST § 328-D:12

End of Document

Defending APP Care in Litigation

- <u>Direct/Institutional Liability</u>
  - Did the supervising provider (if applicable) provide the appropriate supervision/collaboration?
  - What responsibilities are assigned by agreement? By hospital policy? By regulation?
  - Existence of relevant or outdated supervisory agreements for dependent APPs
  - Were the duties at issue properly delegated?
  - If supervision was previously required, has anything fundamentally changed if no supervision is required now?

Existing Supervisory Agreements…PAs

SCOPE OF PRACTICE:

A physician assistant may perform medical services when such services are rendered under the supervision of a physician who is a member of the [redacted] Medical Staff. Supervision shall be continuous and available but shall not require the personal presence of the supervising physician. Physician assistants, depending upon their level of professional experience and in accordance with their delineated privileges, may perform medical services of a general nature and may order tests and therapeutics consistent with any applicable bylaws and policies of [redacted] Hospital. The physician assistant may work with surgical specialties and subspecialties assisting in surgery and providing pre- and post-operative care for surgical patients. Patients admitted by a physician assistant to a specialty service must be seen by the physician of record or the covering physician and a note written within 24 hours of the admission. Any admission by a physician assistant will require "real time" notification/call directly to the physician by the physician assistant. The physician assistant wears a name tag which identifies him or her as a physician assistant. The physician assistant informs each patient that he/she is not a physician and that he/she renders medical services only under the supervision of a full licensee.

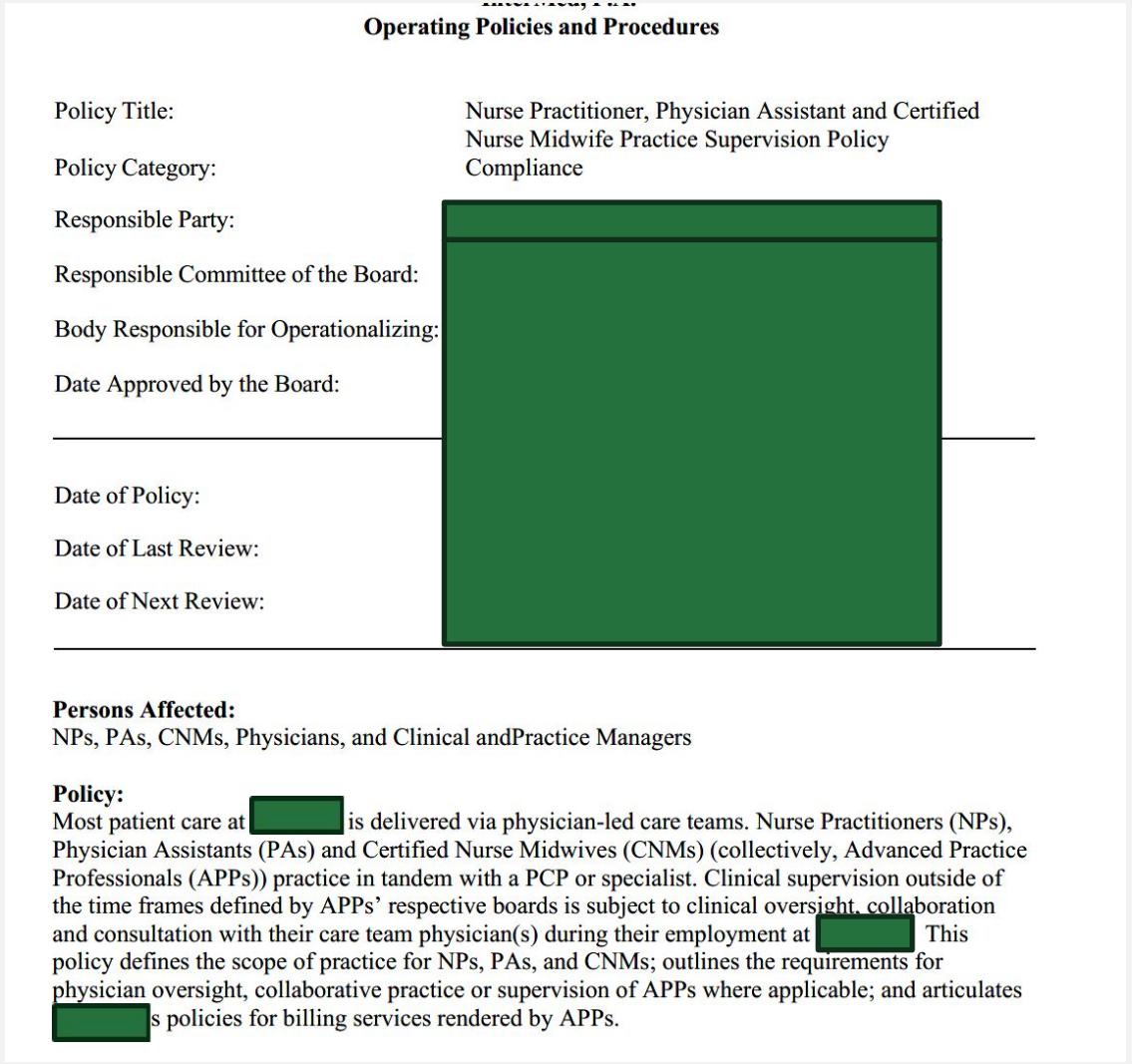
Supervisory Physicians -- NPs

II. Responsibilities of Supervisory Physician

1. Provide the Nurse Practitioner with medical direction, supervision, and consultation. Assign or delegate supervision for medical direction when needed.
2. In collaboration with the Nurse Director, establish competence in writing orders and prescriptions.
3. Develops and signs mutually agreed upon practice guidelines in collaboration with the Nurse Practitioner.
4. Review and approve written practice guidelines once every other year.
5. Reviews and monitors Nurse Practitioner's prescriptive practice at least every three months, with the Nurse Practitioner or delegates this responsibility to anther fully licensed, qualified physician.
6. Agrees to notify the Medical Staff Services Department of termination of employment, change of address or of a change in the Supervising Physician.

Policies and Procedures

- Aligned to:
- State Laws
- Regulations
- Board Guidance
- Etc…



Operating Policies and Procedures

Policy Title: Nurse Practitioner, Physician Assistant and Certified Nurse Midwife Practice Supervision Policy

Policy Category: Compliance

Responsible Party:

Responsible Committee of the Board:

Body Responsible for Operationalizing:

Date Approved by the Board:

Date of Policy:

Date of Last Review:

Date of Next Review:

Persons Affected:
NPs, PAs, CNMs, Physicians, and Clinical andPractice Managers

Policy:
Most patient care at [redacted] is delivered via physician-led care teams. Nurse Practitioners (NPs), Physician Assistants (PAs) and Certified Nurse Midwives (CNMs) (collectively, Advanced Practice Professionals (APPs)) practice in tandem with a PCP or specialist. Clinical supervision outside of the time frames defined by APPs' respective boards is subject to clinical oversight, collaboration and consultation with their care team physician(s) during their employment at [redacted]. This policy defines the scope of practice for NPs, PAs, and CNMs; outlines the requirements for physician oversight, collaborative practice or supervision of APPs where applicable; and articulates [redacted]'s policies for billing services rendered by APPs.

Questions/Discussion