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Medical Professional Liability Insurance

SUMMER 2007

Advisor

THE TEXAS PHYSICIAN'S ADVOCATE

Can the Ambulatory Care Setting Learn Lessons From Other High Risk Domains?

Written by Stephen M. Powell, Capt, BA, ASO

Sense of Urgency

Errors in communication are routinely cited in over 70% of all root cause analyses of serious patient injuries or avoidable patient deaths while in the healthcare system (Joint Commission, 2007). Using data from the Institute of Medicine report *To Err is Human*, the number of preventable deaths each year in the U.S. resulting from poor communication is estimated at 70,000 (Kohn, et al., 2000).

Why We Err?

Human error is inherent anytime a human is involved in the process or execution of a task (Reason, 1990). An organizational safety culture and climate sets important individual norms and beliefs towards the importance of safe and reliable behaviors within high risk domains (Helmreich, et al., 1993). Safety climate is a snapshot or surface manifestation of organizational culture (Schein, 1990). Reported safety attitudes by clinicians in the ambulatory healthcare setting reveal possible areas for improving care in this environment (Table 1).

National Ambulatory Goals for Patient Safety

Analyzing Table 1, threats to patient safety are identified by caregivers within their own environment. The difference in response by discipline may relate to the incidence that these processes of care are recognized as barriers to safe and reliable patient outcomes. In the survey, the referral process, communication and lost or overlooked tests could lead to errors (Modak, et al., 2007). Without proper communication, coordination and other teamwork processes in place, the following errors have been shown to impact patient safety in the ambulatory care environment:

- Judgment Errors
- Missed or Delayed Diagnoses
- Delays in Treatment
- Adverse Drug Events

The Joint Commission publishes evidence-based National Patient Safety Goals for the Ambulatory Care setting to promote improved patient outcomes. Many of these goals are related to improved communication across multiple care teams from the office-based practice, hospital and other services including palliative care and mental health (Joint Commission, 2007).

Table 1: Safety Attitudes in an Ambulatory Care Setting (Modak, et al., 2007)

Safety Climate Questions	Physicians (% agree)	Nurses (% agree)	Managers (% agree)	Medical Assistants (% agree)
I am satisfied with the current referral process in this office	31%	36%	56%	54%
There is adequate and timely transfer of patient information between primary care physician and specialist	27%	36%	25%	47%
Abnormal test results are frequently lost or overlooked	62%	67%	83%	74%

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- Improve the effectiveness of communication among caregivers

For verbal or telephone orders or for telephonic reporting of critical test results, verify the complete order or test result by **having the person receiving the information record and "read-back" the complete order or test result.**
Standardize a list of abbreviations, acronyms, symbols, and dose designations that are **not** to be used throughout the organization.
Measure, assess and, if appropriate, take action to improve the **timeliness of reporting**, and the timeliness of receipt by the responsible licensed caregiver, of critical test results and values.
Implement a standardized approach to **"hand off" communications**, including an opportunity to ask and respond to questions.

- Encourage patients' active involvement in their own care as a patient safety strategy

Improving	Define and communicate the means for **patients and their families** to report concerns about safety and encourage them to do so.

Communication and Other Teamwork Skills

Crew Resource Management (CRM) is an industrial, cognitive and organizational psychology evidence for learning communication and teamwork skills. The skills taught enhanced leadership, decision-making, workload management, communication, situation awareness (vigilance) and coordination. Implementing the values of High Reliability Teams within ambulatory care teams may result in the same positive outcomes for patients as it did for others (Wilson, et al., 2005)

1. **Sensitivity to Operations** – Team has clear awareness of threats to safe patient outcomes. Threats are clearly communicated to all responsible parties including the patient and patient's family if necessary.

2. **Commitment to Resilience** – Team has the ability to recover from inevitable human errors without the error impacting the patient. Teams "watch each others' back" and monitor each others' performance through active listening and mutual support.

3. **Deference to Expertise** – Team has the ability to question actions or decisions of others on the team regardless of position, experience or hierarchy. Team establishes critical language for advocating and asserting for safe patient care.

4. **Reluctance to Simplify** – Team is disciplined and follows established protocols or evidence-based practices. Team encourages healthy skepticism and excels at planning for future increases in workload or patient acuity.

5. **Preoccupation with Failure** – Team is able to self-learn from mistakes. Culture supports learning and discourages blame. Team encourages others to "catch" errors and report them to others.

