Difficult Patient: Physician Involvement is the Solution

by Robert M. Jones, Esq., Legal Counsel

The Risk Management Department at MACM is a great resource if your practice has a question about how to deal with a troubling situation. We often receive telephone calls and e-mails from our insured clinics seeking our advice about how to handle disruptive, noncompliant or simply unhappy patients. The issue may involve a misunderstanding about a treatment plan, disappointment with an outcome, disagreement within a patient’s family, frustration with postponed surgery, or anger at perceived indifference.

Frequently, the clinic manager or nurse has been struggling with how best to respond to the problem for quite some time before we are contacted. During our conversation, we always ask “What discussion has occurred between the physician and patient?” It is distressing to learn in many cases that there has been no discussion and the physician has turned the problem over to a nurse or to the clinic manager. At that point, we usually request that the caller go back to the physician and get him or her involved. We often end our conversation by advising that we really need to speak with the physician.

We understand why you may be inclined to have your clinic manager or staff deal with a patient problem; You are very busy and have become accustomed to delegating tasks. You in good faith believe that a nurse is better able to deal with a patient. You may simply be uncomfortable talking to unhappy patients. You may just believe that is what the clinic manager and nurses are there for!

We assure you that no one in your practice is more effective at dealing with patients than you. Your patients choose you as their physician, not your staff. Do not underestimate the power of the white coat when it is necessary to address a problem with a patient. Regardless of what you may read in the news media, patients generally trust and respect their physicians. You should use your status to help resolve problems.

Our experience in hundreds of medical malpractice claims over many years tells us that many lawsuits are initiated because the patient has been offended by the failure of his or her physician to respond personally to the complaint or problem. Patients are especially offended if they believe that their physician has passed them off to someone else because the physician does not want to deal with them.

I recently attended an out-of-state meeting and had a frustrating experience aboard my return flight. After pulling away from the gate, we sat in the airplane on the runway for over two hours. During the delay, the passengers begged the flight attendants to have the pilots explain and keep us up-to-date on the reason for the delay. We were finally advised...
Encourage Obstetricians. They affect your insurance more than you know.

Most of you know that the specialty of obstetrics is one of the most rewarding specialties in medicine. It is a fundamentally natural process, and at its conclusion everyone is happy and well. If at the conclusion, everyone is not happy and well, there is profound disappointment. As a result, obstetrics is responsible for MACM’s greatest losses, both individually and cumulatively. It follows that obstetricians pay high liability insurance premiums and actuaries have a more difficult time calculating the correct premium. I, as you, assume that most unfortunate outcomes are due to factors beyond the control of obstetricians. That is not always the case.

The MACM Claims Department and Risk Management Department regularly review the factors that result in all claims and lawsuits against MACM insureds. Two such factors have now been identified as regards obstetrics: First, communication between doctors and nurses on the labor and delivery suite and, secondly, interpretation and response to worrisome (obstetricians use the term non-reassuring) fetal heart rate patterns. Other companies similar to MACM have also identified the same problems.

With this information, the Board of Directors of MACM has asked the staff to develop a plan of education and training to help make sure these problems are not present in our insured’s practices. An ad hoc committee was formed and recommendations made. A great deal of research and planning has gone into this process. (Most of the work has been done by JoAnn Bienvenu, Director of Risk Management and former OB nurse).

Your Company is requiring obstetricians to take an on-line fetal monitoring course and to view a DVD regarding high risk litigation practices in obstetrical care. The majority of our obstetricians accepts our approach and recognizes that this effort is designed to decrease their liability and, hopefully, their premiums. As you might imagine, however, some obstetricians are reluctant and/or resistant to our efforts. Please encourage them to complete these tasks and congratulate them when they have done so. They are being required to do extra work in order to make your insurance company more financially stable.

The point of all of this is to let you know that your Company is taking a proactive response to risk management. Your Company is looking for ways to reduce your premiums and hopefully improve patient care.

Physicians: We Want and Need Your Input!

You should have received in the mail or via e-mail a survey from our Risk Management Department asking for your input into our Continuing Medical Education programs. We GUARANTEE that this survey will take you less than three minutes to complete. Please take those three minutes to help us provide education that YOU prefer and that you need.

As a side note: Risk Management Director JoAnn Bienvenu has promised the MACM staff that she would kiss a pig on the lips if we received a greater than 90 percent return on our surveys. May as well shoot for 100 percent! Watch for pig-kissing photos in an upcoming Risk Manager.

Helpful Management Resources Online

www.mgma.com This is the website of the Medical Group Management Association, an excellent resource for clinic management. A recently released web-based assessment tool, the Physician Practice Patient Safety Assessment (PPPSA), allows your clinic to evaluate your processes and practice systems that affect patient safety.

http://enews.ama-assn.org will get you to the American Medical Association health information technology (HIT) web page, where you will find valuable information on implementing and maximizing this technology in your practice. This link is only available to AMA members.
Q: As a physician, I am very aware of the need for confidentiality when discussing my patient’s condition and care. Nevertheless, I often am at a loss for words when I enter a patient’s hospital room to discuss care and family or friends are present. I have been assuming that, if the patient does not request the visitors to step out of the room, then it is OK for me to discuss these things in the presence of the visitors. Am I correct to think that I have an implied consent to proceed?

