

Risk Management PEARLS

for
Physicians



AMERICAN
SOCIETY FOR
HEALTHCARE
RISK
MANAGEMENT

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Introduction

The malpractice crisis, increased governmental scrutiny of billing practices, new disclosure approaches ... today's physician contends with issues that were not foreseeable on the first day of medical school.

Exposures associated with these issues must be addressed if the goal of ensuring safe and trusted health care is to be met. While that task may seem insurmountable, it is not.

In *Pearls for Physicians*, risk management professionals with a special interest in physician office practices share pearls of wisdom – strategies aimed at reducing malpractice and business risk. Indeed, when losses are controlled, quality of care improves; patients, families and caregivers all win.

While new concerns have surfaced since ASHRM's original *Pearls for Physicians* were published in the mid 1990s, some of the basic principles are worth repeating. For example, there is evidence that people sue primarily because they are angry and disappointed. No new strategy for reducing litigation is more important than strong communication skills that can help the patient and family understand the course of care.

Similarly, objective medical record documentation, whether handwritten or electronic, is still the most important aspect of any malpractice defense.

In the discussion of HIPAA, billing and other business risks, much information is new but the most important solutions have traditional origins. For example, understanding the implications of any contractual relationship is critical.

As a basic reference for everyone in your office to quickly turn to when a question arises, *Pearls for Physicians* can provide a foothold in a rapidly evolving environment. ●

Confidentiality

A physician's duty of confidentiality to his or her patients has its basis in the Hippocratic Oath. Medical ethics prohibit the inappropriate disclosure of any patient information exchanged during the course of diagnosis and treatment by any member of the health care team. Such disclosure may result in malpractice litigation alleging breach in confidentiality, defamation or invasion of privacy.

As the most sweeping example of confidentiality law (there are others), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule was enacted and became effective on April 14, 2003, providing federal protection of the privacy of personal health information (PHI). Disclosure of any PHI by a health care provider outside and not necessary to the provision of medical care may result in civil or criminal penalties by the Department of Health and Human Services.

See the "HIPAA: Changes to Confidentiality and Medical Records Practices" section (page 43) for details.

In the Hospital Setting

In the hospital, patient information is necessary and vital for diagnosis and treatment and is constantly exchanged among departments, health care providers and patients. However, each exchange can be a potential breach in patient confidentiality.

In the Office Practice Setting

The duty of confidentiality extends to all members of the physician practice – physicians, nurses, medical assistants, receptionists, billing clerks, et al. – all share the duty to protect patient information. The physician-employer will also share in the liability for unauthorized disclosure by a staff member.

Risk Reduction Strategies

- * Have a confidentiality policy that outlines procedures for protecting patient information and the ramifications of staff non-compliance.
- * Make patient privacy part of new staff orientation and reinforce its importance in staff meetings and in-services.
- * Have detailed procedures in place on releasing patient information to other health care providers, outside agencies, family members, third-party payers, etc.
- * Know your state requirements regarding specially protected patient information (e.g., psychiatric/mental health records, drug/alcohol use and treatment records, and HIV-related information). Special record releases may be required.
- * Hold all conversations with or about patients in a secure area of the office.
- * Keep the medical record secure from accidental disclosures. Do not leave it where other patients may have access to it (for example, in a chart holder or on a hook on the exam room door).

Reports Required by Law

Most states have laws requiring physicians to report certain events such as gunshot wounds, suspected child or elder abuse and certain communicable diseases. Failure to do so can result in fines and sanctions imposed by regulatory agencies, and professional liability if a patient or third party can demonstrate harm or injury that would not have occurred had the physician filed the required report.

Know your state's reporting laws and regulations, including where to report and when (professional organizations, hospital or practice attorneys, and risk managers are sources for this information.).

Know your immunity (or lack of it) for reporting.

Release the minimum information required by law.