

Advisor

**THE TEXAS
PHYSICIAN'S
ADVOCATE**



Get a Handle on Your Practice's Risk

Advocate, MD offers all policyholders a free, comprehensive Risk Management Practice Review that will evaluate your degree of risk exposure and provide loss-reduction and loss-prevention recommendations.

The survey, conducted on-site by our state and nationally certified and credentialed director of risk management, uses established risk-measurement tools and an objective scoring system. The objective, quantifiable process includes:

- Evaluation of medical record documentation and completeness
- A complete review and analysis of all policies and procedures
- An on-site physical assessment of the facility and its surroundings
- An evaluation of patient safety practices
- A tour and review of all patient-service areas
- Review and analysis of compliance with the Health Insurance Portability and Accountability Act
- An assessment of adherence to medication inventory and security practices

The Risk Management Practice Review is free to all policyholders and requires limited assistance from the policyholder's staff, such as guidance to point out various locations within your practice. The survey is usually completed in a half day for solo practices or smaller groups of three to five practitioners. Larger, more-complex groups generally require one day of review time.

**Advocate, MD offers
all policyholders a free,
comprehensive Risk
Management Practice Review
that will evaluate your
degree of risk exposure.**

Because claim and loss avoidance are critical in today's practice environment, this service is strongly recommended as a valuable tool to assist policyholders as well as to reduce risk and draw attention to issues that may give rise to a claim. We encourage you to take advantage of this valuable service by

contacting Advocate, MD's Director of Risk Management, **Terrence G. Hurst**, C.P.H.R.M., M.H.A., at **512|275-1836** or **terrence.hurst@advocatemd.com** to schedule a review. ★

In This Issue

- 1 | Get a Handle on Your Practice's Risk
- 2 | Message From the CEO
- 3 | Web-Based Education
- 4 | HIPAA Helpfuls
- 4 | Message From the President
- 5 | Is Anybody Out There Listening?
- 6 | Meet Brenda Freeman
- 6 | Pre-Expert Opinion Ruling
- 7 | The "Three-Strikes Rule"

Message From the CEO

Dear Advocate, MD Policyholder,

There are many different strengths that distinguish “great” companies from ordinary companies: excellent people, a unique business plan, a superior operating model, providing unmatched customer service, and exceptional day-to-day execution of the business, just to name a few. Usually, great companies can achieve a level of superiority in many of these categories simultaneously, as is the case today with Advocate, MD.

The challenge, however, is creating an ongoing, sustainable business culture that can consistently and systemically leverage existing points of excellence, while continuing to create new competitive advantages to ensure the long-term success of the company.

So, how does a medical liability insurance company such as Advocate, MD nurture and sustain such a business culture? I believe the answer is found in the very foundation of our organization: our company values.

As the Chief Executive Officer of Advocate, MD, I clearly recognize that an integral aspect of leadership is individual accountability for making decisions that are consistent with one’s values. Likewise, great companies that consistently outperform the industry average must also have a culture of accountability that leads to organizational behavior and decision-making consistent with defined company values.

Many quality companies talk about their company values, but great companies have the desire and discipline to “live” them every day. At Advocate, MD, we recognized early that to ultimately be a great company, we needed to avoid the identity crisis into which so many ordinary companies fall. Instead, our employees spent significant time together as a team defining our company values, which today characterize every aspect of our business culture. From new

business development to managing claims, our company values permeate every part of our business.

We believe these values will continue to be the foundation of rock that will guide the ongoing development and execution of our great company. As a current policyholder of Advocate, MD, I thought you might be interested in reviewing these values.

I thank you for the ongoing trust and confidence you have placed in

Advocate, MD by allowing us to be your medical liability insurer. I can assure you that each of us here in this organization will continue to strive for excellence while honoring our stated company values and respecting your trust in our great company.

Sincerely,

Mark Adams

*Chairman, President and Chief Executive Officer
Advocate, MD Financial Group Inc.*

ADVOCATE, MD VALUES

We Are Honest: To warrant the trust of all with whom we come in contact, we must ourselves be consistently honorable in our intentions and our actions.

