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Evaluating the Use of Independent Contractors in Your Practice

Do you currently use independent contractors (ICs) or are you considering using them to supplement your staff? Business owners often believe that hiring independent contractors instead of employees can save time and money, and add greater flexibility in patient/client scheduling, which can lead to business growth. There are, however, important issues to bear in mind when hiring an IC for your private practice. You should understand what it would mean to you and your business by evaluating the benefits, as well as the associated risks.

What does this mean to your practice?

If you decide that ICs are a practical solution for your practice, you should also understand how this approach to staffing might impact your malpractice insurance. ICs that you hire to provide professional services in your practice represent the same risk to your firm as an employee that you hire, because they both provide professional services on behalf of your firm. Therefore, you are liable for the care that an IC provides in the same way that you are responsible for the care that an employee provides.

From a patient/client perspective, they likely assume that everyone providing care in your practice is an employee of the practice. Patients/clients will contact you if they have concerns about the care they are receiving and expect that you will address the issue(s) with the appropriate employee.

It is a reality that firms are held accountable for the actions of their employees and ICs alike. Therefore, the malpractice coverage offered through Healthcare Providers Service Organization (HPSO) asks for the number of employees and ICs in your regular employ, rates these professionals, and affords coverage to both ICs and employees the same. Doing so helps to ensure that your practice is adequately and



appropriately insured.

Knowing that an IC can present a similar risk for medical malpractice as an employee, you should screen employees and ICs the same way. Your standard hiring practices for contracting with an IC should include confirmation of their educational background, their license or certification and their work history, as well as proof that they have their own professional liability insurance. You should complete thorough background and reference checks on any IC with whom you contract. To see what can occur if you don't, read the January Case of the Month at www.hpso.com. If you don't have any of these hiring practices in place and you aren't certain where to begin, then consulting an attorney and/or a business advisor to guide you can be beneficial.

Also, have your lawyer prepare a written agreement that you and the independent contractor can sign. The agreement should outline all responsibilities, expectations and limitations surrounding their duties in your practice. Make certain that all ICs who work for you are aware of your firm's current protocols. They especially need to be clear on your procedures if they encounter a difficult situation.

What's the impact on your premium?

Because of the general trend of increas-

ing frequency and severity of malpractice claims, many insurance carriers, like CNA (the underwriter for HPSO), are now requiring businesses to account for all practitioners and aides, both employees and independent contractors. The premium you pay reflects the exposure represented by the services provided by all staff. Therefore, independent contractors providing services on behalf of your firm are considered in the calculation of your insurance premium.

HPSO has received several inquiries from customers suggesting that if they require independent contractors to carry their own insurance and list the firm as an additional insured, then they would not be required to pay for coverage for the ICs, ultimately resulting in a reduction in premium. Most ICs carry their own insurance, but simply having your practice listed as an additional insured may not adequately protect you and your business. You could be vulnerable to a "no coverage" situation in a number of ways including:

- The potential for differences in coverage forms, i.e. "claims made" vs. "occurrence;"
- The coverage and limits could vary from one insurance provider to the next;
- ICs could allow their policy to lapse or may cancel it mid-term and neglect to notify you.

As a business owner, you want to make certain that you do not create a situation where your practice is exposed. As your insurance provider, we want to protect you and your practice by educating you regarding the potential risks that ICs could create.

Learn all you can about hiring independent contractors so you can ensure that you have the proper protection for your firm. This can give you the peace of mind you deserve.

Rising Malpractice Claims Affect



When we think of malpractice claims, we often focus on lawsuits against hospitals or physicians. We have all read or heard about the crisis in the malpractice marketplace. Public distrust and resentment towards the healthcare industry; the perception that more medical errors are occurring; and, the feeling that plaintiffs deserve compensation because “someone is to blame,” have contributed to the increase in litigation and the resulting malpractice crisis. And the debate about the crisis continues. Some recent reports, including one from the New York Times, stated that the number of malpractice claims paid against physicians has remained flat over the past five years, while others assert that claim severity over the past decade has been the real problem, with jury awards resulting in higher payouts to plaintiffs.¹ Whether the crisis is defined by frequency or severity, the result is the same; malpractice claims expense continues to rise, and the issue is impacting other healthcare practitioners and business owners.

As practitioners find themselves more frequently in the role of a primary care provider, they will become more vulnerable to the increased possibility of being named as the primary defendant in a lawsuit. Even if your firm is not the primary care provider, you could still be named in a lawsuit as a codefendant. In either case, your professional liability insurance carrier is responsible for defending you against covered malpractice allegations and would incur expenses for that defense. This results in increased claims expenses. These expenses, in addition to any claims awards, can make it difficult for insurance carriers to yield a financial return so that the program can sustain itself.

As a result of the claims trend in the healthcare industry, more insurance companies have reevaluated the professional liability insurance coverage they offer. Many insurance carriers have exited jurisdictions or stopped writing medical malpractice insurance policies altogether. Those companies that have continued to provide protection for allegations of medical malpractice have typically responded to the industry challenges by changing the terms and conditions of their policies; reducing limits of coverage; and/or, limiting the types of practices and practitioners they choose to insure. Most have also found it necessary to raise rates in order to continue to provide this protection to their

insureds.

