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Mitigating Risk - Five Key Areas of Focus

By: Jeremy Wale, Esq., of ProAssurance Group

Healthcare liability insurers cannot tell physicians or midlevel providers how to better practice medicine or avoid surgical mistakes—but can offer guidance that can help you mitigate risk. Here are five key areas to focus on that can help protect your practice.

Jeremy Wale, Esq.

Use Technology with Caution

Healthcare looks very different than it did 25 years ago. Physicians are using tablets, smartphones, interactive apps, and other electronic means to provide efficient healthcare to patients.

According to several sources, between 75 and 85 percent of physicians use a smartphone or tablet for professional purposes.[i] Uses include email, research, EMR entry, x-ray review, telehealth, and more. While electronic devices have many benefits, their use presents new risks.

Chief among these risk exposures is the increased possibility of a HIPAA violation. While a HIPAA violation is not the same as a malpractice claim, it can still negatively impact you and your practice, staff, and patients.

HIPAA concerns arise in several areas of electronic device use. Losing a device may allow an individual access to protected health information (PHI) stored on the device. If the device is not properly encrypted or secured, an individual may access PHI through apps, email, or hacking into a system using the device's connectivity.

Another risk arising from mobile electronic devices involves app usage. There are approximately 26,000 healthcare apps available, and 7,400 of those apps are marketed to physicians.[ii] Somewhat surprisingly, the FDA has only approved 10 healthcare apps as of July 26, 2016.[iii]

One physician wrote about a blood pressure app he was using that gave inaccurate readings. When he contacted the app's developer, he was told the app was in the "beta-testing stage" and intended for "entertainment purposes only." Despite this information, the developer was selling the app to end-users—without any disclaimers or mention of its test status.[iv]

Healthcare providers need to be vigilant when deciding whether to use certain apps. Research the app's usage and do preliminary testing to ensure its accuracy. Use the app, then verify the results with traditional testing until the physician is satisfied the app's results are accurate. Another suggestion is to contact the app's developer and request testing/clinical trial results on its accuracy.

Use of smartphones, tablets, laptops, etc., in healthcare becomes more mainstream every day. Be sure you are proactive in mitigating the accompanying risks. You may need to contact an IT security specialist to help ensure you are managing potential risks as effectively as possible.

Track and Follow up on Your Tests

Missed or delayed diagnosis is one of the most often litigated allegations in medical malpractice.[v] These claims often result from tracking and follow-up procedure failures.

Lab testing is one of three key areas (the others are referrals to specialists and missed/canceled appointments) where tracking and follow-up are vitally important. A retrospective study researched the frequency of patients not being informed of test results, concluding there was a 7.1 percent failure rate.[vi] Tracking and follow-up procedural safeguards can be implemented and have a large impact on potential liability claims.

A reliable test tracking and follow-up system ensures the following steps occur:

1. The test is performed.
2. The results are reported to the practice.
3. The results are made available to the ordering physician for review and sign-off.
4. The results are communicated to the patient.
5. The results are properly filed in the patient's chart.
6. The results are acted upon when necessary.

Here are some suggestions for improving your process:

- Route all test results to the ordering physician for review. Procedures to ensure the ordering physician receives each

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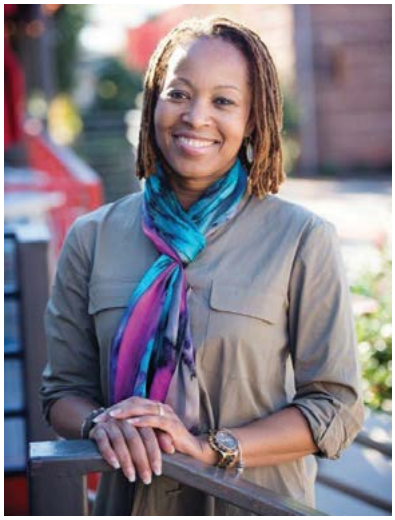
Letter From the President



