

# Advisor

THE TEXAS  
PHYSICIAN'S  
ADVOCATE



## Results of Statewide Risk Analysis Surveys

By Terrence G. Hurst CPHRM MHA, Director of Risk Management

I have had the privilege of traveling around Texas to visit our policyholders performing Risk Assessment and Loss Prevention surveys. These surveys involve the implementation of a specially-designed and “customized” assessment tool. This tool examines over 200 elements of a physician’s practice. The resulting report then quantifies the outcome and focuses on areas in need of strengthening, correcting, or changing. The expectation is that these corrections will reduce risk and control losses.

After compiling data from the survey visits, there appears to be a recurring theme regarding documentation. The office chart or medical record constantly surfaces as a significant source of concern.

The importance of an up to date, accurate, and complete medical record cannot be overstated. But what constitutes a comprehensive and accurate record, and what are the requirements? Who or what agency dictates the standards? To begin with, the state of Texas has adopted standards that apply to the medical record. These standards (Texas State Board of Medical Examiners Rules; Medical Records Chapter 165.1 – 165.5) make specific and detailed requirements which essentially state:

*The contents of the Medical Record shall be maintained by the physician as an adequate record for each patient that is complete, contemporaneous and legible.*

**Each Patient Encounter should include documentation of:**

- Reason for the encounter and relevant history, physical exam and findings, and prior test results
- Assessment and clinical impression or diagnosis
- Plan of care

- Written care plan, when appropriate
- Treatment and medications
- Referrals and consultations
- Patient and family education
- Specific follow up and instructions
- Identity of observer and date of observation
- Rationale for and results of diagnostic and other services
- Past and present diagnosis should be accessible to physician or care giver
- Risk factors identified
- Appropriate diagnostic and procedure (ICD9) codes

These are pretty basic things, and as such form the standards of a medical record. Although this is the foundation of the record, it is also the foundation of the practice itself, and from the medical record all other activities of the practice flow. The reasons for comprehensiveness, completeness, and timely recording are myriad. They include accuracy necessary for determining diagnosis, referring for treatment, patient communication and billing accuracy. Another and no less important reason for good charting is that nearly every medical malpractice suit or claim is won or lost on the quality and content of the medical record.

A merit-less lawsuit may be lost simply because of a poor or missing record which may be incomplete, or a hodge podge of fragmented partial components. A serious claim or suit may be entirely defensible and won because of a precise, accurate, legible record that supports the care given and is a clear record of the events which occurred.

Developing, adopting, and adhering to a good medical record system will go a long way to keeping

you out of many legal problems. Don’t shortcut yourself or your practice. Spend time and money on a good system and the right staff qualified to produce the correct results. This will pay off in terms of quality records, quality healthcare for your patients, and protection for you in the event of a lawsuit. ★

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# Advocate, MD Welcomes Steve Loranger as its New Vice President of Operations

**A**fter an exhaustive search, we are very pleased to have recruited Steve Loranger to join Advocate, MD Financial Group. Steve began working with Advocate, MD in a consulting capacity in 2006. He developed an intimate knowledge of the people, the company and its future direction. He is now a critical part of our team and will add the emphasis of an operational perspective to the business.

Steve spent 25 years with Emerson Process Management managing global teams developing business strategies for the Global Top 20 pharmaceutical companies. During the past ten years he completed operational performance improve-

ment plans for 33 unique businesses in various industries. His passion for the health care industry led him to create PendoVis Consulting, LLC and direct his energies toward improving medical practice management through process optimization using the latest technologies. His company's focus has been on customer centric businesses of less than 50 employees that are on a steep growth path. Steve will use his diverse background and experience to increase our innovation and continue to improve upon our performance-based culture. His wealth of process improvement experience will be critical to implementing our vision "to serve the customer above all else." ★



## We've Moved

**We have relocated to a new address!  
Please make note of our new address:**

**Advocate, MD  
811 Barton Springs Road  
Suite 800  
Austin, Texas 78704**

We outgrew our old space, so we had to search for a new location. After a diligent search, Advocate, MD is now located closer to the city of Austin along a popular thoroughfare in an easy to find location. We are located on Barton Springs Road overlooking Town Lake, directly across from downtown Austin.

Please feel free to stop by during business hours and visit with us. All of us look forward to greeting you. ★



# Schedule a Complimentary Risk Assessment and Loss Prevention Survey

**W**ant 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 policyholder. Simply contact the Risk Management Department at Advocate, MD. The assessment involves an on-site visit by 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.

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. ★

## **Mark Adams**

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

## **Jack Murphy**

President, Advocate, MD Insurance Company

## **Steve Loranger**

Vice President, Operations  
Advocate, MD Financial Group Inc.

## **Thomas Smith, CPA, MBA, CPCU, ARM, ARe**

Chief Financial Officer

## **Terrence G. Hurst, CPHRM, MHA**

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## **Brenda Freeman, JD**

Director, Claims Management

## **Thomas C. Mohler, CPCU, ARM**

Regional Sales Manager

## **Donna Parker**

Director, Underwriting

## **Alaina Judice**

Marketing Manager

## **Bill Canipe**

Regional Sales Manager

## **Mary Heiser**

Editorial Review

### **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](mailto:marketing@advocatemd.com).

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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.

