THE QUARTERLY PUBLICATION FOR CAP MEMBERS

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Case of the Month

The White Elephant in the Room

by Lee McMullin, CPHRM

Airline crews maintain schedules that are highly regulated and monitored, and for good reason. Studies have shown there is increased risk of pilot and flight crew error when they work excessive hours, especially during the transition to a new aircraft when additional focus is needed to adapt to a new environment and equipment.

Healthcare is no different, yet providers are generally expected to self-regulate and monitor their own time and circumstances. The following case addresses the dangers of going too fast and spreading yourself too thin. Long work hours, extended back-to-back workdays, changing work environments, and overloaded patient schedules can all cause physicians to overlook obvious issues and lead to more errors in clinical disagnoses and judgment.

A 45-year-old female, "Ms. Patient," with a history of diabetic neuropathy, hypertension, hyperglycemia, and high BMI was seen in a medical office for complaints of left shoulder pain that occurred after heavy lifting. On presentation to the clinic, Ms. Patient's heart rate was 128/minute. Ms. X, a physician assistant (PA), examined Ms. Patient. She assessed Ms. Patient as having muscle spasms and back pain and treated her with a Decadron injection and a prescription for Cyclobenzaprine.

Two days later, Ms. Patient called the medical office complaining of vomiting and a transient fever following the Decadron injection. The front office staff advised her to go to the emergency room (ER), which Ms. Patient declined. The PA, Ms. X, subsequently spoke with Ms. Patient. Ms. Patient reported no abdominal pain or diarrhea, so Ms. X prescribed Zofran. Later that evening, Ms. Patient presented to an urgent care clinic complaining of vomiting and dizziness, stating, "The room has been spinning for the past two days." She was seen by Dr. Y. Ms. Patient's heart rate was again 128 and glucose was 284. Dr. Y diagnosed Ms. Patient with vertigo and sent her home with a prescription for Phenergan.

The following day, Ms. Patient presented to the ER complaining of shortness of breath, right-sided weakness with facial droop, and slurred speech. An EKG showed ischemia and acute myocardial infarction (MI). Ms. Patient was admitted to the hospital. Her admitting diagnosis was diabetic ketoacidosis (DKA), myocardial infarction, and cerebrovascular accident (CVA) from a left cerebral arterial occlusion.

In the claim that followed, Ms. Patient alleged her diabetes and cardiac condition went unaddressed, leading to DKA, MI, and right-sided CVA. Ms. Patient was critical of the care that she received by the PA at the medical office and the physician at the urgent care clinic.

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The case subsequently resolved informally prior to trial.

Although there were several clinical issues identified in the care and treatment of Ms. Patient in the medical office setting, our attention primarily focuses on the nonclinical, or systems issues, at the urgent care center when Dr. Y saw Ms. Patient. On review, it was noted the urgent care clinic was a high volume, "very busy" center and its processes did not provide adequate time to address patient conditions. Dr. Y, who saw the patient, was working multiple days and long hours, including back-to-back 12-hour shifts at several urgent care centers and medical office practices.

Fatigue can be a significant contributing factor to inattention to detail, e.g., overlooking tachycardia and abnormal lab results, not obtaining a thorough medical history, or not ordering further testing.

The electronic medical record (EMR) at the urgent care center did not have a functioning alert system that notified providers of abnormal vital signs or lab results, unlike another location where the physician practiced. When working at multiple locations with different EMRs and alert systems, it can be difficult to remember what each system does or does not do, especially if a physician is fatigued, distracted, or rushed. Technology can be great, but it should serve to supplement, not replace, one's critical thinking skills.

Had the patient been referred to the ER by Dr. Y on the last encounter at the urgent care center, both the MI and the CVA may have been averted. And yes, had the patient gone to the ER when told to by the front office staff at the medical office clinic, maybe the MI and the CVA could have been avoided. Perhaps if the PA or the doctor spoke with the patient instead of the receptionist, the patient would have been more receptive to the advice.

The moral of the story is that the providers didn't see the elephant in the room (diabetes and tachycardia). Risk factors that contributed to this oversight include:

- Overloaded work schedule/inadequate rest
- Inadequate provider to patient time intervals/ excessive patient-to-provider volume
- No documentation on patient education on the increased risk of DKA with steroid use
- No labs on a diabetic presenting with nausea/ vomiting
- No functioning EMR alert system

There remains controversy on study methodologies and results on medical error statistics. One study ranks error as the third leading cause of death in the U.S,[i] and another ranks it much less.[ii] Mathematically, the lower of these estimates equates to a 747 airplane crash every 90 minutes. Aren't we glad pilots and airline crews don't fly back-to-back 12-hour shifts?

