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Your office staff can get you sued

Protect your practice by employing CMAs (AAMA)

Increasing numbers of employers prefer to hire, or insist on hiring, CMAs (AAMA) or, more specifically, medical assistants who have attained and maintained certification by the Certifying Board of the American Association of Medical Assistants. This article presents some of the legal reasons why employing CMAs (AAMA) is advantageous for all employers.

1. The delegating physician, the practice as a whole, and the medical assistant can be subject to disciplinary actions by the state if a medical assistant is delegated the following responsibilities:
 - a. Any procedures that constitute the practice of medicine, and require the skill and knowledge of a licensed physician
 - b. Any procedures that can only be delegated by state law to certain health professionals other than medical assistants
2. State disciplinary actions can result in fines and other criminal or quasi-criminal penalties for the delegating physician, the practice, and the medical assistant. Professional liability (malpractice) insurance policies do not provide coverage for violations of state laws. These policies only offer coverage in civil matters, such as malpractice and wrongful death suits.
3. A medical assistant should never be referred to as a “nurse,” “office nurse,” or “doctor’s nurse.” In every state this is a violation of the Nurse Practice Act, and can result in fines and penalties. All office personnel should avoid referring to medical assistants as “nurses.” If a patient addresses a medical assistant as a nurse, the patient should be corrected politely and pleasantly.
4. The delegating physician, the practice, and the medical assistant can be sued for negligence if the medical assistant does not perform a duty up to the standard of care of a reasonably competent medical assistant. The physician is potentially liable under the legal doctrine of *respondeat*

An example of the latter is physical therapy. Although some states—explicitly or implicitly—permit physicians to delegate very minor physical therapy modalities to competent and knowledgeable medical assistants working under the physician’s direct supervision, no state allows a

superior, and can also be liable under the theory of *negligent delegation*.

5. The fact that the practice's medical assistants are current CMAs (AAMA) is powerful evidence in a malpractice action. Having a staff of current CMAs (AAMA) can lessen the likelihood that physicians will be held liable for negligent delegation.
6. The "standard of care of a reasonably competent medical assistant" is not necessarily the same in all parts of the United States. The standard may vary from state to state, or even from one region of a state to another. This is a compelling reason for employing CMAs (AAMA). The fact that the CMA (AAMA) credential is nationally accredited by the National Commission for Certifying Agencies (NCCA), and that the National Board of Medical Examiners (NBME) serves as test consultant for the CMA (AAMA) Certification Examination, can be used as evidence demonstrating that the CMA (AAMA) has met or exceeded the "reasonably competent medical assistant" standard. In addition, the CMA (AAMA) must maintain currency to use the credential.
7. A court may hold a CMA (AAMA) to a higher standard of care than a medical assistant who does not have the CMA (AAMA) credential. This is another reason why continuing professional education is so important for the CMA (AAMA) and why more employers are supporting the continuing education of their CMAs (AAMA).
8. A delegating physician, however, can also be liable for the negligence of a *licensed* professional, such as a registered nurse (RN) or a licensed practical/vocational nurse (LP/VN). Contrary to common belief, the physician is not sheltered from civil liability when delegating to a licensed professional. A health professional—licensed or unlicensed—can be held civilly liable for negligent acts. Likewise, a supervising and overseeing physician is responsible for the negligent acts of professionals to whom the physician delegates—whether such professionals are licensed or unlicensed.
9. An increasing number of malpractice insurance carriers are requiring medical assistants to have a professional credential, and some even insist that the credential be the CMA (AAMA).
10. The CMA (AAMA) is the only medical assisting credential that requires graduation from a postsecondary medical

assisting academic program that is accredited by either the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES). The CMA (AAMA) Exam is the only medical assisting credentialing exam that uses the NBME as test consultant.

11. There is an important difference between programmatic (specialized) accreditation and institutional accreditation. Programmatic accreditation of a medical assisting program provides a greater degree of scrutiny and accountability of the program than institutional accreditation of a school that has a medical assisting program. CAAHEP and ABHES are the only accreditors that provide medical assisting programmatic accreditation.
12. The CMA (AAMA) certification/recertification program is accredited by the NCCA, a national accreditor of certifying boards and programs. Accreditation is an attestation of the high standards of the CMA (AAMA) credential. The proven quality of the CMA (AAMA) can be beneficial in many legal contexts, including malpractice actions.
13. Since the CMA (AAMA) represents a medical assistant who has attained and maintained certification by the Certifying Board of the AAMA, the AAMA can enforce its intellectual property rights in federal and state courts. The Certifying Board of the AAMA receives complaints against medical assistants who are unlawfully using the CMA (AAMA) credential, and takes appropriate action.
14. Only those medical assistants who have earned the CMA (AAMA) may use the credential. Other medical assistants, such as Registered Medical Assistants (RMAs), National Certified Medical Assistants (NCMAs), California Certified Medical Assistants (CCMAs), National Registered Medical Assistants (NRMAs), and their employers can be in legal jeopardy if they use the "CMA (AAMA)" initialism.

During this era of increasing litigation, all health care professionals should make sure that they and those they supervise have the education (initial and continuing) and credentials necessary to prevail against any type of legal challenge. Physicians and other employers would be prudent to employ CMAs (AAMA), see to it that the "CMA (AAMA)" appears on name badges, and make sure CMAs (AAMA) are referred to as CMAs (AAMA). ◀

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