Creating High Reliability in Ambulatory Care and Office-Based Practices

The skills learned and the tools available from this evidence-based curriculum are designed to improve communication and other teamwork competencies. Leadership has been shown to be crucial to improving teamwork. Team events such as a team brief or "huddle" are facilitated by a designated leader for planning and sharing critical information at the beginning and end of a shift or procedure have improved team attitudes toward patient safety (Makary, et al., 2007). Structured communication tools for handoffs (Figure 1) such as SBAR (Situation, Background, Assessment and Recommendation) have been shown to improve patient outcomes by reducing adverse drug events by 40% (Haig, et al., 2006).

Figure 1: SBAR (TeamSTEPPS, 2007)

TeamSTEPPS

SBAR provides....

- A framework for team members to effectively communicate information to one another
- Communicate the following information
  - Situation – What is going on with the patient?
  - Background – What is the clinical background or context?
  - Assessment – What do I think the problem is?
  - Recommendation – What would I recommend?

Remember to introduce yourself....

Team Strategies and Tools to Enhance Performance and Patient Safety

Asking for help when needed is much harder than offering help when a team member is task saturated. Expert teams manage high workload periods by planning and coordinating during lower workload periods. Nurse retention improved by 16% and staff satisfaction improved by 19% following the implementation of teamwork practices (Leonard, et al., 2004). Anticipating and adapting to changes is made easier when teams share common goals and vision.

Summary

In healthcare, the goal is safe patient care. Human error is inevitable in our complex and high risk industries; we must put

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countermeasures in place to trap, mitigate and manage the effect these errors will have on safe outcomes. Teamwork is an evidence-based countermeasure for error reduction. Try some of the tools and strategies in TeamSTEPPS™ on your ambulatory care or office-based practice team today. For more information and materials, visit http://www.ahrq.gov/qual/teamstepps.

Stephen Powell is a Principal and Managing Partner of Healthcare Team Training, LLC of Peachtree City, GA and an airline Captain flying the B-777 for Delta Airlines. He can be reached at spowell@healthcareteamtraining.com.

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NEED ANSWERS?

Please let us know if you have questions that you would like addressed in our next issue of the Advocate, MD Advisor or if you have suggestions for future topics.

If you are interested in submitting an article, testimonial, story or suggestion, please email us at marketing@advocatemd.com. We have an experienced and knowledgeable staff ready to answer your questions and meet your needs.

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Defending You

Written by Brenda Freeman, JD, Director of Claims Management

Advocate, MD continues to have a very strong defense record. We have been successful in defending our claims and lawsuits as we continue to follow a claims and litigation management strategy based upon the following principles:

1. **Establish a constructive partnership with effective communication between the physician, Advocate, MD, the defense attorney and Risk Management to produce efficient resolutions of claims and lawsuits.**
2. **Actively involve the Insured with Advocate, MD and the defense attorney in the evaluation, strategy and disposition of each case.**
3. **Identify early on those cases that have a high probability of going to trial, then develop and follow an aggressive strategy that will be vigorously defended.**
4. **Review and re-evaluate each case frequently.**

This team-based approach is dedicated to early investigation, evaluation and disposition of claims, and lawsuits. Our team-based strategy has been very successful with an excellent closed claim ratio of 89%. What does this mean? This means that 89% of our claims have been closed without indemnity payments.

The remaining 11% of our claims that have been closed were closed at the request of the Insured, with settlements starting as low as $500. Each time our Insured made a request that we enter into settlement negotiations, that decision was based upon the Insured's total involvement in that case. Our Insured made that decision following a thorough review and evaluation of the claim.

The majority of our settlements were made based upon concerns relating to documentation in the medical records.

Failure to properly document the medical records and corrections as well as unexplained alterations to medical records can prove fatal to medical malpractice defense.

We have been fortunate in that most of our claims have been successfully defended based upon our Insured's medical records. In these cases, our Insured's thorough and accurate documentation spoke for itself and prevailed in the litigation.