January and February were busy months for the medical society. Dr. Leon Hamrick (President-Elect 2018), Martha Wise and I attended the 40th Annual Governmental Affairs Conference in Washington, D.C. We had an opportunity to hear about "Advocacy Efforts and Healthy Policy for Physicians" from Todd Askew who is the director of the AMA Division of Congressional Affairs. Cynthia Brown, Vice-President of Governmental Affairs of the AMA, gave us an informative lecture on the Medicare Quality Payment Program (MACRA). Len Nichols from George Mason University spoke about "Expected Healthcare Policy Under the New Administration and Congress". The morning conference ended with the ever-entertaining Stuart Rothenberg who gave his annual political update. We then spent the afternoon on Capitol Hill meeting with Alabama's Congressional Delegation.

One thing that our visit to the Hill confirmed is this: there is great uncertainty about the future of the Affordable Care Act and Immigration Reform. No matter our political leanings or party affiliations, physicians have an obligation and a desire to care for all patients to the best of our abilities. The data is clear, however, that many health disparities exist in minority communities because of gaps in physicians' understanding of different cultural groups.

"Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief…." – Excerpt Hippocratic Oath

In the spirit of caring for all, the JCMS is hard at work preparing a cultural competency seminar for physicians and physician extenders. **We have assembled a team of the very best local experts to help address many of the issues that are important to patients and physicians as we aim to provide quality, unbiased healthcare.**

Please mark your calendars for Saturday, October 28th for the inaugural JCMS Lessons in Cultural Competency Seminar. We welcome your ideas as we continue to plan for this informative and exciting conference. Continuing medical education credits will be offered. Some of our featured speakers will include Dr. Lara Embry, Ashfaq Taufique, Stephanie Perry and Dr. Morissa Ladinsky. We look forward to having you take part in this wonderfully informative educational session.

We are also working on our **Physician Burnout Retreat featuring Dr. Dike Drummond, thehappymd.com.** Dr. Drummond is a family medicine trained physician and now works as an executive coach who helps doctors prevent, recognize and treat burnout. Are you on the verge of burning out? Maybe you have already burned out? This conference is for you! Plan to join us on **Saturday, August 19, 2017 at the UAB National Alumni Society House.** Sign up information and the conference schedule will be available soon. Watch for details!

In Service to Mankind,
Katisha Vance, MD, FACP

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and every test result can help lessen the risk of a result "falling through the cracks". Something as simple as a log book or email notification can help facilitate physician review.

- Ask the ordering physician to review and sign off on each ordered test result. Physicians order lab tests for specific reasons; physicians are encouraged to sign or initial each test result following review.
- Notify your patients. Several practices notify patients only when there is an abnormal result. Some practices choose to send a letter for normal results and call the patient for abnormal results. Others call patients with all results. In today's technology-driven world, an email may be appropriate for normal results, or an email directing patients to a portal where results can be reviewed. Patient notification of all test results is advised—however your practice chooses to do so.

Ensuring all tests ordered by your physicians are handled in a consistent manner will help avoid tracking and follow-up errors.

Set and Review Policies and Procedures

A policy and procedure manual is an important tool for defining practice operations. In well-run practices, there is one set of rules every staff member understands and follows. The alternative is risky—procedures that vary from physician to physician or between staff members make it easy for errors or omissions to occur.

Develop a comprehensive manual of specific policies and procedures that explains how tasks are performed in your office, and make it readily available to all staff. It's important for staff to review and initial that they have read and are aware of these policies and procedures.

The following is a list of suggested topics to address in your policies and procedures manual:

1. Clinical Protocols/Patient Care
2. Patient Relations and Confidentiality
3. Health Information Management (Medical Records)
4. Laboratory (Test Tracking and Follow-up)
5. Radiology
6. Appointment Scheduling
7. Patient Tracking and Follow-up
8. Infection Control
9. Human Resources
10. Practice Operations
11. Special Procedures
12. Safety

You may need to add or subtract certain topics to best address the specific areas of your practice.

Maintain Accurate Medical Records

A medical record is crucial to the defensibility of a case; occasionally it can be the biggest hurdle. The primary purpose of a medical record is to provide a complete and accurate description of the patient's medical history. This includes medical conditions, diagnoses, the care and treatment you provide, and results of such treatments. A well-documented medical record reflects all clinically relevant aspects of the patient's health and serves as an effective communication vehicle.