We Are Moral: We will strive to give precedence to that which is right over that which is merely expedient or convenient.

We Are Loyal: To each other and to those outside the Advocate, MD organization, we will strive to fulfill both the obvious and the unenforceable obligations we owe to all whom we serve and with whom we work.

We Are Respectful: Whatever our station in life may be, we will respect in others of all ranks those virtues and strengths of character which we collectively

and individually endeavor to exemplify.

We Are Legal: We recognize the authority of legal restraints and our obligations to be in conformance with both the spirit and the letter of the law.

We Are Fair: In regard to decision-making at all levels, we will strive for maximum objectivity and even-handedness with all those whose lives we touch.

We Are Charitable: We recognize and embrace our obligation to give back to those less fortunate and to support the community in which we operate.

We Are Exceptional: We exhibit exceptional ability and desire to serve our customers above all else.

Advocate, MD Announces Web-Based Education

Continuing medical education courses are now just a click away, thanks to a valuable new addition to Advocate, MD's online resources for physicians.

Director of Risk Management Terrence G. Hurst, C.P.H.R.M., M.H.A., has established a Web-based education system that will give Advocate, MD-insured physicians and others access to more than one hundred hours of accredited medical education courses — all with a simple click on the Advocate, MD Web site.

The system will enable physicians to keep abreast of the many risk-management and medical practice related issues that are so important to preventing and reducing claims, while helping to improve practice quality.

The Web-based system is easy to use and access, with contemporary content. It gives physicians an alternative to “live” presentations, allowing them to avoid long trips by using a comprehensive and useful tool that meets CEU and CME licensure requirements — right in their own offices.

The system became operational May 15, 2006. To access the courses, go to the Advocate, MD Web site at www.AdvocateMD.com and click on the Risk Management button. A link will open entitled “*Accredited Continuing Medical Education Classes*.” Simply click on it and select from the list.

Physicians can select the course they need, take the course, and then take an exam covering the course content. The exam is graded and scored, and if a passing grade is achieved, the physician will receive a written certificate by mail.

For questions or help, please contact Terry at **512|275-1836** or terrence.hurst@advocatemd.com. ★

Mark Adams

Chairman, President and Chief Executive Officer,
Advocate, MD Financial Group Inc.

Jack Murphy

President and Chief Executive Officer,
Advocate, MD Insurance Company

Thomas Smith

Chief Financial Officer

Bill Canipe

Director, Agency Relations

Brenda Freeman

Director, Claims Management

Jennifer Hanke

Editorial Review

Terrence G. Hurst, CPHRM, MHA

Director, Risk Management

Alaina Judice

Marketing Manager

Thomas C. Mohler, CPCU, ARM

Sales Manager

Donna Parker

Director, Underwriting

NEED ANSWERS?

Contact Advocate, MD to have your questions addressed in our next issue of the Advocate, MD Advisor. We have an experienced and knowledgeable staff ready to answer any question you may have. Also, please contact us if you would like to submit an article, testimonial, story, or suggestions that may benefit other policyholders.

We value our policyholders and would like to extend an opportunity to help you further.

If you would like to receive updates and our quarterly newsletter via email, please send a request to marketing@advocatemd.com.

CONTACT US

Toll Free

800 | 686-2734

Main

512 | 275-1830

Fax

512 | 275-1240

E-mail

info@advocatemd.com

risk.management@advocatemd.com

Web site

www.advocatemd.com



Advocate, MD Insurance

2700 Via Fortuna • Suite 425

Austin, TX 78746

Articles appearing in the Advocate, MD Advisor are for educational purposes only.

The contents are not intended to represent a standard for medical practice or determine a standard of care. Risk management information does not constitute legal opinion, nor is it a substitute for legal advice.

HIPAA Helpfuls

Yes, the Health Insurance Portability and Accountability Act has been around for quite a while now, and we have been hearing about it for even longer. You may remember it languished for years while bureaucrats struggled with the language and then finally posted the rules for comment, and then after even more changes, the rules were published and distributed.