Defense firms have clearly stated recommendations that need to be followed in order to avoid problems in defending a case where the medical records documentation does not support the defense lawsuit. Based on experience, the recommendations are as follows:

1. **Do not alter medical records. Alteration is absolutely fatal to malpractice defense.**
2. **Beware of the potential problems relating to late entry:**
   a. Late entries must be clearly dated and marked "Late Entry."
   b. The reason for a late entry should be explained in detail.
   c. Put the late entry in the chart in the normal chronological position, do not "squeeze it into" a space.
3. **Correct medical records if necessary:**
   a. The correction should allow the mistake to be viewed (strike through incorrect information with one single line).
   b. The correct information should be added and initialed. Do not use Wite-Out or attempt to black out the incorrect information.
   c. Obscuring information leads to questions.
4. **Medical records should include medical records only. Do not include:**
   a. Financial or health insurance information.
   b. Speculation or subjective opinions.
   c. Blame of others or second guessing.
   d. Derogatory comments about colleagues or their treatment of the patient.
   e. Legal information.
   f. Unprofessional or personal comments about the patient.

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As previously indicated, documentation is key to any successful defense. An example where excellent documentation did, in fact, prevent a lawsuit is a recent claim that was successfully resolved. In May, Dr. E, one of our Insureds, received a Notice of Claim based upon an alleged post-op infection resulting in the death of a patient. We aggressively responded to the Notice of Claim, reviewed the medical records with the claimant attorney and challenged the Notice of Claim based on our findings. Shortly after sharing our research, we received a letter from the claimant attorney stating, "I have come to the conclusion that Dr. E has not violated the standard of care. For this reason, please advise Dr. E that our office will not be pursuing this matter."

In closing, I would like to express my appreciation to Dr. E and all of our other Insureds who contact Advocate, MD immediately upon receipt of a Notice of Claim and keep accurate medical records. Early notice of a claim gives Advocate, MD an opportunity to review, evaluate, and aggressively respond to the Notice of Claim prior to the time a lawsuit is filed. Accurate, thorough records support a successful resolution to your claim. ★

Advocate, MD Welcomes New Members to Team

Advocate, MD is having a great year with double digit growth. We continue to add staff ahead of the increased workload to maintain our outstanding customer service reputation.

Please join us in welcoming:

Christine C. Mitchell – Director of Marketing

Christine is a small business owner with over 18 years of business development and marketing expertise. She was part of the launch team that successfully started Grande Communications in 7 different cities. Prior to Grande, Christine worked as a Freelance Production Supervisor in the Feature Film business.

Christine graduated with a B.A. in Communications from Loyola Marymount University. She is a founder of Charitable Ladies and is actively involved in other non-profit organizations and associations. Christine and her husband, Matt are avid sailors who explore the islands each November.

Kelly Shaw – Regional Sales Manager

Kelly began his career running the Sales and Marketing division of a medical laboratory company for three years. He then started his own medical laboratory company where he was CEO. Realizing his incredible value, Farmer's Insurance recruited Kelly to be a licensed Property, Casualty, Life and Health agent. Kelly moved to an independent agency before joining Advocate, MD.

Kelly enjoys coaching football, baseball, and basketball as well as playing and teaching golf. Kelly and his wife, Tori have five children and live in Beaumont.

Elisa Anderson – Underwriting Assistant

After graduating from Brigham Young University, Elisa worked as a Recreation Coordinator then a Public Events Manager in Utah. She then spent time as an Administrative Assistant for a staffing company in Nebraska before joining Advocate, MD in Austin.

Elisa and her husband, Nick moved from Omaha, Nebraska this past May and love their new life in Austin. Elisa enjoys sports, the outdoors and travel. Elisa and Nick hope to run a half marathon together this year.

Advocate, MD plans to continue to expand through the end of 2007. We look forward to adding several additional people to help meet and exceed your needs and expectations. ★

Testimonials

We appreciate all of your feedback as we continue to strive to exceed the needs of our Insureds. We are here because of you and we invite you to read what others are saying!

"I was very pleased with my quote from Advocate, DO. They came in under everybody else, and also did not fill my contract with restrictions. What makes it even more attractive is that TOMA and Texas ACOFP also benefit financially when its members sign up."

David E. Garza, D.O.
TOMA Board of Trustees,
Laredo, Texas

"The staff at Advocate, MD is a pleasure to work with. They provided a free on-site risk management assessment that contributed to our first significant decrease in my OB/GYN malpractice coverage in 10 years. Also, with my recent addition of a medical spa they were able to tell me ahead of time if any of the added procedures would result in a premium increase. It is great to be able to call and speak directly to the underwriter."

Jonathan Weinstein,
M.D., F.A.C.O.G.

Sample Medications in the Office Practice

Written by Terrence Hurst

Sample medications have brought a tremendous amount of value to physicians and patients. With the expensive cost of medications, some physicians have used samples to help their patients utilize the medication that they otherwise could not afford. The samples also provide an opportunity to try a certain medication without the financial obligation. However, free sample medications provided by pharmaceutical representatives can prove to be a liability to the physician. All care and caution must be exercised when storing, prescribing, and dispensing sample medications.

