

10.2 Physician Employment by a Nonphysician Supervisee

Physicians' relationships with midlevel practitioners must be based on mutual respect and trust as well as their shared commitment to patient well-being. Health care professionals recognize that clinical tasks should be shared and delegated in keeping with each practitioner's training, expertise, and scope of practice. Given their comprehensive training and broad scope of practice, physicians have a professional responsibility for the quality of overall care that patients receive, even when aspects of that care are delivered by nonphysician clinicians.

Accepting employment to supervise a nonphysician employer's clinical practice can create ethical dilemmas for physicians. If maintaining an employment relationship with a midlevel practitioner contributes significantly to the physician's livelihood, the personal and financial influence that employer status confers creates an inherent conflict for a physician who is simultaneously an employee and a clinical supervisor of his or her employer.

Physicians who are simultaneously employees and clinical supervisors of nonphysician practitioners must:

- (a) Give precedence to their ethical obligation to act in the patient's best interest.
- (b) Exercise independent professional judgment, even if that puts the physician at odds with the employer-supervisee.

AMA Principles of Medical Ethics: II, VI, VIII

Background report(s):

CEJA Report 4-A-09 Physician employment by a nonphysician supervisee

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 4-A-09

Subject: Physician Employment by a Nonphysician Supervisee

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Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Daniel W. Van Heeckeren, MD, Chair)

1 At its 2008 Annual Meeting, the House of Delegates (HOD) of the American Medical Association
2 (AMA) adopted Resolutions 5, "Employment Relations," and 13, "Physician Employment by a
3 Physician Extender." Resolution 5 asked that the AMA's Council on Ethical and Judicial Affairs
4 (CEJA) address the ethical implications of physicians working as employees of those whom the
5 physician is required to supervise. Resolution 13 asked our AMA to address the ethical
6 considerations that arise when a physician supervises or collaborates with a midlevel practitioner
7 by whom the physician is employed. Given the resolutions' common concerns regarding ethical
8 boundaries in physicians' relationships with nonphysician practitioners with respect to supervision
9 and employment, CEJA believes these issues can best be addressed in the single report that
10 follows.

11
12 CEJA has stated in previous opinions that in any contractual relationship, physicians should be free
13 from outside interference in professional medical matters and should not enter into any
14 arrangement that undermines the physician's ethical obligation to advocate for patient welfare.^{1,2} A
15 broad range of contractual relations exists between physicians and their nonphysician colleagues.
16 The nature of the relationship in turn may create varying degrees of conflict for physicians. For
17 example, as an independent contractor, a physician is entrusted to undertake a specific project but
18 is left free to perform his or her clinical duties and to choose the method for accomplishing these
19 duties. An employee, on the other hand, works in the service of another person (the employer)
20 under an express or implied contract of hire, under which the employer has the right to control the
21 details of the physician's work performance to some extent. The latter employment relationship
22 poses unique conflict of interest challenges for a physician who is responsible for supervising a
23 nonphysician clinician who is also the physician's employer. This relationship in particular is the
24 subject of the following report. CEJA intends to address the more complex topic of collaborative
25 arrangements in a future discretionary report.

26
27 CURRENT PRACTICE ENVIRONMENT

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29 Physicians are increasingly working with midlevel practitioners, such as physician assistants and
30 nurse practitioners, to increase access to cost-effective, quality care. In the past decade, the practice
31 environment of nonphysician clinicians has changed dramatically. The number of certified

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1 nonphysician clinicians reached 200,000 in 2007.³⁻⁵ In addition, state laws and regulations have
2 incrementally expanded both the scope of practice prerogatives of nonphysician clinicians and their
3 autonomy from physicians.³ As a result, nonphysician clinicians are increasingly assuming “tasks
4 and responsibilities that physicians formerly considered their own.”³