Since HIPAA was published in 1996, a lot of water has gone over the dam, and yet there are still questions. That's no surprise, since the rules were intended to protect our privacy but were to be designed to be realistic and applicable throughout the healthcare industry — from large, billion-dollar organizations to solo practitioners. The amount of energy and resources that each of these entities has to devote to the matter often dictates the ability to understand and comprehend the complexities and penalties for violation.

COMMON HIPAA ERRORS

The law, regulations, and rules are so complex and overwhelming, space doesn't allow for a comprehensive explanation here. But some real-life examples of foibles and some correct responses to these types of instances follows:

One practice site has established a system of having patients sign in using their name, address, phone number and social security number on a clipboard list. The rules for the billing office were apparently misapplied to the patient registration process and were clearly creating a privacy issue. There are a number of ways to achieve privacy, protect confidentiality and still accomplish the necessary data collection to bill and register patients. One method is to use a set of peel-off labels on a sheet that the arriving patient uses to register. This method provides proper identification, but lets the staff peel the information off and apply it to the log before replacing the clipboard for the next visitor. This ensures that the previous visitor's information isn't available for the next visitor to see.

Another common violation happens during the appointment-scheduling process. A patient schedules an appointment for a procedure at her doctor's office and uses her work phone number to be notified of any changes or confirmation. The day before the

appointment, the physician's office calls the work number, and since the woman isn't available, leaves a message on her voice mail. The message includes a confirmation of the appointment, a description of the procedure and the name of the procedure, and a caution as to a preparation to be done that evening that is graphic and somewhat descriptive. Needless to say, the patient's administrative assistant pulls off the message and manages to share some of it with other workers. Although hard to imagine, these things do happen. Never, under any circumstances, leave any message on any phone other than "Hello Mr./Mrs. Patient, this is Dr. _____'s office confirming your appointment for time and date. Please call us for instructions, or if you have any questions or need to re-schedule."

For consultation or advice about how to handle HIPAA issues, please contact Terrence G. Hurst, C.P.H.R.M., M.H.A., Director Risk Management, at **512 | 275-1836** or terrence.hurst@advocatemd.com. ★

How I See It From My Viewpoint

As president of Advocate, MD, I am very proud of our outstanding team of insurance professionals. As we continue to grow, I remain focused on establishing our dedicated team as "THE Texas Physician's Advocate."

The Advocate team represents more than 150 years of experience in the Texas medical professional liability industry. Unlike our competitors, we do not require our policyholders to provide the company with needed capital through assessments, contributions or surcharges.

Advocate's team is available to our policyholders on a 24/7 basis and is always prepared to provide premium indications, answer questions or respond immediately to claims or legal notices.

Our Risk Management and Claims Departments have real, hands-on experience and national and statewide credentials, enabling them to provide advice and counsel regarding practice issues, claims and of course, loss control.

I invite you to visit us any time, to meet me and our team and give us the opportunity to demonstrate that we are "THE Physician's Advocate."

Sincerely,

**Jack Murphy
President and Chief Executive Officer,
Advocate, MD Insurance Company**

Is Anybody Out There Listening?

For decades, we have addressed informed consent as a process, as a principle, as a standard, as a loss-prevention mechanism and as a communication vehicle. Yet, we are still regularly confronted with claims and lawsuits that invariably include the matter of “informed consent” as a claim or basis for the case.

Are we talking to our patients about risk, but no one is listening? Is the message we are trying to deliver actually getting to the receiver? Does the message get there garbled? Or are we speaking a language no one else understands?

These and other issues are all at the core of the problem of providing “informed consent” — the operative word being “informed.”

UNDERSTANDING THE RISKS

At the heart of the issue of informed consent is a realistic and factual, yet understandable, explanation of the risks. Effectively explaining risk is the whole point of informed consent, and the delivery of the communication — its manner, style and content — are essential to the message’s effectiveness.

Other industries manage to communicate risk-related messages more effectively. Some employ highly specialized experts who are trained both in the subject and in communication. In medicine, however, as the rules state, the physician is responsible for describing the risks and informing the patient of the possibilities.

Paling¹ suggests adding strategies and structure to the communication process, such as visual aids, and offers a toolbox of techniques to improve communication and ensure a connection with the patient.