# Test Tracking and Follow up Systems

## Communications and Information Support

By Terrence G. Hurst CPHRM MHA, Director of Risk Management

The importance of effective and timely communication is a continuing theme throughout healthcare and the physician's office practice is no exception. Just because it's a small practice or office instead of a large multisite healthcare provider, does not exempt the office from the need to develop a comprehensive and user-friendly Test Tracking and Follow up System.

The adage goes, "If you ordered the test you must have wanted the results." The purpose of having those labs or MRI done is so that you have the necessary information upon which to make your decisions or develop a diagnosis. You also want your patient to know what the outcome of the tests were. All of this is part of effective communications. The average physician's office receives an unending number of reports on a daily basis. Who sees them, where do they go, how are they distributed, when do they get charted, and what purpose have the tests served?

The failure to follow up on test results is an extremely important issue in terms of patient safety, and is one of the leading causes of litigation and claims. One in five primary physicians has revealed in recent surveys that a delay in diagnosis due to incomplete test

tracking or an ineffective test tracking system has occurred more than five times in the past two months. Courts have found that due to the greater level of knowledge that a physician has, the physician is the more responsible party. This means the physician should take appropriate steps to make certain that patients receive information timely and accu-

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rately. The physician should also educate the patient on the importance of following through with ordered tests or procedures, and that the failure to do so may negatively affect the patient's condition.

Some office managers have built systems that are able to track tests and provide notification of any follow up, results of studies, and any appointments the physician has ordered. The key here is "organized, standardized, user-

friendly and reliable." Test tracking and follow up systems can be basic (such as a simple notebook or binder or an index card system) or more advanced (such as a PC with a program to follow and track test results). While equipment and technology play an important role, the users must be fully aware of the importance of the system and the need for its use and maintenance. Staff must be knowledgeable of the system and should be accountable for following the process.

By openly communicating with patients, physicians are able to teach them the importance of the testing and consultation process. These communications should be documented. During these discussions, make certain that the patient understands; speak in a manner and style with which they are comfortable. Remember, you should not rely on the patient to always follow your instructions. It is sometimes necessary to provide a reasoned explanation. Explain the time factor; test results are not always available "overnight." In our highly charged technical society, we often expect things to happen rapidly. Since this is not always the case with laboratory studies and consultant's reports, there can be some lag between the appointment and the receipt of results. Don't let this time gap create a loss



# The Importance of Cultural Competency and Communication in Medical Care

By Paul Bracken and Terrence G. Hurst

We continue to provide articles and support to physicians particularly in the interest of improving and strengthening communication skills. It is clear that good technical training and skills are important, as is the recognition that communication skills are sacrosanct to the delivery of high quality, safe medical care.

As America's profile changes, we should prepare to deal with a diverse community. Texas is no stranger to diversity; the 2005 Census reports 13.9% of Texans are foreign born, and 31% of Texans speak a language other than English in their home. Texas is 34.6% Hispanic or Latino, 11.7% Black, 3.2% Asian, and 49.8% non-Hispanic White. Federally funded initiatives have been established to address culturally based barriers to the provision of health care which imply or even require certain cultural competencies. Regardless of Federal mandates it just makes good sense that the patient/physician relationship be as free as possible of any communication barriers.

Acknowledging and delivering medical care while recognizing the risk associated with cultural competencies requires understanding the definition. "Cultural Competency" (a working definition) is defined as: a set of congruent attitudes and policies, coming together in a system among professionals enabling effective delivery of medicine in a cross cultural situation.

(Cross, T., Bazron, B., et al Georgetown University Child Development Center 89)

Paul Bracken, a very experienced defense attorney in El Paso, states, "Having represented physicians for over twenty years in El Paso, where cultural diversity has always been the norm, understanding its impact on the patient/physician relationship is second nature to us."

El Paso is west of what most consider West Texas. It is a city rich in cultural diversity. It is a diversity that all parts of Texas are beginning to see. Does this diversity affect the practice of medicine? Attorney Bracken says that, "If you don't recognize and appreciate the effect of cultural diversity in your practice, you may be

likely to be sitting in an attorney's office defending your medical actions, even when all the standards of care have been met."

Risk related to a lack of culturally competent care usually involves cultural differences that create conflicts and misunderstandings, which could result in inferior care. These risks can occur at any point in the care of a person with different religious and cultural customs and beliefs and more often when the person has limited English proficiency. According to research, these differences manifest themselves in the acceptance of the cause of an illness, a prognosis, how a patient expresses pain, and the patient's approach to life and death in general. Additionally, different beliefs and customs

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regarding the roles of men and women further complicate the delivery of healthcare when cultural barriers exist.

The effect of cultural diversity on communication may also be a contributing factor leading people to seek legal advice and a review of their medical treatment.

