Patient Self-Service: Perk or Expectation?

By Elizabeth Woodcock, MBA, FACMPE, CPC

When is the last time you walked into a bank? Automated teller machines put banking transactions in the hands of customers years ago. Airport kiosks, gas pumps, ridesharing, self- check-out lanes, and bill payment have joined the self-service trend. Most Americans love the convenience, transparency, and flexibility of self-service, and businesses can enjoy the cost savings from using this “free” employee. Is it time for your practice to engage in an activity – or two – that offers self-service? Consider these available options:

- Self-scheduling is rapidly becoming an expectation, and practices are enjoying an increase in new patients – and a reduction in no shows - as a result.
- Appointment confirmations via text, email, or other secure software reduce no shows and allow you to fill those last-minute open slots from your wait list, boosting your practice’s profits. (Don’t forget necessary HIPAA authorizations.)
- Structured self-reported history questionnaires can be integrated into the electronic health record system, saving precious staff and provider time.

- Requests for referrals, prescription renewals. and other tasks can be efficiently batched and handled asynchronously (through a secure, encrypted transaction), boosting staff productivity.
- Messages can be received from patients through a secure portal or app, saving time to properly identify the patient and document the message.
- Electronic bill payment can be offered, reducing the ever-increasing cost of paper and postage.

The list of self-service options for medical practices to offer is growing, rapidly moving from a customer perk to an expectation. Consider taking advantage of these options so that your medical practice stays at the forefront of patient expectations.

Risk Matters: Supervision and Delegation of Advanced Practice Providers

By Jeffrey A. Woods, JD

A topic which generates many questions from policyholders is the supervision of and delegation to advanced practice providers. The questions we are asked most frequently are:

- “What is the liability risk to the supervising/collaborating physician?”
- “What are the duties of the supervising/collaborating physician?”
- “Do you have a protocol “form” that I can use?”

Unfortunately, there is no “one size fits all” protocol or cookie-cutter template which can be used. Advanced practice providers are governed by rules and regulations that are specific to each state in which they are licensed. It is imperative that a provider/practice obtain and become familiar with current and applicable state laws governing the employment and

supervision/collaboration of advanced practice providers.

First and foremost, the liability risk to the physician can increase exponentially based upon the number of advanced practice providers supervised. In almost every case where an advance practice provider is sued, the supervising/collaborating physician is also sued (in those states where a supervising/collaborating physician is required).

With respect to the duties required, before entering into an agreement with the advanced practice provider, the physician/practice should investigate requirements for the following:

- supervision of the advanced practice provider
- written protocols
- prescription writing
- services at off-site/remote locations
- review of records created by the advanced practice provider

Copies of pertinent legislation/rules/regulations and examples of protocols may, in some states, be obtained from the respective state licensure board. If a practice elects to purchase a recognized text or a specialty-specific text to use as a protocol, this should be utilized only after collaborative review between the supervising physician and the advanced practice provider and then modified as needed to meet the practice needs. Also, some states, such as Tennessee, do not provide examples of protocols, thus requiring the physician and the advanced practice provider to develop an individual protocol/collaboration agreement that is specific to the needs of their practice arrangement.

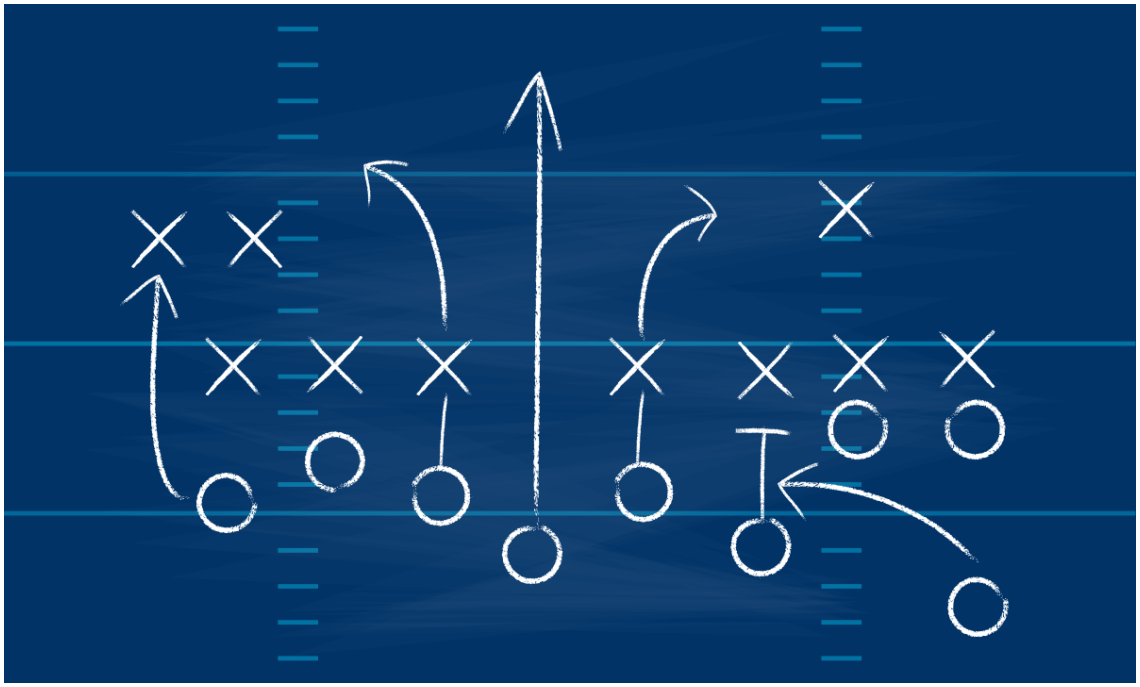
In medical malpractice claims involving advanced practice providers, the failure to properly supervise/collaborate is often alleged. In most states, proper supervision/collaboration first begins with a detailed protocol which is jointly developed by the supervising physician and advanced practice provider as stated above. A copy of this protocol must be maintained on-site, and SVMIC recommends that both the supervising physician and advanced practice provider sign and date the protocol once the document has been finalized. SVMIC further recommends that this protocol be reviewed and updated in accordance with state regulations to ensure that the advanced practice provider is receiving appropriate oversight. Second, it is imperative that the supervising/collaborating physician perform their duties in accordance with both the state laws and the jointly developed protocol as well as ensure that the advanced practitioner is acting in accordance with the laws and protocol. Supervision/collaboration cannot be merely perfunctory.