It has been suggested that patients simply don’t grasp the enormity or severity of risk, but take away from the conversation a distilled impression that “some risk” may be involved in a procedure. Emotion plays a great role in this perception, so the physician’s role is to display both competence and caring when communicating. The physician should structure the discussion of risk in a way that increases the chances that the patient will understand the risks.

BE SPECIFIC

Reminding patients that risk is an inherent part of the medical treatment process is a good first step, reflecting truth and counteracting any beliefs that medicine is a risk-free environment. It’s also important to offer a message of reassurance that all healthcare providers will do the best they can, and that all their interests are focused on the patient and a quality outcome.

Numbers and values are an effective way to describe and explain risk, but physicians often quote values by using phrases such as “low-risk.” A listener will interpret a phrase such as this using his or her own internal value system, so it is essential that levels of risk be clearly quantified.

As Paling suggests, it is better to quote the “odds” in an appropriate context, such as, “so many out of 1,000.” This puts both the sender of the message and the receiver of the message on the same or equal plane of understanding, avoiding conflict when the outcome seems to differ from what was said.

Other recommendations include using consistent denominators when describing various outcomes. It’s always best to use the same numbers and values, and it’s ideal to use

absolute numbers rather than relative risk. Avoid speaking in terms of “high” or “low.”

Visual aids or example cards can demonstrate the value or amount of a term in a quantitative manner. Some charts or graphs are great for depicting proportionate value and are easily understood. A chart helps to bind the doctor-patient relationship more closely, and as the relationship strengthens, the likelihood of a claim is lessened.

Communicating risk effectively improves the quality of care delivered. To ensure effective communication, become better skilled and seek out training to improve your ability to partner with patients. Also, be fully aware of cultural biases in the medical practice environment, and implement strategies to remove those barriers. ★

- **Communication methods and styles affect a patient’s perception of risk.**
- **Replace verbal explanations with quantifiable numbers.**
- **Use absolutes, not relative terms such as “high” or “low.”**
- **Describe odds in both a positive and negative fashion.**
- **Implement visual aids in the discussions.**
- **Keep it simple.**
- **Be sure the patient understands and has been part of an information process, rather than just acknowledges consent.**

1. J. Paling, *BMJ*, Volume 327, 27 Sep. 03.

Meet Brenda L. Freeman, Director of Claims Management

In November 2004, I had the opportunity to begin working with Advocate, MD. In fact, I managed Advocate's first claim and have continued to manage claims and litigation from that day forward. In the process, I had the opportunity to join the management team at Advocate, MD and look forward to managing your claims and litigation for many years.

My background is somewhat diverse, encompassing law, education and claims management. I practiced law in Georgia and Tennessee, focusing on civil litigation, products liability, professional liability and insurance defense. After moving to Texas, I decided to focus on education and training, and taught at Lamar University in Beaumont for several years. When my husband was transferred to McAllen, Texas, I took that opportunity to open the first paralegal school in the Rio Grande Valley.

During the past 12 years, I have been responsible for claims and litigation management in the employment and professional liability arena. My diverse experience in law, education and claims management has been instrumental in the development of Advocate, MD's claims and litigation policies.

IT'S ALL ABOUT RELATIONSHIPS

Advocate, MD is dedicated to providing quality claims management to our doctors, establishing sound, team-based relationships dedicated to early investigation, evaluation and disposition of claims and lawsuits.

This is easily accomplished because our claims department works closely with our doctors from the day a claim is reported. We keep you

informed of the status of the claim and establish a working relationship that makes it easy to reach our goals of promptly investigating, realistically evaluating and expeditiously disposing of claims and lawsuits.

Our claims and litigation management strategy is based on the following principles:

- 1 *Efficient resolution of claims and lawsuits depends on a constructive partnership and effective communication between the doctor and Advocate, MD. In many instances, this partnership will also include the defense attorney and risk management.*
- 2 *The insured must be actively involved with Advocate, MD and the defense attorney in the evaluation, strategy and disposition of each case.*
- 3 *Cases that will be vigorously defended and probably tried will be identified early, and an aggressive strategy will be developed and followed. These cases will be assigned to an experienced defense attorney selected from our approved list of highly experienced attorneys throughout the state.*
- 4 *Each case will be reviewed and re-evaluated frequently.*

PROVIDING EXCEPTIONAL SERVICE TO EVERY ADVOCATE, MD CUSTOMER

Our physicians have recognized our claims and litigation management strategy — which stresses early investigation, evaluation and disposition of claims — as exceptional service.