Lee McMullin is a Senior Risk Management and Patient Safety Specialist for CAP. Questions or comments related to this article should be directed to LMcmullin@CAPphysicians.com

[i] https://www.hopkinsmedicine.org/news/media/releases/study_suggests_medical_errors_now_third_leading_cause_of_death_in_the_us

[ii] https://www.medscape.com/viewarticle/917696#vp_2

Till Death Do Us Part: Dos and Don'ts of Signing the Certificate

by Brad Dunkin, MHA

One of the most important methods of mortality surveillance is through monitoring causes of death as reported on death certificates.

Death certificates are registered for every death occurring in the United States, which helps provide a complete picture of mortality trends and data nationwide. The death certificate includes essential information about the deceased and the cause(s) and circumstance(s) of death. Appropriate completion of death certificates yields accurate and reliable data for use in epidemiologic analyses and public health reporting.[1] In addition, death certificates are vital for settling estates, closing bank accounts, determining insurance and pension benefits, and providing evidence for court, if needed.

In California, all deaths must be registered on "the prescribed certificate forms" according to Health and Safety Code 102100. California's Uniform Determination of Death Act states the following:

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.[2]

But, as important as the death certificate document is, many physicians are not aware of their duties or responsibilities when called upon to certify the death of a patient, in part due to the lack of prior training in medical school or residency training programs and/or the infrequency of opportunities to certify a patient death. Because of this lack of experience, certifying death can be an unfamiliar process.

The problem is further exacerbated because physicians are concerned about their liability associated with completing a death certificate if they had very limited engagement with the patient, or if they had not seen the patient in an exceptionally long time. Physicians may not be aware of the patient's most recent health status, or if the patient's condition had changed significantly since their last encounter. As a result, physicians can be uncomfortable completing the death certificate because they are apprehensive about providing the wrong cause of death, which may have negative implications down the road and impact other parties and circumstances.

Certifying a death is also time consuming and demanding. California Health and Safety Code specifies that the doctor who last attended to the deceased person must sign the death certificate within 15 hours, stating the date, time, and cause of death. The coroner or funeral home expects a quick turnaround, as delays can cause problems with disposition of the deceased's body, preparation for burial or cremation, etc.

Most physicians, excluding those in some medical specialties, will at some point in their careers complete a death certificate. Given this likelihood, it is important to keep in mind the guidelines and risk management strategies when called upon to certify a death as the physician of record, even if you may have engaged with the patient on a very limited basis or have not seen the patient in some time.

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Typically, the funeral home director initiates the death registration process by gathering personal and demographic information about the deceased. A coroner will complete the medical section of the certificate if the death was unexpected, unexplained, or resulting from an injury, suspected poisoning, or a public health threat. In most cases, an attending physician is responsible for determining cause of death.

Consider the following when asked to complete a death certificate as an attending physician or physician of record:

1. Complete the death certificate as requested. In many cases, you may have no reservations about asserting the primary and underlying causes of death based on your familiarity and recent or ongoing engagement with the patient.

2. If you have reservations about accurately indicating the cause of death, review the deceased's medical record and try to obtain additional information from the funeral director, the deceased's family, or a coroner or medical examiner (in the event the request comes from a coroner).

3. Determine if there is another physician who may be more qualified to complete the death certificate, depending on individual patient factors.

4. In cases where a definite determination of death cannot be made, but the cause of death is suspected or likely (e.g., the circumstances are compelling within a reasonable degree of certainty), it is acceptable to report the cause of death as "probable" or "presumed." In these instances, certifiers should use their best clinical judgment in determining cause of death. This has often been a problem when COVID-19 was the probable or presumed cause of death with patients who had other complications or comorbidities.

5. Resist the temptation to refuse to complete a death certificate. Other parties are depending on the completion of the death certificate before important and timely decisions and arrangements can be made regarding the deceased and the disposition of their remains.