The medical record also has a critical secondary function: it is the most important piece of evidence in the successful defense of a medical professional liability claim. On average, a medical malpractice lawsuit takes five years to resolve.[vii] Most physicians cannot recall specific patient encounters from several years ago—so it is important to have accurate, thorough, and timely documentation of all your patient encounters.

Good medical record documentation may help prevent a lawsuit. Your defense team may be able to disprove a patient's assertions if the physician has thoroughly and accurately documented the patient encounter.

Good medical record documentation includes, but is not limited to, the following elements:

1. Legible – If your handwriting is not legible, consider dictating your notes.
2. Timely – Most electronic medical record systems document the date and time of all entries. If you still use paper records, note the date and time of each entry, with an accompanying signature or initial. It is best to chart patient encounters either contemporaneously or shortly after the visit for more accurate and thorough documentation.
3. Accurate – Ensure your documentation accurately reflects what occurred during a patient encounter.
4. Chronological – Documentation is more easily understood when it is sequential by date and logical in process. The SOAP (subjective, objective, assessment, plan) format, or something similar, is suggested when documenting patient encounters. A logical, clear thought process is compelling evidence to present to a jury.
5. Thorough – The old adage "if it's not documented, it didn't happen" still applies today. It is challenging to show something happened if there is no documentation to support that assertion.
6. Specific and objective – Make documentation as specific as possible (e.g. using actual measurements rather than descriptors such as "small" or "large" in size).

Additions, corrections, or addendums may be pertinent in certain situations, but altering a medical record is strongly discouraged. It will destroy your credibility in the eyes of a jury and cast doubt on the legitimacy of the entire chart. Alterations include modifying accurate information for fraudulent or self-serving reasons.

To properly correct a written chart, strike a single line through

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incorrect information, leaving it readable. Then make the correction or addition as needed. Be sure to authenticate the change with a time and date, along with your initials or signature. In the event of litigation, be prepared to be questioned about any changes made to the patient's chart—especially if they occurred after the incident in question or suit was filed.

Follow the same authentication principles in electronic records; consider using a "strikethrough" function rather than deleting information. Making any corrections or additions to a medical record after a claim or lawsuit has been filed—or after receiving notice a claim or lawsuit may be filed—is strongly discouraged. These actions will likely be viewed as self-serving and could severely undermine your defense.

Keep Your Team Trained and Informed

Office staff is a critical component of a medical practice. Patients often have more interaction with staff than physicians. Properly trained and educated staff can be strong protection against a professional liability claim. Consider the following risk tips for office staff issues:

- Prepare written job descriptions for all staff. Review each staff member's job description at his or her annual performance evaluation to determine whether the description accurately reflects the individual's responsibilities and capabilities.
- Ensure each staff member works within the boundaries of state laws regarding appropriate job functions.
- Provide clear instructions to your staff on the amount and type of advice they may relay to patients and limitations on such advice.
- Establish a formal orientation period for new employees. Include a review of administrative practices, emergency medical procedures, and clinical skills and responsibilities.
- Establish procedures to ensure professional staff are credentialed.
- Educate all employees on patient confidentiality and have them sign a confidentiality agreement annually.
- Document employee training, including clinical competency, credentialing, performance evaluations, and annual reviews in employees' personnel files.
- Conduct regular staff meetings with designated agendas.
- Provide frequent feedback (both positive and negative) to staff.
- Ensure tasks are delegated to staff with the appropriate education, training, and experience to perform the task.

While the risk of a medical malpractice claim can never be eliminated, the information provided herein will help you reduce your practice's risk of a claim. If you have a specific question regarding your practice, please contact an attorney.

Jeremy Wale is a licensed attorney in Michigan where he works as a Risk Resource Advisor for ProAssurance. He has authored numerous articles about mitigating medical professional liability risk. Mr. Wale also conducts loss prevention seminars to educate physicians about new and emerging risks.