Recently, I received a letter from one of our insured radiologists, who expressed his appreciation for the manner in which a claim was handled on his behalf. This radiologist missed

a subtle lesion in his review of a patient's mammogram. The claimant alleged that this oversight resulted in an eight-month delay in the diagnosis of a breast lesion. As a result, she alleged that she sustained substantial injuries and losses. On the bright side, however, she has had surgery and chemotherapy and is free of disease.

The radiologist's letter points out how successful we were in promptly investigating, realistically evaluating and expeditiously disposing of the claim under policy limits, without the necessity of a lawsuit:

"I appreciate the company's settling this case quickly, since I had submitted my resignation to the hospital and was waiting for my successor to complete his fellowship. Had this not been settled, it would have disrupted my life for the next two to three years, and the case still probably would have been lost. So I want to express my appreciation for the company's support. I regret the company's loss, and the unnecessary delay in diagnosing the patient's breast lesion."

This letter is just one of many that shows how we continue to prove that Advocate, MD is "the physician's advocate."

Please feel free to contact me whenever you have questions relating to your practice. I will work diligently with you to find answers to your questions, and I look forward to working with each of you.

Brenda L. Freeman, J.D.

*Director of Claims Management
Advocate, MD*

Pre-Expert Opinion Ruling:

The Twelfth Court of Appeals in Tyler recently rendered an opinion relating to pre-expert report discovery. The Court held that the tort reform statute, Chapter 74 of the Texas Civil Practice and Remedies Code, does not prevent pre-suit depositions under Rule 202.

As a result of this ruling, there may be an increase in pre-suit deposition notices issued to physicians. We believe that plaintiff attorneys may try to use this as a way to circumvent the expert report rule under Chapter 74.

This ruling by the East Texas court basically allows Plaintiff attorneys the opportunity to investigate their claim by issuing a Rule 202 deposition notice.

If the East Texas case is allowed to stand, it will have an adverse effect of allowing the plaintiff's counsel to "sandbag" our health care professionals by concealing the nature of a claim from the professional being deposed. As a result, a physician could provide testimony that would be adverse to a defense without being made

aware of the accusation and without any foreknowledge of the probable line of questioning.

We anticipate an increase in pre-suit deposition notices. Advocate, MD is adamant that these types of deposition notices should be resisted until the right case can be made to the Texas Supreme Court. Accordingly, Advocate, MD requests that you immediately contact Brenda Freeman, Director of Claims Management, upon receipt of a pre-suit deposition notice.

The “Three-Strikes Rule”: It’s Not Baseball

In 2003, Texas Legislators had serious questions as to whether the Texas Medical Board was doing its job of disciplining bad doctors. At the request of the Board, and as a means of balancing tort reform, Senate Bill 104 was passed, sending a clear message that the agency needed to refocus and address issues regarding Texas physicians.

The Board has long been able to discipline physicians, subject to “repeated or recurring” and “meritorious” liability claims that imply professional incompetence likely to injure the public. But the legislated changes have resulted in some interesting — if not confounding — rules. For example, the act called for reinforcement of the standard for disciplining physicians against whom complaints have been filed, as well as the addition of a “three-strikes rule.”

With the “three-strikes rule,” unlike baseball, you’re not “out.” Essentially, the rule states that if a physician is named in three separate healthcare liability lawsuits within a five-year period, the Texas Medical Board will launch an investigation of that physician’s medical competency.

Reporting claims is each physician’s responsibility, but the job is carried out by the insurer in two instances: when a medical malpractice complaint has been filed, or when a “settlement” of a malpractice dispute has been made. To be certain that no malpractice lawsuit goes unreported, the Board requires physicians to report their malpractice histories as part of its biennial registration process.