In conclusion, the *CDC Physician's Handbook on Medical Certification of Death* addresses common problems in death certification and provides a sound approach to completing death certificates:

The certifier should think through the causes (of death) about which he/she is confident, and what possible etiologies could have resulted in these conditions. The certifier should select the causes that are suspected to have been involved and use words such as "probable" or "presumed" to indicate that the description provided is not completely certain. If the initiating condition reported on the death certificate could have arisen from a preexisting condition, but the certifier cannot determine the etiology, he/she should state that the etiology is unknown, undetermined, or unspecified, so it is clear that the certifier did not have enough information to provide even a qualified etiology. **Reporting a cause of death as unknown should be a last resort.**[3]

Brad Dunkin is a Senior Risk Management and Patient Safety Specialist for CAP. Questions or comments related to this article should be directed to BDunkin@CAPphysicians.com

Additional Resources:

Death Autopsies and Anatomical Gifts (Chapter 14), California Hospital Association Consent Manual 2019

Determination and Pronouncement of Death and Death Certificates, California Physicians Legal Handbook, Document #3402, January 2022

Death Certification: A Final Service to Your Patient, Chicago Medicine, 2014

Creating an Accurate Cause of Death Statement on a Death Certificate, LA County Department of Public Health, Volume 5, Number 5, May 2014

Completing and Signing the Death Certificate, American Family Physician, 2004. American Academy of Family Physicians

Death Certificates: Let's Get it Right, American Family Physician, 2005, American Academy of Family Physicians

Instructions for Completing the Cause-of-Death Section of the Death Certificate, US Department of Health and Human Services, 2004

References:

[1]Guidance for Certifying Deaths Due to Coronavirus Disease 2019 (Covid-19), US Department of Health and Human Services, Report #3, April 2020

[2]California Health and Safety Code Section 7180

[3]Physician's Handbook on Medical Certification of Death, Centers for Disease Control 2003 https://www.cdc.gov/nchs/data/misc/hb_cod.pdf

A Harsh Proposal to Medicare Reimbursement: Take Action Now

by Gabriela Villanueva

Public Policy

On July 7, 2022, the Centers for Medicare & Medicaid Services (CMS) released its more than 2,000-page Medicare Physician Fee Schedule (PFS) and Quality Payment (QPP) proposed rule for Calendar Year 2023. The top policy proposals impacting practices include:

- Updating the annual conversion factor
- Making changes to Medicare telehealth
- Extending flexibilities for billing Evaluation and Management (E/M) split (or shared) visits in 2023
- Introducing new Merit-based Incentive Payment System (MIPS) Value Pathways, and;
- Establishing changes to the Medicare Shared Savings Program

Focusing on the Medicare Physician Fee Schedule (PFS) Proposed Rule addressing Medicare Part B payments for physicians in 2023, the PFS conversion factor would be $33.08, a 4.4% decrease (-$1.53) from the CY 2022 PFS conversion factor of $34.61. But the changes do not end there.

Due to statutory factors, the rate would also be impacted by the 2% sequestration payment reduction currently suspended through the end of 2022 because of the public health emergency (PHE) declaration, and the additional 4% in what is called the "PAY-GO" rules—a rule designed to encourage Congress to offset the cost of any legislation that increases spending on entitlement programs or reduces revenues, so it does not expand the deficit. Physicians are potentially facing an up to 10.4% cut to reimbursement, making it untenable for many.

While these policies are only proposals at this time, they can be changed in the final PFS, which is usually released on or around November 1 each year. This ongoing trend of decreasing payments and significant cuts is a serious concern. Generally, Congress will implement last-minute changes while finalizing budget bills in December to help mitigate the cuts before they go into effect on the 1st of the year. But this process is not ideal, and more permanent solutions in Congress are needed.

CMS is collecting comments on the proposed rule until September 6, 2022. Comments submitted to CMS can have a significant impact on a proposed rule before it is finalized.

Please take a moment to submit your comments at www.Regulations.gov and enter CMS-1770-P in the Search section to be directed to the comment submission page.

CMS Proposed Rule Fact Sheet: https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-proposed-rule

Gabriela Villanueva is CAP's Government and External Affairs Analyst. Questions or comments related to this article should be directed to GVillanueva@CAPphysicians.com.

Ask My Practice

by Andie Tena

Stay On Top of Practice Management Best Practices

Many independent practitioners are so immersed in the day-to-day operations of keeping their practices afloat and providing the highest level of care, finding the time to stay up to date with the ever-changing healthcare landscape is difficult.

- Did you know that Centers for Medicare & Medicaid Services (CMS) just released the 2023 updates for the Physician Fee Schedule?
- Did you know that the No Surprise Billing Act went into effect on January 1, 2022?
- Did you know that e-prescribing is now mandatory in the state of California?

Knowing when there are regulatory and other updates that impact your practice's workflow, billing, clinical delivery, and more, is essential to your success.

