Physicians in training, nurse practitioners, physician assistants, attending physicians, and institutions that sponsor medical education are all at risk for potential professional liability issues. The unique relationship between healthcare providers and their sponsoring institution generates complex and evolving legal issues for all participants in medical education training. The law has played a great role integrating quality care and patient safety with excellent medical education for training physicians, while providing an avenue for relief when a medical error occurs. The intersection of law and medicine, while allowing for optimal medical education and patient care, exposes participating medical providers and the sponsoring institutions to specific professional liability issues. This article addresses these medical education settings and their potential professional liability issues.

**KEY WORDS:** Nurse practitioner; physician assistant; attending physicians; standard of care; negligence; professional liability; case law; common law; professional liability insurance.

Physicians in training (i.e. interns/residents, fellows) and advanced practitioners (i.e., nurse practitioners [NPs] and physician assistants [PAs]) are employed by the institution that sponsors their medical training program. The institution may be a community hospital or, more commonly, a hospital affiliated with an academic center. Due to varying levels of medical qualifications, physicians in training and advanced practitioners work under the supervision of attending physicians in a hierarchical fashion. The attending physicians are either employees of the institution or have a contractual relationship to teach the physicians in training.

Under common law, the employer has the right to dictate to the employee what to do as well as where, when, and how. This type of strict employee–employer relationship typically exists between the training program and the healthcare trainee. In exchange, the institution or training program must provide to its employee continuing medical education, an environment where responsible patient care can be practiced, and protection against the medicolegal system during this critical learning period. It is because of this interwoven relationship that the physician in training, advanced practitioner, attending physician, and sponsoring institution of the graduate medical education are all at risk for allegations of negligence and are potential defendants in a lawsuit.

**INTERSECTION OF MEDICINE AND LAW**

Physicians in training and advanced practitioners must be licensed to practice medicine, and are subject to personal medical malpractice risk for providing care that does not meet the identified standard of care in the medical community. Physicians in training and NPs must recognize the impact of the law in graduate medical education. The greatest concern for training physicians and physician extenders is the potential for personal encounters with the law. The Accreditation Council for Graduate Medical Education (ACGME) requires accredited institutions that sponsor...
residency and fellowship programs to provide professional liability insurance. Examples that demonstrate the sometimes tortuous relationship between medical education and the law include: the antitrust lawsuit against the association of American Medical Colleges; the Federal regulation of resident work hours; Medicare and Medicaid’s ever-changing compliance regulations; the complexities of the Health Insurance Portability and Accountability Act of 1996; and the growing concern with the legal ramifications of the electronic medical record and the exponential growth in rules and regulations associated with guideline and metric medicine.

The attending physicians and sponsoring institutions are aware of, and concerned about, the potential for professional liability. The complex relationships between physician trainees, NPs, attending physicians, and sponsoring institutions make the legal issues an important topic for discussion. In the future, graduate medical education will continue to be constrained by current and evolving rules of law.

THE STANDARD OF CARE

Healthcare providers and graduate medical education institutions together share a responsibility to provide high-quality and safe patient care in accordance with standards of care established in medicine. The law has not, and will not, proffered a lower threshold for meeting the standard of care for physicians in training or advanced practitioners. Physicians in training are held to the same standard of care as attending physicians. This principle encourages physicians in training to seek supervision and inspires attending physicians to provide close, vigilant oversight.

Courts have held that trainees should be held to the same standard of care as attending physicians.

Attending physicians are exposed to malpractice allegations for the care they provide directly and indirectly through their supervision of physicians in training. Attending physicians may be held vicariously liable for the negligence of a physician in training under their supervision and directly liable for insufficient supervision. The adequacy of supervision is continually being elevated to higher standards as the public’s attention to patient safety continues to escalate. The graduate medical education institutions and program sponsors bear legal responsibility for the care they deliver and the negligence of their employees. They also face liability for failure to administer safe systems of care. Physicians in training, advanced practitioners, attending physicians, and graduate medical education organizations all must understand and meet these substantial legal standards.

PHYSICIANS IN TRAINING STANDARD OF CARE

What standard of care should apply to a physician in training? Courts have held that trainees should be held to the same standard of care as attending physicians. Courts walk a slippery slope when determining where to hold trainees accountable using an objective, equitable standard of care that facilitates the essential educational mission of training, yet ensures patient safety, and an opportunity for patients to seek redress for their injuries [Parmlee v Kline, 579 So2d 1008 (La Ct App 1991)].

Modern jurisprudence favors holding the trainee/advanced practitioner/attending triad to the standard of care of an attending in that particular specialty. This is a reasonable and sensible standard given the education and training process is dependent upon the attending physician’s teaching and supervisory role.