[i] "Mobile Officially a Staple in the Doctor's Office," March 26, 2015, <http://www.emarketer.com/Article/Mobile-Officially-Staple-Doctors-Office/1012271>, accessed on October 11, 2016. "Professional usage of smartphones by doctors in 2015," October 27, 2015, <http://www.kantarmedia.com/us/thinking-and-resources/blog/professional-usage-of-smartphones-by-doctors-in-2015>, accessed on January 30, 2017.
[ii] Sher, D, MD, "The big problem with mobile health apps," March 4, 2015, <http://www.medscape.com/viewarticle/840335>, accessed on October 13, 2016.
[iii] "Mobile medicine resources: FDA approved apps," July 26, 2016, <http://beckerguides.wustl.edu/c.php?g=299564&p=2000997> , accessed on October 13, 2016.
[iv] Sher, D, MD, op. cit.
[v] "PIAA Closed Claims Comparative: A comprehensive analysis of medical professional liability data reported to the PIAA Data Sharing Project," 2015 Edition.
[vi] Casalino, L.P., et al., "Frequency of Failure to Inform Patients of Clinically Significant Outpatient Test Results." Archives of Internal Medicine 169 (2009): 1123-9.
[vii] Suszek A., "How long will it take to settle your medical malpractice case?" <http://www.alllaw.com/articles/nolo/medical-malpractice/how-long-settle.html>, accessed on October 31, 2016.

MASA ANNUAL CONFERENCE: LECTURE ON MARIJUANA

"Cannabis and Pain: Lessons from Colorado" with Kenneth P. Finn, M.D.
Friday, April 14 at 1 pm at the Renaissance Montgomery Hotel & Spa - Convention Center
Tallapoosa St, Montgomery, AL 36104

Dr. Kenneth Finn is board certified in physical medicine and rehabilitation and pain medicine. He has been on the Exam Council for the American Board of Pain Medicine since 2001, and is Level II accredited to perform impairment ratings for injured workers in the State of Colorado. He is a member of the American Academy of Physical Medicine and Rehabilitation, the American Academy of Pain Medicine, and the Spine Intervention Society. Dr. Finn served on the Governor's Task Force on Amendment 64, Consumer Safety and Social Issues Work Group, and currently on the Colorado Medical Marijuana Scientific Advisory Council.

In Memoriam

The JCMS wants to acknowledge the recent passing of the following JCMS members:

Edward Carraway Tyndal, M.D.
January 5, 2017

Mark A. Mussell, M.D.
March 19, 2017

Upcoming Events

Apr. 14-15	MASA Annual Meeting and Business Session at the Renaissance Montgomery Hotel and Spa in Montgomery, AL.
Apr. 17	Foundation Trust Meeting – 5:00 p.m. Executive Committee Meeting - 5:30 p.m.
Apr. 18	The Wayne Finley 811 Breakfast Meeting – Robert Stanley, M.D., will speak on "Early Days of Computed Body Tomography (CT)" at 8:30 a.m. in the JCMS Board Room.
May 7	Annual JCMS Barons Event at 3:00 p.m. at the Regions Field
May 15	Board of Censors Meeting - 6:30 p.m. Executive Committee Meeting - 5:30 p.m.
May 16	The Wayne Finley 811 Breakfast Meeting – Michael Lyerly, M.D., will speak on "Strokes" at 8:30 a.m. in the JCMS Board Room
June 12	Foundation Trust Meeting – 5:30 p.m. Executive Committee Meeting – 6:00 p.m.
June 29-30	Health Professions Program with Girls, Inc.
Aug. 19	Physician Burnout Education – more details to come.
Oct. 28	JCMS Lessons in Cultural Competency Seminar – more details to come.

Contact Juanita Pruitt at 933-8601 or jpruitt@jcmsalabama.org for more information regarding any of the above events.