5
6 Different states recognize various degrees of clinical authority for midlevel practitioners, but all
7 within defined levels of primary and specialty care.³ States have granted nonphysician clinicians
8 the authority, in limited circumstances and in accordance with their training, to diagnose the
9 patient, communicate that diagnosis, assume a degree of responsibility for care, and refer the
10 patient to other clinicians as appropriate.³ Some states have granted nurse practitioners a level of
11 clinical authority independent of physician involvement. While physician assistants by definition
12 practice under the direction of a licensed physician, some states allow physician assistants to
13 prescribe independent of physician authority, so long as such prescribing is consistent with the
14 physician’s overall direction.³

15
16 Nonphysician clinicians are also beginning to move toward greater ownership roles in health care
17 practices. In some states, midlevel practitioners are legally permitted to own medical practices in
18 whole or in part and to employ physicians.⁶⁻⁸ Currently this is a relatively rare occurrence. These
19 roles have largely been adopted for practical reasons, such as being able to ensure continued
20 service in rural or underserved areas when a supervising physician moves or retires and leaves his
21 midlevel practitioner in a well-established practice.⁹ A physician in a neighboring area may be
22 willing to supervise the nonphysician clinician but not to assume the burden of owning another
23 practice.⁶ Alternatively, midlevel practitioners may be offered opportunities to join a practice as
24 partners or shareholders as incentives to recruit them to a physician’s practice.⁹ Ownership
25 arrangements may range from a minor interest in a corporation that manages a hospital to a
26 majority interest in a small group practice.

27
28 These changes are occurring in the context of powerful trends in medicine toward greater
29 measurement, management, and regulation of medical practice. Medical knowledge has been
30 increasingly “systematized” through measurements of medical work, e.g., case mix measures (such
31 as diagnosis related groups), for a variety of managerial purposes, including prospective
32 remuneration.¹⁰ Other managerial strategies have further defined how doctors deliver care at the
33 level of individual patient encounters (e.g., clinical protocols) and process patients through the
34 health care delivery system.¹⁰ Financial and other incentives, as well as state regulations (such as
35 compulsory clinical audits and publication of clinical performance indicators) have also
36 significantly modified clinical practice over the years. In the era of managed health care, therefore,
37 employers and administrators—who may often be nonphysicians—play an increasingly dominant
38 role in what care is provided and how. These past trends have inappropriately undermined,
39 constrained, and curtailed clinical autonomy at the level of individual patient encounters.¹⁰

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41 Medical practices run by nonphysician clinicians may enhance access to care, especially in
42 medically underserved communities. However, when nonphysicians employ physicians to
43 supervise the employer’s clinical practice, they create conditions that can lead to ethical dilemmas
44 for the physician. To the extent that the owner-employer has authority over the physician, the
45 relationship may compromise the physician’s judgment and clinical autonomy. Such relationships
46 can create or appear to create tensions between the physician’s obligation to put patient care
47 interests above the physician’s self-interests including income and employment benefits.

1 PHYSICIAN SUPERVISION OF MIDLEVEL PRACTITIONERS

2
3 Physician relationships with midlevel practitioners are based on mutual respect and trust.
4 Physicians and nonphysician clinicians share an ethical commitment to alleviate illness.¹¹ This
5 purpose of medicine is common to the ethical codes of physicians, physician assistants, and
6 nurses.¹¹⁻¹³ Physician support for nonphysician colleagues must not undermine the physician's
7 primary duty to a patient's well-being. The central goal of supervision is to ensure patient safety
8 and improve patient care.^{14, 15} The physician is accountable to both the patient and the profession of
9 medicine to act in accord with the patient's interests at all times, including when he or she acts as
10 supervisor of midlevel practitioners.

11
12 Given their common goals of excellence in patient care, all health care professionals recognize that
13 clinical tasks should be shared and delegated in keeping with each practitioner's training and scope
14 of practice.^{13, 16, 17} Midlevel practitioners generally provide wellness care and care for
15 uncomplicated acute disorders and mild chronic conditions.³ Similarly, while routine aspects of
16 specialty care may be within the scope of care of midlevel practitioners with appropriate training,
17 case management and complex procedures may only be performed by physicians. The physician's
18 greater scope of practice is based on the range and depth of education and training that physicians
19 receive. They retain ultimate professional responsibility for the quality of care that patients receive,
20 even if some aspects of that care may be delivered by nonphysician clinicians.