Some suggested practices when addressing sample medications are as follows:

- Treat all medications the same as any item which has value that should be protected from loss, misappropriation, misuse, and misadministration.
- Only licensed, qualified care givers may dispense sample medications.
- Keep all medications in a lockable storage area, room, cabinet, drawer, or closet, out of the main traffic area and inaccessible by patients.
- Access to storage area and sample medications should be limited to authorized staff only.
- Keep all medications in a room temperature environment unless they require refrigeration.
- Never allow pharmaceutical representatives access to the storage area without an accompanying staff member to observe and oversee their actions.
- Organize the samples by manufacturer then establish a system within the manufacturer (alphabetical, for example).
- Establish and maintain an inventory log to list all pharmaceuticals and various medications kept in the system. Work from this inventory list as samples are distributed to patients, disposed of or returned to pharmaceutical representatives.
- Inventory lists will help you track the distribution of your sample medications as well as provide a means of controlling the flow of samples. The list will also identify anyone who may have received sample medications which may now be recalled.
- Inventory the samples regularly (monthly is recommended) and maintain a log of the medications checked and their destruction date as they expire.
- Check with local ordinances to determine the correct on-site disposal method or request that the pharmaceutical representative take the expired medications with them when they leave (after you have notated your inventory).
- If a sample medication is given to a patient, it should be reflected on their chart.
- Do not distribute samples to office employees without treating them in the same manner as an office patient. Establish a record, do a history and physical, write progress notes and support the diagnosis, then record the sample distribution. Avoid any steps that bypass the normal patient process.
- Treat the distribution of the sample medication in the same manner a pharmacy would when filling a prescription. Provide an explanation of the medication, all appropriate cautions, side effects, and adverse signs to look for. This communication should also be recorded in the patient's chart.

Like any other office activity, distribution and use of sample medications requires diligent observance of the rules. It also requires communication, a good patient-physician relationship, and accurate, timely and comprehensive documentation. ★

Advocate, MD Web Based Education

Continuing medical education courses are just a click away with Advocate, MD's online resources for physicians.

Advocate, MD has established a web based education system that gives Advocate, MD insured physicians and others access to more than one hundred hours of accredited medical education courses.

Advocate, MD's website enables 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 online tool that meets CEU and CME licensure requirements.

To access the courses, go to either www.advocatemd.com or www.advocatedo.com and click on the "Physicians" section. Once in the Physicians section, select "Risk Management" from the left hand box, then select "Accredited CME Courses".

Physicians may select and take the courses they need. The physician will receive a written certificate by mail after passing the exam.

For additional information, contact our Risk Management Department at 512.275.1836 or by email at risk.management@advocatemd.com. ★

Advocate, MD employees support our local communities through sponsorship of the Make-A-Wish Foundation®, a global non-profit organization that grants the heart-felt wishes of children with life threatening medical conditions to enrich the human experience with hope, strength, and joy.

The Central and South Texas chapter has granted more than 2,300 wishes since it was founded in 1984. During the 2006 fiscal year, volunteers and donors made it possible for 191 children in our area to experience the magic of a wish.

To participate as a volunteer or to make a donation, please call 512.329.9474 or visit www.centralandsouthtexas.wish.org. ★

Schedule a Complimentary Risk Assessment and Loss Prevention Survey

Do you want to be sure you're doing everything you can to protect your practice? Schedule a **FREE Risk Assessment** and Loss Prevention Survey today.

Advocate, MD provides this complimentary service to any interested and existing policyholder. Simply contact the Risk Management Department at risk.management@advocatemd.com. The assessment involves an on-site visit by the Advocate, MD's Director of Risk Management, interviews with physicians, and close interaction with your practice or office manager and other staff members, as appropriate.

The assessment is a customized, definitively outlined process covering more than 200 points of a medical practice and its risk exposures. In most cases, a thorough review of 10 or more randomly selected files is conducted. At the conclusion of the survey, the Director of Risk Management will meet with the physicians and staff to review the preliminary findings and outcomes. A written, detailed, and formal report will be delivered within 2 weeks of the visit.

Advocate, MD believes that a proactive approach to risk management is essential to controlling risk and losses, and provides a focus to help physicians provide safe, high-quality health care. ★

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