Appropriate supervision/collaboration does not typically require the continuous and constant physical presence of the collaborating/supervising physician; but it may require the physician to make a personal review of historical, physical, and therapeutic data on all patients and their condition as often as medically indicated. Collaborating/supervising physicians should examine and comply with the state rules governing such review. Prescription writing of narcotics typically requires additional review by the

supervising/collaborating physician and is another area of potential liability.

Finally, some states limit the number of advanced practice providers that a physician may supervise/collaborate. Supervision of, and collaboration with, a significant number of advanced practice providers can be a “red flag” that proper oversight is lacking.

When the Best Offense Is a Good Defense



By Tim Behan, JD

Growing up an avid sports fan I often heard the phrase, offense wins games but defense wins championships. The “defense wins championships” part of this maxim was first uttered by the legendary football coach Bear Bryant. Other legends of the sporting world such as Pat Summitt and Michael Jordan were known to use variations of this adage. Sports history has proven this to be generally true. In the medical malpractice arena, it is also true that a strong offense can win battles during a lawsuit against a provider. But it is usually a vigorous defense that gets favorable verdicts for our insureds. Sometimes, when the offense sputters, the defense needs to be legendary. Such was the case in this month’s closed claim article involving a diagnostic test filed away by a nurse prior to our physician reviewing it and having the chance to act upon the findings.

Every sport has rules to follow and objectives that must be met to win on the field or in the arena. The same holds true for litigation. For a plaintiff to win a medical malpractice case in the courtroom, they must convince a jury of four elements. The first two are offensive in

nature. The second two are more defensive oriented. The first element they must prove is that there was a duty owed to the plaintiff. This is easy to establish due to the nature of the patient- physician relationship. The second is that there was a breach of that duty owed. In other words, they must prove there was a deviation from the standard of care. This typically involves a battle of the medical experts for both sides. The third element a plaintiff must prove is that the breach of duty caused an injury that would not have occurred but for the breach; this is known as causation. This also involves a battle of the experts. The fourth and final element is that there must be damages. In medical malpractice, these are economic (lost wages/ medical bills) and non-economic (pain and suffering/ loss of enjoyment of life). Trials are usually won by physicians on the second element. The plaintiff did not convince a jury that the provider breached the standard of care. But occasionally, a case is won on causation when the jury finds that the breach did not cause or make the make the medical condition being treated worse. It takes a great defense to win this way because there is no longer an offense when the jury finds a standard of care violation.

This happened to one of our insured OB-GYNs a few years ago. His 30-year-old patient presented for her yearly exam with vague complaints of abdominal issues. He performed a pap smear and sent it off to pathology. The pathology report stated that the patient had atypical endocervical cells of undetermined significance. The physician's nurse received the report, reviewed it, and then filed it away in the patient's medical record file without ever notifying the doctor. Almost a year later, the patient was diagnosed with invasive cervical cancer and underwent a hysterectomy and fallopian tube removal. Fortunately, she was cancer free after the procedure. Suit was filed against the doctor and against his group for the acts of his nurse. The allegation against our physician was that he did not properly supervise his nurse. The theme of the case was that, had the patient been informed of the pathology findings, she could have had a trachelectomy thus saving her uterus and ability to have children. The plaintiff lawyer was so sure that she would win that she asked the court for an almost immediate trial setting. It was somewhat understandable due to our inability to mount any offense to support element two, the standard of care.

In accordance with the four elements of a medical malpractice lawsuit, there was obviously a duty owed to the patient to notify her of the abnormal test results and a breach of that duty by not doing so. The battle was going to come down to causation and damages. This was a battle we were forced to fight despite our efforts to reasonably compromise the case before trial due to the extremely high monetary demands from the patient's attorney. At trial, the plaintiff's lawyer brought in an expert from a teaching university in a neighboring state. She fully supported the plaintiff's theory that the trachelectomy could have been performed if the patient had timely notice of the test results. Opposing counsel was so confident in her offense that she increased her demand to settle during the trial. But what the plaintiff and her attorney did not appreciate was the strong defense our attorney was mounting. He had the support of a gynecological oncologist expert, likewise from a neighboring state, who testified that due to the type of cells and their location, the plaintiff's cancer was, in fact, invasive at the time of the pap smear and thus she would not have been a candidate for a trachelectomy. The expert further opined that a trachelectomy

would have been too risky and more likely than not, it would have required a higher resection of the uterus than would have been possible to preserve fertility. To put it simply, the failure to notify the patient of the test results did not cause her any more damage than she would have suffered had she been timely notified. Opposing counsel was aware of this potential testimony from the expert's pre-trial deposition. But she discounted it to her detriment. She assumed that the expert would not be well received or believed by the jury. She was wrong. The causation defense our attorney was able to provide to the jury carried the day resulting in a defense verdict for our doctor. While we prefer to defend cases involving the practice of good medicine (with a good offense), the plaintiff and her attorney forced this case into trial when they were unwilling to negotiate. Fortunately, the trial was ultimately won due to a great defense, from both our expert and our doctor's attorney.