21
22 To a great extent, state laws mandate physician supervision of midlevel practitioners and also
23 delineate the terms of such supervision. A supervising physician accepts full professional and legal
24 responsibility for the medical services provided by a midlevel practitioner under the physician's
25 direction and supervision. In states where physician supervision of nonphysicians is mandated,
26 physician supervisors are held accountable for those they supervise in the form of direct and
27 vicarious liability. These legal standards are intended to protect patients and promote safe, effective
28 practice.¹⁸

29
30 Supervision needs often vary according to the supervisee's experience and level of training.¹⁴ In
31 some states, supervisory requirements are on a sliding scale based on the nonphysician clinician's
32 level of experience.^{19, 20} In all cases, a physician is obligated to ensure that the nonphysician
33 clinicians who practice under his or her supervision provide appropriate care within the
34 nonphysician clinician's scope of practice. Practice that is inconsistent with a midlevel
35 practitioner's recognized scope of practice, education, and training can compromise the safety and
36 quality of health care delivered to patients.

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38 Thus, situations in which physicians supervise the clinical practice of a midlevel practitioner who is
39 also their employer can put the physician in an ethically untenable position. To the extent that
40 maintaining the employment relationship with a midlevel practitioner contributes significantly to
41 the physician's livelihood, this can potentially put the physician's personal financial interests at
42 odds with patient care interests.^{1, 2} Simultaneously fulfilling the roles of a supervisor and an
43 employee may create real or perceived conflicts regarding professional judgment and clinical care.
44 Being employed by a nonphysician clinician who is in a position to influence one's professional
45 judgment and clinical recommendations can undermine the physician's ability to fulfill this
46 responsibility.

47
48 Physician supervisors must be highly sensitive to the potential for erosion of their ability both to
49 practice according to their training and expertise and to honor their primary commitment to the

1 patient's well-being. Preserving the physician's clinical autonomy is essential for ethically sound
2 practice, even when the physician is not the practitioner actually delivering hands-on care. Any
3 supervisory relationship that may compromise a physician's autonomous clinical judgment
4 undermines professionalism and professional accountability and is therefore inconsistent with the
5 code of professional medical ethics.

6
7 Due to the inherent conflicts of the simultaneous roles of employee and supervisor of one's
8 employer it is necessary to avoid any arrangements that require a physician to supervise his or her
9 employer, regardless of the supervisee's level of ownership interest or degree of influence over
10 employment decisions. Because employer status confers broad administrative and financial
11 influence, physicians ethically cannot supervise midlevel practitioners who simultaneously employ
12 them.

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14 **RECOMMENDATION**

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16 The Council on Ethical and Judicial Affairs recommends that the following be adopted and the
17 remainder of this report be filed:

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19 Physicians' relationships with midlevel practitioners must be based on mutual respect and trust
20 as well as their shared commitment to patient well-being. Health care professionals recognize
21 that clinical tasks should be shared and delegated in keeping with each practitioner's training
22 and scope of practice. Given their comprehensive training and broad scope of practice,
23 physicians have a professional responsibility for the quality of overall care that patients
24 receive, even when aspects of that care are delivered by nonphysician clinicians.

25
26 When nonphysicians employ physicians to supervise the employer's clinical practice,
27 conditions are created that can lead to ethical dilemmas for the physician. If maintaining an
28 employment relationship with a midlevel practitioner contributes significantly to the
29 physician's livelihood, a physician's personal and financial interests can be put at odds with
30 patient care interests. Similarly, the administrative and financial influence that employer status
31 confers creates an inherent conflict for a physician who is simultaneously an employee and a
32 clinical supervisor of his or her employer.

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34 Physicians in such arrangements must give precedence to their ethical obligation to act in the
35 patient's best interest by always exercising independent professional judgment, even if that
36 puts the physician at odds with the employer/supervisor.

37
38 (New HOD/CEJA Policy)

Fiscal Note: Staff cost estimated at less than \$500 to implement.

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