So, where can a physician find operational guidance for their practice to ensure they are following the most up-to-date guidelines?

As a member of the Cooperative of American Physicians (CAP), you have access to *My Practice*, CAP's free program to help you in the following areas so you can spend more time providing patients with excellent care:

- Workflow Optimization
- Best Practices
- Patient Experience
- Opening/Closing a Medical Practice
- Vendor Recommendations
- General Billing/Coding Guidance
- Free Practice Assessment
- Regulatory Updates

If you are looking to optimize your practice's business operation or need additional resources and support, contact *My Practice* at **213-473-8630** or via email at **MyPractice@CAPphysicians.com**, for immediate assistance. *My Practice* is a CAP member-exclusive program providing valuable services and resources to help you manage the business and operational side of your practice.

Andie Tena is CAP's Director of Practice Management Services. Questions or comments related to this column should be directed to ATena@CAPphysicians.com.

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Employee Health Insurance Benefits Available for CAP Member Practices

The cost of healthcare is a constant challenge for all employers, but providing employees with quality health insurance benefits can have long-term positive impacts on your practice.

As healthcare costs continue to rise, the licensed insurance professionals with CAP Physicians Insurance Agency (CAP Agency) recognize that CAP members need flexible options when selecting the right health insurance plans for their practices. That is why CAP Agency has partnered with CAP's health insurance broker, Ashbrook-Clevidence, to offer valuable healthcare coverage options for CAP members and their employees. Ashbrook-Clevidence has been CAP's health insurance broker for over 20 years and is a trusted resource.

Top Reasons to Offer Health Insurance Benefits in Your Practice

1. Good health insurance coverage helps attract and retain quality employees, saving you the cost of high turnover.
2. Businesses get the tax advantage of deducting plan contributions.
3. Employees will often accept better benefits in lieu of a higher salary.
4. Quality healthcare helps everyone stay healthy and productive.

Now more than ever, it is critical to review your plan designs and premium programs to ensure you have the best plan to balance your coverage needs and budget.

The dedicated team at Ashbrook-Clevidence offers enhanced employee insurance programs and solutions to CAP member practices that can help reduce costs and ensure minimal member disruption.

Get started by sending them a copy of your current plan so they can do a side-by-side comparison of your benefits and costs in the market. Ashbrook-Clevidence will also evaluate other benefits you may provide your employees, such as dental and vision insurance. You may be surprised by the preferred low rates you can get from CAP Agency's programs, which are specially designed for smaller practices.

Ashbrook-Clevidence works with a variety of insurance companies, including:

- Aetna
- Cigna
- Anthem Blue Cross
- HealthNet
- SHARP
- Blue Shield of California
- Oscar
- Kaiser Permanente
- Sutter Health
- California Choice
- United Healthcare
- And many more!

We encourage you to reach out to the Ashbrook-Clevidence team and see if they can help you and your employees.

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For All Other Insurance Needs:

CAP Physicians Insurance Agency, Inc. (CAP Agency) is a full-service insurance agency created to support CAP members with their insurance needs. The licensed, trained professional insurance agents with CAP Agency have expertise in all lines of business and personal insurance coverage, and they know healthcare. They can provide you with a comprehensive review of your risk exposures, assess your current coverage, and provide you with comparative, competitive quotes at no cost to you.

To learn more about how we can support you and your practice with comprehensive insurance programs at favorable rates, contact us by calling **800-819-0061** or emailing **CAPAgency@CAPphysicians.com**.

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4th Annual Public Affairs Symposium

The Truth Behind AB 35 and Its Impact on California Physicians

Virtual Program | Wednesday, September 21, 2022 | Noon-1:30 p.m.

On May 23, 2022, Assembly Bill 35 (AB 35) was signed into law by Governor Gavin Newsom. AB 35 significantly increases the caps on noneconomic damages and attorney's fees in medical malpractice lawsuits, diminishing the important protections and limits provided by MICRA—the Medical Injury Compensation Reform Act of 1975.

AB 35 will pose significant challenges to the medical community for a variety of reasons as a surge in malpractice claims frequency and severity is expected after the law goes into effect on January 1, 2023.

CAP members are invited to participate in our 4th Annual Public Affairs Symposium where a panel of legislative experts and policy analysts will provide a behind-the-scenes look at how AB 35 materialized, explore what the legislation means for your medical professional liability risk, and discuss what you can do to protect your practice.