The rationale for insisting on this standard for training physicians is grounded in a public policy that protects the safety of patients. Courts have noted a benevolent dual purpose: (1) creating an incentive for physicians in training to seek supervision; and (2) incentivizing attending physicians to provide the highest quality supervision. Physicians in training should expect to be held to the same standard of medical care as a reasonable attending physician in their specialty based on the precedent of the available case law. Graduate medical education institutions must ensure risk management considerations, bolstering patient safety by mandating that training physicians seek attending physician advice whether certain or uncertain about the patient’s medical conditions. Attending physicians must be available to provide the supervision needed to provide the highest quality of care. The discussion between the trainee and the attending physicians has great value in evaluating the appropriateness of the trainee’s thinking and plan of medical care.

PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS IN TRAINING

In general, the ACGME requires accredited institutions that sponsor residency and fellowship programs to provide professional liability insurance to cover all claims arising within the scope and duration of the training. This occurrence-based coverage provides for a defense and financial protection against claims connected to medical care implemented during a training physician’s activities while participating in a graduate medical education program. The ACGME standards do not mandate that the policies apply to medical practice outside the graduate
Liability Issues

PAs and NPs, or physician extenders, are considered legally liable for actions or omissions concerning patients they treat, and, therefore, are required in all states to carry adequate medical liability insurance.

Physicians providing medical direction or supervision may also be held liable for the actions or omissions of PAs and NPs, even if no patient-physician interaction occurred. Such liability exists in three separate manners: negligent selection, negligent supervision, and respondeat superior.

The medical director or other party responsible for hiring a physician assistant or nurse practitioner may be accused of negligent selection, claiming that the party responsible for hiring the physician assistant or nurse practitioner knew, or should have known, prior issues in the PA’s or NP’s past that might have predicted future performance insufficiencies. Diligent research and reference review, with adequate documentation of same, should help prevent and protect from such claims.

Negligent supervision may be alleged against the supervising physician of record, claiming that the supervising physician did not follow state, hospital, or departmental supervision regulation/policies/guidelines, or if the plaintiff’s expert believes the physician’s supervision was otherwise below the standard of care. In order to decrease ambiguity, emergency departments using advanced practitioners should have guidelines specifying supervising physician responsibility, including factors that trigger when a PA or NP should seek supervising physician consultation, and when a supervising physician should physically attend to a patient evaluated by a physician extender.

If not named for any of the aforementioned reasons, a supervising physician may be included in a medical liability action against a physician extender under the respondeat superior claim. Respondeat superior, Latin for “let the master answer,” is the primary vehicle used to assert vicarious liability of the supervising physician for the alleged negligent acts of physician extenders. Under this principle, the supervising physician may not have been present or even aware of the patient encounter, but as the “master of the ship” may be considered liable. Should no claim of negligent selection or supervision be raised, often, supervising physicians named under the concept of respondeat superior will eventually be dismissed from the case.

Historically, there have been fewer medical liability cases brought against physician extenders. In 2009, Hooker et al. undertook a review of 17 years of records from the United States National Practitioner Data Bank, from 1991 through 2007. During the study period, the probability of making a malpractice payment was 12 times less for PAs and 24 times less for NPs as compared with physicians.

ATTENDING PHYSICIANS
STANDARD OF CARE

Attending physicians supervising training physicians in graduate medical education setting are subject to the same liability exposure they face when they personally direct and deliver care outside the graduate medical education arena. The attending physician’s liability risk is unaffected by the nature of the relationship with the sponsor of the training program. Attending physicians are exposed to two additional types of liability when assuming a supervisory role: (1) vicarious liability for the physician in training’s negligence under the respondeat superior notion; and (2) direct liability for failure to supervise.

Vicarious liability is the law’s imposition of liability on a person or institution for the negligence of another (e.g., trainee/nurse practitioner) based on the relationship between the parties. An employer may be held liable for the negligent acts of employees acting within the scope of their employment, even if the employer acted appropriately. An attending physician acting in a supervisory role can be held liable for the acts of the trainee [Brown v Flowe, 496 SE2d 830 (NC Ct App 1998)]. Courts focus on the nature and extent of the attending physician’s control over the practice setting, and the control of the institution under which the training physician is working [McCullough v Hutzel Hospital, 276 NW2d 569 (Michigan Ct of App 1979)]. Frequently, both the attending physician and the sponsoring institution may be vicariously liable. Additionally, attending physicians may be held liable for negligent oversight and supervision of the care provided by training physicians and advanced practitioners.

PRESENT DAY MEDICAL PRACTICE

These evolving and growing legal standards are juxtaposed with the fact that physicians working in hospitals are being asked to do more in less time—the impact of corporate medicine and the RVU as the metric of productivity. The arsenal of tests, technologies, and therapies is expanding at an exponential rate. Concerns over neglectful medical decisions made under extreme fatigue have resulted in reduction of resident work hours. Consequently, this change in trainee working hours has led to an increasing number of “handoffs” of patients between changing shifts, and continuity of care may be compromised. This change in the healthcare landscape has mandated that attending physicians and their extenders be more aware of the details
of each patient’s health status to better coordinate the care of patients being cared for by physicians in training.