HPSO advocates for you, our customer, so you are not in the position of having very limited coverage or no coverage options at all. We continue to work toward the best approach to preserve the coverage currently offered to you. This has resulted in rate increases and modest changes to coverage. We recognize that these changes in premium have triggered concern for you. Increasing rates alone will not solve the problem. As a business owner, you can do your part to prevent risk and reduce the likelihood of malpractice incidents associated with your business.

Understanding what is contributing to the loss frequency and severity can be the first step in addressing the issue. It's been our experience with the program offered through HPSO that physical therapists working in an outpatient setting are challenged with liability issues such as improper performance of therapeutic exercise; failure to monitor; improper performance of manual therapy; and, improper management of treatment, with many resulting in trauma, broken/fractured bones and burns, among others. Almost 80% of these incidents take place in a rehabilitation center practice setting.

Minimize your risk

Reducing your risk can be as simple as focusing on basic practice procedures such as documentation, quality of care, continuity of care, and supervision.

To reduce the risk of incident and possible lawsuit, be sure that your staff follows the standards of practice. Provide a copy of written protocols and procedures to your staff and be available to answer any questions. Suppose one of your physical therapists is explaining prescribed therapy to a patient. Be sure that the PT understands the importance of giving details about the benefits and risks of the therapy, as well as alternative treatments. Make certain the therapist educates the patient on all proper safety precautions, and always have them document their patient's chart in detail. Stress the importance of referring patients to their primary care providers when a patient's condition is outside the scope of your facility's expertise. Encourage

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Healthcare Practitioners Everywhere

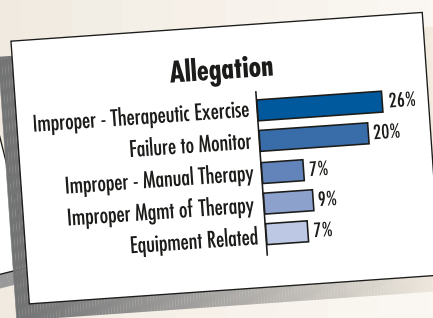
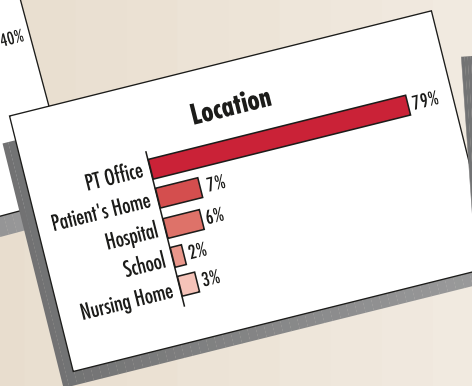
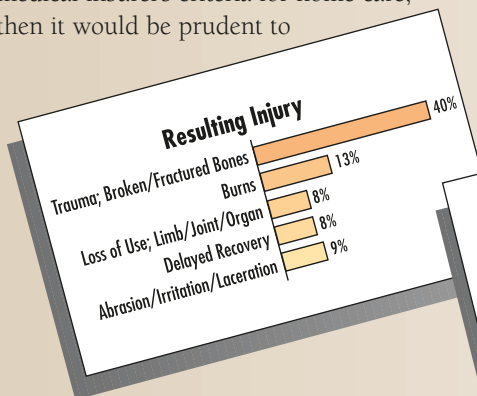
sign-off of the discussion with the patient on a standard disclosure form, and follow up on the referral.

Home health clinicians can face additional issues. Liability issues characteristically involve patient abandonment, personal injury, violent situations and quality of care. If your practice provides home health services, be aware of the need to train your staff to avoid an incident that could result in a lawsuit. For example, if a home health patient is being discharged because he or she no longer meets the medical insurer's criteria for home care, then it would be prudent to

a need to refer to a patient's history. Keeping a detailed account of the treatment provided will help you and your practice if you are named in a lawsuit. Consider auditing patient charts on a regular basis to provide feedback to each staff member on the quality of their documentation.

Establishing standards for verbal and written communication to patients and staff can be key to minimizing a malpractice incident. It is also important to establish your standards for supervision of assistive personnel. Review your state's practice act to be sure that your protocols

licensing boards, the Joint Commission of Accredited Healthcare Organizations (JCAHO) and Medicare to name a few, often define the standards of practice. Use these references and any others that your attorney, accountant or business consultant recommends for accomplishing this goal. Be sure that your staff is properly trained on your facility's protocols and procedures. Remember, as a risk manager, your responsibility is to safeguard your practice against potential risks by addressing the basics of good practice protocols and procedures regarding documentation, quality of care, continuity of care and supervision.



communicate this to the patient so the patient doesn't feel abandoned, and document the discussion.²

The circumstances may vary, but healthcare experts agree that communication with patients is essential to quality patient care. Studies show that the more a practitioner communicates with patients, the more satisfied they will be. And if your patients trust you and are satisfied with their care, they are less likely to sue even if an incident occurs.