The symposium is a free virtual event exclusive to CAP members. Register now at **www.CAPphysicians.com/PA22**

Update Your Membership Information to Help with Your Year-End Planning

August 2022

If you are considering a change in your practice this year or in 2023, please notify CAP as soon as possible so our Membership Services Department can review your options with you and make your coverage transition a smooth one. Changes include, but are not limited to:

- Retirement from practice at age 55+
- Part-time practice (e.g., 20 or fewer hours per week or 16 hours for anesthesiologists)
- Reduction or *any* change in the scope of your practice
- Employment with a government agency or nonprivate practice setting
- Employment with an HMO or other self-insured organization
- Joining a practice insured by another carrier
- Moving out of state
- Termination of membership

The Board of Trustees of the Mutual Protection Trust will levy an assessment in November 2022. To allow ample processing time, we strongly recommend that you complete your Coverage Update Form (CUF) no later than October 31, 2022, to be evaluated for reductions or proration of the 2023 assessment.

The online Coverage Update Form (CUF) will be available soon in the Members Only Area of the CAP website at www.CAPphysicians.com. Members will be notified via email when the form goes live, so keep an eye on your inbox.

If you do not yet have a Members Only account, please register at **https://member.CAPphysicians.com/register**. You will need your member number and last four digits of your social security number.

Important Announcement: **2023 Transition to Paperless Billing**

Starting January 2023, CAP members who receive their printed monthly statements via postal mail will be automatically enrolled in paperless billing to help reduce costs, and use of paper, on behalf of the entire membership.

With paperless billing, you can receive your CAP statement via email, pay your bill online, and manage your account easily through a secure portal.

Members will be provided with the opportunity to continue to receive their printed statements via mail when they complete their 2022 Coverage Update Form (CUF), but will be charged a $2 monthly fee to cover increased postage and paper expenses come January.

Don't wait until the new year to benefit from paperless billing and enjoy the ease and convenience of managing your CAP account online. Enroll in paperless billing today with the click of a button. Here's how:

1. Visit **https://member.CAPphysicians.com** to log into your CAP account. If you do not have an account, you will need to visit **https://member.CAPphysicians.com/register** to create one.
2. Once logged in, select the green "Set Up Paperless Billing" button to the left of the screen.
3. Select the "Via Email Only" button.
4. Verify your email address and click the "Save Changes" button.

For assistance with your account or if you have questions about your membership, please call **800-610-6642** or email **MS@CAPphysicians.com**.

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We welcome your comments! Please submit to communications@CAPphysicians.com.

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Preventing Water Damage in Your Practice Could Save You Thousands

CAP Members Can Access Free Water Sensor Monitoring Through Their Business Owner's Policy

Water damage can cause significant destruction to your medical equipment and office property, impacting your business income should you be forced to close your practice for repairs.

If you purchase or have a business owner's policy through CAP Agency, you can access the popular Smart Sensor Program provided by Hartford Steam Boiler (HSB) and The Hanover **at no cost**.

Easy Installation and Monitoring

The Smart Sensor program features cutting-edge technology that sends you real-time alerts and provides easy-to-install sensor devices that automatically monitor your property 24/7 for any system issues such as:

- Water leaks
- Temperature changes
- Mold
- And more!

Get Started Now!

If you already have a business owner's policy with The Hanover through CAP Agency, sign up at:

www.CAPphysicians.com/Sensor

Once you sign up, your equipment will be sent directly to you.
You will have the option to install it yourself or to set up a professional installation.

What Can You Save by Signing Up?

Customers who have signed up have already saved their business from significant losses.

Dollars saved: $100,000*

The filter of a water line came off in a building causing water to spill all over the floor. An actionable water leak alert was sent, and within minutes staff were able to respond to bypass the flow of water. As a result, the office did not have to cancel patient appointments or deal with the inconvenience of renovating the office after a water leak event.

Dollars saved: $40,000*

A pipe valve failed causing water to spray into a patient room and storage closet of a closed office. A high humidity alert from the sensor prompted staff to visit the office and shut off the water in time to contain the leak. The alert prevented costly business interruption, loss to medical supplies, and damage to valuable medical equipment.

*Dollars saved are verified amounts for actual scenarios and are based on The Hartford Steam Boiler Inspection and Insurance Company proprietary data.

If you'd like to learn more about obtaining a comprehensive business owner's policy tailored for your practice, or if you have questions about your existing policy, call 800-819-0061 *or* email CAPAgency@CAPphysicians.com

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