Simply put, and not based on any scientific research, "bed side manner" and effective communication is the biggest non-medical predictor of whether you are likely to be sued if there is an unexpected outcome. Take a few extra minutes to make sure your patient or family members fully understand what the plan of care and treatment is, and why. Integrate this into the patient's particular culture and be able to translate it in their language or have translation service available. If you are a specialist, do not leave it to the attending physician to explain your involvement and recommendations; you must do this to ensure effective communication and good medical care.

Attorney Bracken goes on to say, "I know that most doctors are very busy, and seem to have to work harder and faster with the never-ending reductions from health care insurers and the federal government. However, taking time to understand cultural biases and differences and communicating with a patient can save you time and money in the long run. Effectively controlling risk by avoiding a lawsuit will save you from a great deal of avoidable and lengthy claim and lawsuit processes."

Attorney Bracken provides this list of recommendations:

- 1 *Have your medical forms, including consent forms, translated into Spanish or other appropriate languages. Currently there are many video presentations used to explain physical anatomy, conditions, and treatment options.*
- 2 *Document your discussions, including that the patient understood, and how you made sure they understood.*
- 3 *Consider bilingual staff assistance to assure communication.*
- 4 *With older patients, consider having an adult child present to hear explanations of conditions/treatment and to answer questions with both present. Older patients are less likely to ask questions, and more likely to say they understand when they don't. In some cultures, it is even considered impolite to question a doctor.*
- 5 *Older patients, especially first generation Americans, require more questioning and prodding to obtain information and are less likely to complain. They generally need to reach a certain comfort level with the physician before they open up.*
- 6 *Remember your patient is a human being with feelings.*
- 7 *Your staff should consider these same recommendations. Your patients will likely have more contact with your staff than with you. The patient's contact with your staff reflects their perceptions of you as their physician.*

Remember, in a "jury trial of your peers," the jury make-up will in all likelihood more closely reflect your patients than your peers. I have yet to see a doctor serve on a jury, and most ask to be excused from jury service (but this is a topic for another day). ★

# Frequently Asked Questions

By Terrence G. Hurst, CPHRM, MHA, Director, Risk Management

## **Q** Should I keep equipment in the office to handle a medical emergency?

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**A** A physician's office is certainly not immune to experiencing medical emergencies, as they are essentially public places no different in many respects from a store or business office. Medical emergencies don't selectively occur in a non-medical environment.

Equipment for emergency response should be for early intervention and basic life support, and should include items such as: oral airways, oxygen and oxygen masks, a bag respirator, I.V. epinephrine and diphenhydramine, and a portable defibrillator. Equipment should be centralized and periodically checked to ensure that it works and is in good repair.

The staff should be aware of the equipment, its location, and how and when it should be used. Training is an important component of the process. Set aside a location in the office for the exclusive use of storing the response kit, and make certain that the location is known by all. Don't lock up the items, as this only delays the response when the equipment is needed.

Make certain that local emergency responders are aware of your location and the specialty of your practice, as this can help reduce their response time once you have contacted them by dialing 911 or another appropriate code. There is a level of public expectation, and all medical offices should be able to start and support medical interventions in emergencies. An inadequate response to a medical emergency would be difficult to defend, regardless of the practice specialty. Patients and the public may assume a physician's office is prepared to handle an emergency, and may interpret any delay negatively.

## **Q** What kind of services should I be prepared to provide for patients or their family members who are not able to understand English, or for those with sensory disabilities?

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**A** First, it is important to recognize that as a base and standard, the Joint Commission on Accreditation of Healthcare Organizations and the National Committee for Quality Assurance both have established that interpreter services are a requirement. That is not to say, however, that private practitioners are bound by these standards. What should be recognized is that a medical practice that fails to accommodate the sensory-impaired could be at risk for an Americans with Disabilities Act violation.

Clinicians who are charged with the care of patients should provide the appropriate assistive devices necessary to accommodate the patient. The standards refer to the assistive devices as "reasonable accommodations to ensure that disabled persons are not denied services." The burden of providing appropriate services, costs and available financial resources are all considered in any determination as to the "reasonableness" of the assistance.

As cases are developed and become published nationally, there has been at least one finding in favor of the plaintiff over the issue of providing an interpreter for a hearing-impaired patient. It is recommended that practice administrators and physicians do an inventory or assessment to identify the level of risk or exposure, and then analyze the risk, make a determination as to the appropriate remediation necessary, and act accordingly to address the issue.

As to the matter of communication and the effect that the lack of an understanding of English may have on a practice, the previously stated remarks regarding interpreters and assistive devices apply. To minimize any failure to communicate or misunderstandings of the treatment regimen, medication instructions or any other health advice, it is imperative that the patient fully and completely understand the caregiver and any instructions or advice.

If the practice is located in a community with a population that speaks and understands a language other than English, it would be wise to make arrangements for an interpreter to be available in some capacity to assist the caregivers. There are a variety of community resources generally available to assist in these matters. Relying on family members is an alternative, but be cautious, as there may be some bias on the part of a family member to add or detract from the caregiver's message. ★

# Advisor

**THE TEXAS PHYSICIAN'S ADVOCATE**

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