In addition to improved communication, quality documentation is crucial. Thorough documentation is often your best resource for showing that the patient received appropriate care. It will assist you and your employees whenever there is

and procedures comply with guidelines. Clearly define and document the duties that the assistive staff is authorized to perform under supervision. Communicate the scope of these duties to your staff and monitor activity on a regular basis. Provide any necessary feedback should procedures fall below the expected standards.

Liability in Review

As a business owner you took on many roles including that of risk manager. As a risk manager, one of your responsibilities related to the risk of professional liability is to develop and maintain up-to-date practice procedures. Organizations and regulatory boards such as state or national professional associations, state

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* CNA Claims Data from Oct. 2004. These statistics are unique to HPSO and may not reflect national or regional litigation trends.

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Professional Liability Checklist When You Share Space

Professional group practices are typically structured as sole proprietorships, partnerships or corporations. Under these structures, a practice can be protected against malpractice allegations through a shared limit professional liability insurance policy, which protects the business owner and the staff. But what do you do about professional liability insurance coverage if you are a practitioner who simply shares office space with another unaffiliated practitioner?

Various healthcare professionals are sharing space with others to help reduce costs, but it is an arrangement that needs to be entered into after careful consideration. For example, a nurse practitioner, a physical therapist and a dietitian may decide to rent space together in order to share in office expenses. Unlike a traditional group practice where practitioners may refer patients to each other, these practitioners are legally classified under independent practices, functioning separately from each other. Despite the many positive aspects to office sharing, be aware that these affiliations can increase your exposure to a lawsuit for incidents unrelated to your practice, especially because the affiliation may be perceived as a group practice.

To assess your liability risk, ask yourself the following questions: Do I share patients, clients, staff or fees with other practitioners in my office? Do I store patient or client records in a common area? Do I consult

with other practitioners in the office about their patients or clients? Do I post a sign on the office door that leads the public to think I am part of a traditional group practice, and thus share in all responsibilities of the practice?

If you answered “yes” to any of these questions, then consider the risk management tips below to help reduce your risk of a malpractice lawsuit.



- Check references of new professionals joining a shared office setting. It is important to verify that they are qualified healthcare professionals.
- Establish a written office share agreement that details the expectations of those sharing the office space for business issues such as rent, equipment ownership and usage, and receptionist services.

- Develop and document your office procedures. Make them available to all other practitioners in the office and require them to do the same.
- Make sure those with whom you share office space have their own professional liability insurance and carry the same limits of liability as you. Ask for a copy of their policy at each renewal, as well as confirmation that it's been paid.
- Educate patients or clients on your relationship with the other practitioners. Make sure it's clear that you are an independent practitioner and not part of a group practice.
- Safeguard your patients' or clients' privacy by keeping their records separate from the other practitioners' files. These are confidential records, and should not be stored in a common area.
- Consider adding individual phone lines with separate numbers. If you share office staff, make certain they answer your phone by using your practice name.

Shared office space can leave you open to being named in a lawsuit due to the perception that a group practice exists. Know as much as you can about your colleagues and their practice, and maintain well documented office-sharing arrangements to help protect you and your practice in the event of a malpractice lawsuit.

Expanding Your Practice: Are you covered?

Research indicates that a number of healthcare business owners are expanding their practices into other areas to add variety to the services they provide, and to generate additional income. Expansion has its rewards, but as a business owner, you also need to consider the risks that these changes can present.

One example of an expanding practice that our customers have identified is outpatient rehabilitation centers that offer fitness and wellness services. The scope of fitness and wellness services can range from one-on-one aftercare to unsupervised strength training and group exercise classes, much like those offered at a public fitness center. This type of expansion raises questions about continuity of care, aftercare, and treatment that is independent of medical treatment. When fitness and wellness services are offered — sep-

arate from treatment — to the public, for a fee, or are otherwise questionable as to whether they are professional services, this raises concern about having the appropriate insurance in place for these expanded services.

The professional liability insurance policy you purchased through Healthcare Providers Service Organization (HPSO) is designed to cover you and your practice for medical malpractice incidents. As an example, fitness and wellness activities when facilitated as one-on-one aftercare in a rehabilitation facility would be considered medical treatment, and if negligence was alleged, your HPSO policy would typically respond. In certain situations, some expanded practice areas aren't categorized as medical care. For example, if the primary focus of a physical therapist-owned facility is fitness and wellness without the treatment

component, then injuries occurring in this setting may not be covered under your professional liability insurance policy.

Facilities that have expanded beyond offering pure rehabilitation services should consider additional coverage such as Commercial General Liability (CGL) insurance in recognition of this increased exposure. Further, a Business Owner's Policy (BOP) may be appropriate if you require coverage for office equipment, treatment equipment and other general business exposures.

If you are thinking about expanding your practice, e-mail HPSO at firms@hpso.com or call us at 1-888-288-3534 so that we can help you evaluate your exposure and, if necessary, recommend appropriate coverage for your expanded services.