Inpatient care at hospitals has become a relay race among training physicians, advanced practitioners, and attending physicians—the patient is the baton, and coordination of the patient's care is a challenge. These changes have led to a more turbulent work environment. Homeostasis is the ability of the system to absorb change and external stressors and maintain stability—to be resilient. Medical care is susceptible to the level of emotional, biological, and physical resilience of attending physicians, NPs, and physicians in training. Physicians need an internal compass to cope with the changing landscape of medical care to preserve the sanctity of patient care. The large number of variables involved in patient care leaves us susceptible to medical errors and to potential allegation of negligence.

**ALLEGATIONS OF NEGLIGENCE**

Like any physician practicing medicine, physicians in training, PAs, and NPs can find themselves being named in an allegation of medical malpractice. In a medical malpractice case, the plaintiff-patient must prove to the trier of fact that the defendant physician breached the professional standard of care. Expert testimony generally is required to establish the prevailing standard of care for a particular specialty. Although the physician in training’s liability ultimately depends on many competing factors, a complicating fact is that there is a paucity of case law discussing the standard of care for training physicians [McCullough v Hutzel Hospital, 276 NW2d 569 (Michigan Ct of App 1979)]. Courts have tended to treat physicians in training as attending physicians when it comes to the professional standard of care in medical malpractice cases [Rush v Akron General Hospital, 71 NE2d 378 (Ohio Ct App 1957); Jenkins v Clark, 454 NE 2d 541 (Ohio Ct All 1982); Centman v Cobb, 581 NE2d 1286 (Indiana Ct App 1991)]. NPs and PAs need to understand that they will also be held to the same standard, as this incentivizes these advanced practitioners to seek supervision from the attending physician. Attending physicians must understand the scope of practice of physician assistants and nurse practitioners and support them to practice within that scope.

Courts have tried to hold physicians in training to an equitable standard of care in medical malpractice cases, being mindful of the educational purposes of graduate medical education, the need for adequate supervision, and the overriding policy to provide a proper channel of relief for patients who have been harmed [Pratt v Stein, 444 A2d 674 (Pa Super Ct 1982); Jistarri v Nappi, 549 A2d 210 (Pa Super Ct 1988); Bahr v Harper Grace Hospitals, 479 NW2d 526 (Michigan Ct App 1993); and Gonzalez v St. John Hospital & Medical Center, 739 NW 2d 392 (Michigan Ct of App 2007)].

**NEGLIGENCE**

Negligence is well defined in tort law. To demonstrate negligence, a plaintiff must prove four elements under a “greater probability than not” standard:

- The defendant owed the plaintiff a duty.
- The defendant breached that duty.
- The plaintiff sustained an injury or harm.
- The injury/harm was a direct consequence of the defendant’s breach.

Physicians breach their duty when their actions or omissions of behavior fail to meet the standard generally expected for a physician in similar circumstances.

**IMPACT OF A LAWSUIT**

Physicians in training, PAs, and NPs must realize that being named in a lawsuit can result in onerous and time-consuming processes that affect work and home life [Brown v Flowe, 496 SE2d 830 (NC Ct App 1998)]. The impact of lawsuits on the relationship among healthcare professionals can be extremely disruptive and contentious. Litigation has the potential to bring severe unrest and tension to the graduate medical education setting. The awareness by trainee physicians, NPs, and PAs of how the law impacts medical practice is a first step in attempting to prevent the possibility of a lawsuit. The sponsoring institutions must also recognize the importance of developing a risk management program that will help all members of the healthcare team understand the potential pitfalls that could result in allegations of negligence.

**CONCLUSION**

Professional liability considerations are important for physicians in training, PAs, NPs, teaching attending physicians, and graduate medical education institutions. All members of the healthcare team are at risk for allegations of negligence. All physicians working in graduate medical education must be aware of the issues related to professional liability. Based on collaborative efforts involved in the medical care provided to patients, all healthcare providers, no matter their level of qualification or certification, are held to the same standard of medical care. This is grounded in a public policy incentivizing trainees and advanced practitioners to seek supervision, and for attending physicians to provide appropriate supervision.

The student and teacher must see and examine the patient and discuss the potential etiologies of the patient’s symptoms and physical findings. The physician trainee and PA or NP must be able to articulate underlying pathophysiologic principles resulting in symptoms, physical findings, and potential treatment options. The attending physician must ensure that the decision-making processes made...
by students under his or her supervision are accurate and safe. These laws help to provide the legal foundation for the medical education of trainees and physician extenders while providing assurance to the general public that the medical education system results in medical providers who practice clinically appropriate, high quality, and safe medical care.

REFERENCES
1. Accreditation Council for Graduate Medical Education. www.acgme.org