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JCMS Annual Barons Event

Sunday, May 7, 2017
Regions Field
Game time: 3:00 pm
Birmingham Barons vs. Mississippi Braves
Meal will be served at 3:00 p.m.
Covered Patio Seating

Visit the Barons Website

No Charge to Attend for JCMS Members & Immediate Family*
RSVP by emailing Martha at mwise@jcmsalabama.org or call 933-8601
Deadline to RSVP is Thursday, April 20 at 3:00 p.m.**

**Immediate family includes those family members who are residing in your household. Ticket packages can be purchased for additional guests*
***If your plans change and you will not be able to attend, please cancel by April 20 at 3:00 p.m. We have to guarantee our final number at that time, and are charged based on that number. If your reservation is not cancelled in a timely manner and we cannot use your tickets for another member, you will be charged.*

JCMS Welcomes the Following New Members

Sarah E. Aultman, M.D.	Obstetrics/Gynecology
Courtney Joshua Balentine, M.D.	Surgery
Joseph B. Barney, M.D.	Internal Medicine
Elizabeth M. Bebin, M.D.	Neurology
Adam W. Beck, M.D.	Surgery
Ms. Taylor Rae Bono	Medical Student
Rachel K. Bramlett Lancaster, M.D.	Surgery
Yu Hsn Cheng, M.D.	Internal Medicine
Joshua N. Cockrell, M.D.	Cardiology
Bradley J. Coker, M.D.	Anesthesiology
Britney P. Corey, M.D.	Surgery
Brad D. Denney, M.D.	Surgery
Spencer W. Evenhuis, D.O.	Anesthesiology
Christopher A. Godlewski, M.D.	Anesthesiology
Sara Gould, M.D.	Emergency Medicine
Stephen A. Gould, M.D.	Orthopedic Surgery
Ericka C. Guillon, M.D.	Internal Medicine
Kimberly M. Hendershot, M.D.	Surgery
Charles W. Hoopes, M.D.	Surgery
Boni E. Hoover, M.D.	Dermatology
Marcia J. Howton, M.D.	Anesthesiology
Monica G. Hunter, M.D.	Cardiology
Matthew T. Jennings, D.O.	Anesthesiology
Gregory D. Kennedy, M.D.	Surgery
Timothy W. King, M.D.	Surgery
Mr. Stephen Jeremy Layfield	Medical Student
Christina E. Maddox, M.D.	Obstetrics/Gynecology
Clinton Martin, M.D.	Psychiatry
David C. Mauchley, M.D.	Thoracic & Cardiac Surgery
Laurence D. McMillan, M.D.	Psychiatry
Kristen N. Michael, D.O.	Family Medicine
Vincent E. Mortellaro, M.D.	Surgery
Rene P. Myers, M.D.	Plastic Surgery
Jill A. Neely, M.D.	Hospitalist
Georges J. Netto, M.D.	Pathology
Laura H. Nye, M.D.	Hospitalist
Cayce S. Paddock, M.D.	Psychiatry
Brent A. Parnell, M.D.	Obstetrics/Gynecoloy
Jason Pittman, M.D.	Orthopedic Surgery
Megan S. Poston, M.D.	Obstetrics/Gynecology
Danielle K. Powell, M.D.	Physical Medicine & Rehab
Ms. Jessica Tierce Powell	Medical Student
Carlos Prieto Granada, M.D.	Pathology
Jonathan H. Quade, M.D.	Orthopedic Surgery
Soroush Rais-Bahrami, M.D.	Urology
Sakthivel Rajaram Manoharan, M.D.	Orthopedic Surgery
Patrick James Siler, M.D.	Emergency Medicine
Emily L. Spangler, M.D.	Surgery
Helena M. Speake Batson, M.D.	Obstetrics/Gynecology
William Richard Stetler Jr., M.D.	Neurological Surgery
Benjamin J. Sutlive, M.D.	Anesthesiology
Lauren Caldwell Tanner, M.D.	Surgery
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Alfred Joseph Tector III, M.D.	Surgery
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Brant Michael Wagener, M.D.	Anesthesiology
Paula P. Warren, M.D.	Neurology
Ursula I. Wesselmann, M.D.	Neurology
Andrea R. White, M.D.	Internal Medicine
Kyle Wood, M.D.	Urology

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