WHAT TO EXPECT IN AN INVESTIGATION

During an investigation, the Board will subpoena the medical records of the patients subject to each claim, then hire an independent consultant to review the records and determine if there has been any violation of the standard of care. If the investigation finds that the standard of care has been violated, it reaches the level of a complaint against the physician.

It has become clear that the investigational steps in the Board’s process focus on the medical record. There can be no louder message as to the importance of the quality,

comprehensiveness and content of each and every medical record within a practice.

The importance of comprehensive, accurate documentation cannot be overstated. When it comes time to defend or support the practice of medicine or the reasons for taking certain actions on behalf of patients, the only reliable source is the record. This increased focus on the record not only means that it must support the care delivered, but that the record must be in compliance with the standards as set forth by the Board.

Some would say that this is a double whammy: One, the Board is investigating the physician’s medical practice, and two, in the process, the Board is also reviewing the record for compliance. That is exactly the case, and as

With the “three-strikes rule,” unlike baseball, you’re not “out.”

often happens, the independent consultant “expert” may determine that the standard of care has been met, but that the medical record is deficient.

In the last four months, the Board has disciplined 59 physicians, and of these, 10 were disciplined for “record-keeping violations.” By way of comparison, there were 14 “quality of care violations,” 10 “unprofessional conduct” cases, and eight cases involving “impairment due to drugs, alcohol or mental condition.”

HOW TO CUT YOUR RISK

How can physicians reduce the likelihood of being investigated while remaining compliant with record-keeping statutes?

First and foremost, document, document, document. Do it accurately, legibly, concisely, precisely, consistently and in a timely manner — and be sure to date every entry. Check out the Board’s Web site at www.tmb.state.tx.us, which offers a very easy-to-follow and -understand set of criteria, which, if followed, will keep you out of the Board’s range of view.

Regularly audit your records. Set up a quarterly process in which you randomly select charts for review to objectively — and be honest here — determine how well your charting is progressing and if it is compliant.

Educate your staff on the standards, and be certain that they are also charting correctly and are compliant.

Establish an archiving and record-storage system that reduces the on-site volume of records, which also reduces the record-storage requirements for the practice.

The best way to avoid the attention of the Board is to practice medicine with the goals of providing the best possible medical care, focusing on communication, and establishing relationships with the patients you serve. It is important to realize that patients rely on you for medical care and treatment, and that they are very attentive to how you communicate and the type of person they perceive you to be. If you are seen as a good listener, a caring and understanding physician, and an open and honest individual, the likelihood of generating a complaint is reduced.

WHAT TO DO IF YOU’RE INVESTIGATED

Even after you have done all the right things and you have an excellent record system with impeccable records, you may still find yourself being investigated. Now what?

Always notify your malpractice carrier immediately upon receipt of the notice from the Board. This will give the carrier the “heads up” needed to review coverage and to assign counsel, if appropriate. Often, this is a notice to preview the eventuality of a lawsuit.

Never try to go it alone. The course of an investigation is no place to be without legal counsel.

Advocate, MD’s Director of Risk Management is available to assist with any questions you may have on this subject or to consult with you regarding the standards for record compliance. Please feel free to contact Terrence G. Hurst, C.P.H.R.M., M.H.A., at **512 | 275-1836** or terrence.hurst@advocatemd.com. ★

Advisor

THE TEXAS PHYSICIAN'S ADVOCATE

If you would like to receive updates and our quarterly newsletter via e-mail, please send a request to marketing@advocatemd.com.

TOLL FREE
800 | 686-2734

MAIN
512 | 275-1830

FAX
512 | 275-1240

E-MAIL
info@advocatemd.com
risk.management@advocatemd.com

WEB SITE
www.advocatemd.com

In This Issue

- 1 | Get a Handle on Your Practice's Risk
- 2 | Message From the CEO
- 3 | Web-Based Education
- 4 | HIPAA Helpfuls
- 4 | Message From the President
- 5 | Is Anybody Out There Listening?
- 6 | Meet Brenda Freeman
- 6 | Pre-Expert Opinion Ruling
- 7 | The "Three-Strikes Rule"