

Risk Matters: Shadows



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We are often asked our position on allowing students or other non-employees to “shadow” physicians, providers, or staff in a medical practice or other clinical environment. Shadowing allows individuals to observe the day-to-day activities of a medical practice, giving them a realistic view of what a career in medicine entails which can help them to make informed decisions about pursuing a medical career. Permitting someone to shadow within the practice is a kind gesture, but often as the saying goes, “no good deed goes unpunished.” There are liability risks associated with allowing untrained, unlicensed persons to observe and/or assist in patient care, especially if the shadow is a minor.

Some areas of risk are:

Confidentiality and privacy: Generally, under the HIPAA Privacy Rule, the physician or practice (“covered entity”) must develop and implement written privacy policies and train all workforce members under the direct control of the entity “whether they are paid or not” (which includes volunteers and shadows). High school and college students may not understand or appreciate state and federal privacy laws, and there is an increased risk

they will discuss their experiences with family and friends. Ensuring that shadows understand and comply with HIPAA and other privacy regulations is the responsibility of the physician and/or practice.

Under no circumstance do we recommend a person under the age of majority be permitted to shadow, work, or volunteer in a healthcare environment. Legally, minors lack the capacity to enter into contracts and typically cannot be held responsible for violating the terms of an agreement such as a HIPAA acknowledgement form. Even students who appear to be the most trustworthy, intelligent, and mature can have a moment of indiscretion resulting in liability for the physician/practice.

Disruption of Clinical Workflow: Shadows can sometimes be disruptive to the workflow of healthcare providers, especially if they require too much attention from staff during busy periods. We are also aware of instances where a staff member or the person assigned to supervise the student focuses more on the interaction with the student than on the patient or job at hand.

Hands-On Experience: The purpose of shadowing is observational learning. It is often a temptation for the supervisor to permit the shadow to engage in patient care. Unless they are students enrolled in an accredited medical school or nursing program which expressly authorizes limited participation in direct patient care on credentialed procedures, shadows should never engage in patient care even if under the supervision and instruction of a physician.

Liability Issues: The presence of a student or other non-employee in a clinical setting can raise liability concerns, particularly if an error, accident, or misunderstanding occurs. Examples include:

- improper delegation of tasks
- failure of the physician/provider to obtain the patient's consent to have an untrained, non-employee shadow present
- injury to the shadow while on the premises of the practice either by a piece of equipment, slip-and-fall, or attack by a patient.

Before allowing a student or non-employee to shadow, the physician or practice manager should confirm with the practice's liability insurance carriers, including SVMIC, whether coverage extends to these individuals.

Based upon the risks outlined above, it is our recommendation that physicians and other healthcare providers should only permit adults who are actively enrolled in an accredited medical school or nursing program to "shadow" them. These types of accredited programs typically have adequate liability insurance for their students and delineate in writing those specific tasks the student is credentialed to perform. These students are exposed to privacy and confidentiality concerns as part of their education and understand the importance of HIPAA. Students should be required to sign a Confidentiality Agreement with the practice. The patient should be told at the outset of the student's role, and patient

permission should be obtained and documented.

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