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Five Considerations When Litigating Malpractice Claims Against 'Noctors'

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The realities of the practice of medicine today mean that individuals seeking medical care are increasingly likely to be attended to by a physician assistant (PA)—who, as a group, are sometimes derisively referred to as “noctors,” as in “not doctors.” That term is widely used by physicians who oppose the increasingly significant roles that hospitals, medical practices, and insurers want to delegate to these PAs, including tasks traditionally performed by physicians, to help boost their profits.

According to the National Commission on Certification of Physician Assistants (NCCPA), there were 201,038 board-certified PAs in the U.S., as of Dec. 31, 2025, compared to 1,098,754 licensed physicians, according to the Federation of State Medical Boards (FSMB). The number of PAs has more than doubled since 2013, when there were merely 95,583 PAs, according to the NCCPA. Last year, 93.9% of PAs reported practicing clinically.

Closer to home, as of the end of 2025, approximately 5,566 board-certified PAs worked in New Jersey, according to the NCCPA, representing about 2.8% of the national total. The number of PAs in the state increased by 40.2% from 2021 to 2025. According to the FSMB, there were 54,694 licensed physicians in New Jersey in 2025.

Because PAs often step into the shoes of physicians and provide medical care, they are susceptible to medical malpractice claims when their care falls below the applicable standard of care. But medical malpractice claims against PAs differ in several ways from claims against physicians. To successfully litigate a malpractice claim against a PA, plaintiffs’ counsel should take into account five considerations and adjust their litigation strategy accordingly.

New Jersey Law Regarding Physician Assistants’ Administration of Medical Care

New Jersey's physician-assistant framework, the Physician Assistant Licensing Act, is codified at N.J.S.A. 45:9-27.10, (as revised by the 2015 PA Modernization Act, P.L. 2015, c. 224).

To be licensed as a PA in New Jersey, an applicant must, pursuant to N.J.S.A. 45:9-27.13, be at least 18, of good moral character, a graduate of an accredited PA program, and have passed the NCCPA's national certifying examination. Once licensed, per N.J.S.A. 45:9-27.15, a PA may practice "in all medical care settings," including physician offices, health care facilities, institutions, veterans' homes, and private homes. PAs can only perform medical services within their education, training, and experience, and must do so under physician supervision and with notice to the patient that the PA is performing the care while "conspicuously" wearing an identification tag indicating they're a PA.

N.J.S.A. 45:9-27.16 limits the care PAs can provide. On their own initiative, PAs can:

- Take histories and perform physical examinations
- "Identify[] problems and present[] them" to the supervising physician
- Suture and care for wounds, "except for facial wounds, traumatic wounds requiring suturing in layers, and infected wounds"
- Counsel and educate patients "consistent with directions of the supervising physician"
- Assist in inpatient rounds, therapeutic planning, and continuing care
- Refer patients to community resources

Only when directed, ordered, prescribed, or delegated by a supervising physician, may PAs:

- Perform or assist licensed personnel in performing non-invasive laboratory procedures and related studies
- Give injections, administer medications, and request diagnostic studies
- Suture and care for facial wounds, traumatic wounds requiring suturing in layers, and infected wounds
- Write prescriptions or order medications in an inpatient or outpatient setting
- Prescribe the use of patient restraints
- Authorize patients for the medical use of cannabis

A PA may assist a supervising surgeon in the operating room under certain circumstances and may perform medical services beyond those listed above when a supervising physician with whom the PA has signed a delegation agreement delegates such services. In those cases, the procedures delegated to the PA must be limited to "those customary to the supervising physician's specialty and within the supervising physician's and the physician assistant's competence and training." Per N.J.S.A. 45:9-27.19, a PA may "order, prescribe, dispense, and administer medications and medical devices" to patients and issue written instructions regarding them "to the extent delegated by a supervising physician."

N.J.S.A. 45:9-27.18 states that a PA "shall be under the supervision of a physician at all times during which the [PA] is working in an official capacity." While a physician's supervision of a PA must be continuous, it need not be in person, so long as the physician and the PA "maintain contact through electronic, or other means of, communication."

When performing "all practice-related activities," per N.J.S.A. 45:9-27.17, a PA shall be "conclusively presumed" to be the agent of the physician supervising them. Physicians who permit a PA under their supervision to practice contrary to the Physician Assistant Licensing Act will be deemed to have engaged in professional misconduct and be subject to disciplinary action.

Finally, PAs who engage in clinical practice must be covered by medical malpractice insurance or, if such liability coverage is unavailable, by a letter of credit, per N.J.S.A. 45:9-27.13a.

Amending the Medical Malpractice Playbook when Litigating such Claims Against Physician Assistants

At first glance, litigating a medical malpractice claim against a PA looks awfully similar to litigating such a claim against a physician: Establish through the record and expert testimony that the PA breached the standard of care when administering care to an individual in the course of a PA-patient relationship, that the breach caused the individual's injuries, and that the injuries caused economic and/or non-economic damages.

The playbook for bringing malpractice claims against PAs is similar. But personal injury attorneys should consider adjusting how they litigate and try those claims based on five considerations.

