



# Risk Advisor

## In This Issue . . .

Rising Claims.....	2-3
Expanding Your Practice .....	4
Sharing Space .....	4

## 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 Nurses Service Organization (NSO) 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.nso.com](http://www.nso.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 increasing frequency and severity of malpractice

claims, many insurance carriers, like CNA (the underwriter for NSO), 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.

NSO 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

NSO *Risk Advisor* is intended to inform Affinity Insurance Services, Inc. customers of potential liability in their practice. It reflects general principles only. It is not intended to offer legal advice or to establish appropriate or acceptable standards of professional conduct. Readers should consult with a lawyer if they have specific concerns. Neither Affinity Insurance Services, Inc., NSO *Risk Advisor* nor CNA assumes any liability for how this information is applied in practice or for the accuracy of this information.

The professional liability insurance policy is underwritten by American Casualty Company of Reading, PA, a CNA company. CNA is a service mark and trade name registered with the U.S. Patent and Trademark Office. NSO *Risk Advisor* is published by Affinity Insurance Services, Inc., with headquarters at 159 East County Line Road, Hatboro, PA 19040-1218. Phone: (215) 773-4600. ©2006 Affinity Insurance Services, Inc. All world rights reserved. Reproduction without permission is prohibited.

EDITORIAL INFORMATION: Send comments and questions c/o NSO *Risk Advisor* at 159 East County Line Road, Hatboro, PA 19040-1218. Due to space limitations, all editorial sources and references may not be listed, but may be available on request. Publisher: Michael J. Loughran, Executive Editor; Dolores A. Hunsberger, Managing Editors/Contributing Writers: Loretta D'Antonio, Alicia R. D'Onofrio, Diane Widdop, Designer: Susan Rinaldi

For questions about this newsletter, send an email to [service@nso.com](mailto:service@nso.com)

**W**hen 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.<sup>1</sup> 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.

NSO 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.

## 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 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

# Healthcare Practitioners Everywhere

or she no longer meets the medical insurer's criteria for home care, then it would be prudent to communicate this to the patient so the patient doesn't feel abandoned, and document the discussion.<sup>2</sup>

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

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 and procedures comply with guidelines. Clearly define and document the duties that the assistive staff is authorized to per-

form 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.

date practice procedures. Organizations and regulatory boards such as state or national professional associations, state 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.

#### References

<sup>1</sup> Anderson, Jenny. *New York Times*, "Study Says Malpractice Payouts Aren't Rising." July 7, 2005.

<sup>2</sup> Tritchler, Virginia, MHA, RN. *Advance for Nurses*, "Home Health Liability." May 2005.

#### Other Sources

HPSO 2004 Counselor On-line Risk Advisor, "Good Documentation Brings Peace of Mind."  
<http://www.hpso.com/newsletters/2004/document.php>.

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 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

form 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-



#### KEEP IN TOUCH WITH NSO

Phone: 1-888-288-3534

Fax: 1-847-953-0134

Mail: 159 E. County Line Road

Hatboro, PA 19040-1218

E-mail: [service@nso.com](mailto:service@nso.com)

Web site: [www.nso.com](http://www.nso.com)

# 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 to provide a wider variety of services. This can be a rewarding opportunity, and as a business owner, you should consider the risks that these changes can present if you choose to expand your practice.

Let's consider a staffing agency whose primary clients are hospitals. The agency is looking to expand its services to include the staffing of nurse anesthetists, physician assistants, physicians and pathology lab technicians. While NSO provides coverage to more than 70 healthcare classes, there are instances when certain services and/or staff do not qualify for coverage. It is imperative that the business owner first confirms that each profession would be covered by the policy available through NSO before moving

forward with securing contracts with clients and recruiting staff for those temporary and/or permanent positions. In the example above, several of these professions are not included in NSO's classification of eligible professions. So, if an injury occurs as a result of care provided by one of these ineligible professions, the incident would not be covered under the business' professional liability insurance policy. Therefore, a policy for the business in this example would not be available.

Home health agencies can experience similar issues when trying to expand their practice. Retaining a physician for patient care extends the scope of services for a business. However, physicians are not eligible for coverage in the program offered through NSO if they are providing patient

care even on an emergency only basis. The business can be eligible for limited coverage if the physician is serving only in the capacity as the medical director for administrative duties. It's important for you to understand the potential for increased risk if expanding your practice and ensure that you have the right kind of protection when you need it most. If you are thinking about expanding your practice, e-mail NSO at [firms@nso.com](mailto:firms@nso.com) or call us at 1-888-288-3534 first so that we can help you evaluate your exposure and, if necessary, recommend appropriate coverage for your expanded services.