A: Assuming an implied consent might get you into a lawsuit for breach of confidentiality. Although we would like to believe that the patient would take steps to safeguard his or her own privacy by speaking up, it is the healthcare professional that is charged with protecting the privacy of healthcare information. Sometimes the patient is reluctant to appear rude to visitors and may even assume that the physician would surely not divulge personal information when visitors are present. This may seem naive, but, nevertheless, it is important that the physician ask before proceeding. A statement such as, “I would like to discuss Mrs. Jones’ medical status with her. It will take about 10 minutes, if you would like to wait in the lounge area.” In this way, you have taken reasonable steps to protect your patient’s privacy. Also, remember that roommates have ears. A very private conversation, such as discussion of HIV status, might best be done in another area, if possible.

Q: I have an elderly patient who has a severe visual problem which has been confirmed by a local specialist. She has also been involved in several traffic accidents in the recent past. I have advised both her and her family that she should stop driving; however, she continues to drive. What else can I do, especially with the HIPAA regulations on privacy?

A: One may submit a confidential report to the Mississippi Highway Patrol. They will then notify the driver that a driving test is required for license renewal. Unfortunately, however, our state automobile laws do not have any requirements for physicians to report medical conditions; therefore, there is no statutory protection for the physician who communicates this to authorities. Additionally, this may also be considered a violation of HIPAA regulations. Since you have advised both her and her family of the risk and have documented this in the medical record, you may consider sending a letter to her. In this letter outline your concerns and again state that you recommend that she stop driving. You may also want to include a statement that if she is involved in an accident and you are asked to testify in any legal proceeding, you will have to state that you told her to stop driving, but that she continued against medical advice. Be sure to send this letter by certified mail, return receipt requested, and by regular mail. If you continue to feel uncomfortable with this situation, you should consider withdrawing from medical care using the appropriate correspondence.

Q: What recourse do we have when a new patient refuses to provide us with his social security number?

A: You should explain to the patient that his social security number is needed as a routine course in your practice and that it is required from everyone. If he will not supply the information, then you can refuse to accept the patient. Consider writing a policy for your office which states that obtaining a social security number is a part of the routine admission to the office and, if the individual refuses to provide one, then the office will not accept him as a patient.

Q: How long should our clinic retain the original paper medical record after scanning it to be incorporated into our new electronic medical record system?

A: You should retain the paper record until it has been determined that the EMR system is working properly and that things are being scanned accurately (usually about a year). After being assured that the system is working properly, you should probably retain the paper record for three to six months and begin to rotate the destruction of the paper records. Of course, you should have a written EMR policy that includes guidelines for retention and destruction of paper documents.

Q: What are the liability issues relating to physicians who are deficient in their dictation of clinic notes or hospital reports such as discharge summaries or other notes?

A: The availability of timely clinical information is crucial to quality patient care. We recommend that records be prepared as contemporaneously as is possible. This will allow those who have need of the information access to it, thus improving patient care. Without timeliness, insufficient communication may occur and can result in errors or adverse incidents. While the Joint Commission may allow as much as 30 days to dictate certain reports, we offer the same recommendation that the information be dictated as close to the event as is possible. In the event of a lawsuit, it is helpful for us to be able to show the jury that your medical records were dictated in a timely manner, particularly if there is a dispute as to the accuracy of a record entry.

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**2007 Risk Management Update for Office Staff**

Please see the MACM website at www.macm.net for a schedule of the Risk Management training, *Who Will Be a Millionaire?,* available to your office staff. Make plans NOW for them to attend the one closest to you!
that the flight was being cancelled due to mechanical trouble. As the passengers exited the airplane at the gate, the pilots remained in their seats in the cockpit instead of the usual practice of greeting passengers as they exited. The interesting thing was this—as the weary passengers walked up the ramp to the terminal, they were not so much upset with the flight cancellation as they were with the fact that the pilots acted so unconcerned. I am certain that the flight attendants also did not appreciate the inaction on the part of their pilots.

We urge you, as the leader of your healthcare team, to remain involved and participate in resolving troubling situations in your practice. Your patients and the clinic staff will appreciate it. As we say at MACM, you can deal with the problem now, or you can deal with it later—in court!

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REMEMBER

Mandatory Orientation Program for New Physicians is On-Going

NEW physicians whose policy inception was on or after August 1, 2006 are required to attend. Failure to attend one of the programs scheduled in 2007 will result in a 5% premium surcharge or $1000, whichever is greater. Continued failure to attend through the next policy period will result in a 10% surcharge or $1000, whichever is greater. If the requirement is not met within the third policy period, the physician will be considered for non-renewal.

To register on-line, go to www.macm.net. Under the Risk Management menu select New Physician Orientation to register for this program.