First, there's the question of serving an affidavit of merit for malpractice claims against PAs. New Jersey's Affidavit of Merit (AOM) statute, N.J.S.A. 2A:53A-26 to -29, requires a plaintiff suing a "licensed person" to serve, within 60 days of the answer, an affidavit regarding the alleged malpractice from an appropriately qualified expert. The statute's definition of "licensed person" is a list of enumerated professions at N.J.S.A. 2A:53A-26—a list that PAs are not on. Given the New Jersey Supreme Court's statement in *Haviland v. Lourdes Medical Center of Burlington County,* 272 A.3d 912 (2022), that "it is not for us to expand the carefully circumscribed list of professions to which the Legislature has elected to apply the AOM requirement," it is unlikely that any court would hold that a malpractice claim against a PA requires an AOM.

Thus, a standard medical malpractice claim against a PA is arguably outside the AOM statute, so an AOM may not be needed to bring such a claim. When a malpractice claim against a PA is accompanied by one against the supervising physician, the latter will require an AOM. However, a vicarious liability claim against the physician on account of a PA's alleged negligence may not require one. The more cautious approach would be to serve an AOM on a PA when plaintiff's counsel can obtain one, and to always serve one on a physician regardless of the claim against them. But when certain claims against PAs are so novel that plaintiff's counsel may have trouble obtaining one, failing to do so is unlikely to be fatal, given that PAs are not listed as "licensed person[s]" under the AOM statute.

Second, the Physician Assistant Licensing Act likely eliminates defendants' ability to challenge a PA's agency and a physician's vicarious liability for their actions. Commonly in respondeat-superior disputes, defendants fight over whether a tortfeasor was an employee or an independent contractor and whether the conduct fell within the scope of employment.

Against a PA, that fight largely disappears, since the Physician Assistant Licensing Act "conclusively presumes," under N.J.S.A. 45:9-27.17, that when a PA performs "all practice-related activities," they are an agent of the physician supervising them. In addition, N.J.S.A. 45:9-27.18 states that a PA "shall be under the supervision of a physician at all times during which the [PA] is working in an official capacity." The Physician Assistant Licensing Act appears to draw a straight line from the PA's negligence to the physician and their practice, and through both or either, to a better-funded insurer. (More on that below.) For that reason, plaintiffs' counsel should consider naming the supervising physician and their employer in malpractice claims against PAs.

Third, on a related note, liability theories in malpractice cases against PAs can be more straightforward than in malpractice cases against physicians. With the Physician Assistant Licensing Act spelling out the care a PA may provide on their own, the care that requires an order or delegation, and the care for which supervision is mandatory, it may be easier to prove deviations from the standard of care.

If a PA sutured an infected or facial wound without a physician's order, or practiced without the continuous supervision New Jersey law demands, the breach will likely arise more from a statutory duty rather than from an expert-witness-influenced judgment call. Those same facts may also support a separate, direct claim against the physician for negligent supervision or delegation—distinct from vicarious liability.

Plaintiffs' counsel may thus want to focus discovery on documents with no analog in a typical physician malpractice case: the written delegation agreement, its chart-review and countersignature provisions, supervision arrangements, and the practice's PA protocols. That said, even a clear scope violation usually still requires expert testimony on causation, and often on the standard of care itself. It's unlikely that the "common knowledge" exception would carry a PA medical malpractice case.

Fourth, plaintiffs' counsel may need to litigate two standards of care simultaneously when pursuing a direct malpractice claim against a physician, and will incur the expense of doing so. A malpractice claim against a PA will be based on the standard of care practiced by a reasonably prudent PA, whereas a malpractice claim against a physician will be based on the standard of care practiced by a reasonably prudent physician in the relevant specialty.

Because experts will be required to establish the PA's and physician's deviations from their respective standards of care, plaintiffs' counsel will have to invest in twice as many experts, and spend twice as much time working with them, reviewing their reports, and

preparing them for trial. This increase in costs and time may be too much for smaller or less experienced personal injury attorneys and firms to manage without assistance from co-counsel.

Finally, plaintiffs' counsel may have no choice but to press meritorious claims against physicians in PA malpractice cases to access adequate insurance coverage. Every clinically active New Jersey PA must carry malpractice coverage or a letter of credit per N.J.S.A. 45:9-27.13a. But policy limits are frequently lower for PAs than for physicians, and in practice, the indemnity may be paid through the supervising physician's or the practice's policy due to the statutory agency relationship. Thus, plaintiffs' counsel must evaluate the insurance coverage available when naming only a PA versus the supervising physician and the employing practice, determine what obstacles could prevent them from reaching that coverage, and resist the temptation to let a modest PA insurance policy define the value of the case.

Expect More Opportunities for Malpractice Claims Against "Noctors"

PAs are increasingly at the center of front-line medical care in New Jersey. With more PAs caring for clients, the number of PA malpractice claims will likely grow.

New Jersey's Physician Assistant Licensing Act requires plaintiffs' counsel to run a slightly different playbook for PA malpractice claims than the one they run for physician-only claims. Personal injury attorneys may believe that, based on these differences, PA malpractice cases look "easier," cheaper, and more lucrative to bring than physician malpractice claims. But looks can be deceiving.

To litigate PA malpractice claims successfully, plaintiffs' counsel should expect to invest similar, if not more, time and expenses in proving their clients' cases, while tweaking their malpractice litigation strategy to account for New Jersey's statutory PA scheme.

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