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In this issue

1 **Practice management**
Watch locum tenens contract terms to guard against rogue providers

3 **Billing**
Hefty telemedicine correction adds opportunity, also restricts billing

4 **Coding**
Defend your psychotherapy revenue from the top down

5 **Benchmark of the week**
Appending XS instead of 59 returned favorable denial rates

7 **Health IT**
Oz, AI and MA: Signs point to more AI, sooner, for CMS

Practice management

Watch locum tenens contract terms to guard against rogue providers

A traveling nurse convicted of tampering with morphine raises the question: How responsible is your practice for outside clinical providers hired on a freelance basis?

According to court documents, Loralie LaBroad, RN, was hired via a staffing agency by a rehab center in Danvers, Mass., and was found to have "tampered with … bottles of morphine sulfate. [For example] LaBroad diluted Patient 1's morphine sulfate by removing morphine sulfate and replacing the removed liquid with another solution."

LaBroad was tried and convicted on one count of tampering with a consumer product — not on malpractice or other patient harm. But, given the crime, the possibility of a civil action for a scenario like this is not out of the question.

Limit your exposure

Would the locum tenens status of the provider indemnify the practice? Not entirely, experts say, but practices can take steps to limit their exposure.

Stacey B. Lee, CEO of health care consultancy Praxis Pacisci LLC in Baltimore, says that health care practices "retain significant legal exposure even when using agency-provided locum tenens."

The law may differ in various states, but some principles obtain pretty much everywhere. For example, you may have heard of vicarious liability, which can hold one

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party responsible for the actions of another, as in an employer-employee situation when the latter acts on behalf of the former. In the case of locum tenens providers, this can be complicated by the fact that the locums is hired by one party and employed by another.

Therefore, says Christopher E. Brown, partner with Kaufman Dolowich in Orlando, Fla., contract language is very important: "If you're going to be contracting with a locum tenens agency, there must be indemnification language within that contract."

Lee gives an example of the sort of "duty to defend" language that could help:

"Agency agrees to indemnify, defend and hold harmless Practice and its officers, employees and agents from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or related to any act or omission of Agency's personnel, including without limitation any negligent or willful misconduct, professional malpractice, or failure to meet credentialing requirements."

Even with this kind of language, Brown says, it's not impossible that a wronged patient could come after you as well as the agency. But "should there be a judgment later down the road, ultimately that indemnification language would give the practice an avenue to seek financial reimbursement from the agency for those allegations," he explains. In Brown's state of Florida, "you can shift liability for malpractice back to the [LT] agency by requiring the agency to assume financial responsibility for the actions of the locums."

Another point to consider: Brown says that before entering a contract you should make sure the agency has enough malpractice insurance to cover that judgement if it comes.

Who's in charge? Maybe you

There are other possible pitfalls, Brown says: for example, the "apparent agency" angle.

"Even with indemnification language, a hospital or a practice could still be held liable if the court finds that there was a non-delegable duty of care," he says — "that is, the patient was not put on notice that they were being treated by a third-party contractor, and believed the nurse or the physician was actually an employee."

For that reason, Brown suggests you make patients aware "of who's treating them and who employs that individual."

Also, your state may — like Florida — have a corporate negligence statute that says the health care entity is required to exercise due care in selecting and retaining medical staff. So, Brown says, if the plaintiff can show you "failed to verify credentials or ignored prior history of malpractice," you still could be liable, even if the agency seems to have that responsibility.

For that reason, Lee suggests that you "treat locums like permanent staff by requiring comparable

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onboarding and supervision. The practices with the strongest legal position are those that can demonstrate they applied the same quality standards to temporary providers as permanent ones."

Lee realizes that "traditional onboarding can take weeks or months," but still recommends a "risk-adjusted, fast-track onboarding protocol designed specifically for short-term providers" that may just last hours and cover the sort of things that can really cause trouble — e.g. medication safety, reporting obligations, escalation procedures. This onboarding should also be documented.

"If you wouldn't let permanent staff skip the safety protocols, don't let locums walk in cold," Lee says.

Remember, Lee says: "In a malpractice scenario, juries are less concerned with contractual technicalities than with whether your practice took reasonable steps to protect patients. Your best protection isn't just in the contract language — it's in having documented systems that treat patient safety as a non-delegable duty." — *Roy Edroso* (*roy.edroso@decisionhealth.com*) ■

RESOURCE

- U.S. Attorney's Office, District of Massachusetts, "Former Traveling Nurse Sentenced To Prison For Tampering With Morphine," April 4, 2025: *www.justice.gov/usao-ma/pr/former-traveling-nurse-sentenced-prison-tampering-morphine*