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Risk Management and Patient Safety News

Patient Expectations: The Root of All Evils?

by Lee McMullin, CPHRM

Have you ever heard the colloquialism "Don't count your chickens before they've hatched"? Of course, you have. Yet, it seems in healthcare we frequently do so. This is especially true in the immediate postoperative period. In postoperative conversations, physicians will reassure the patient and family that the surgery went as planned and without complications. Then, seemingly out of nowhere, a complication arises that sets the patient back a month or more in his or her recovery and totally hits the patient like a bad surprise party. Therein lies the issue—a complication should never take a patient by surprise. Although it may be disappointing, a patient should not feel ambushed by a complication. Does the cause rest with us in our lack of adequate assessment and management of patient expectations that can end up being our litigation headline?

Some complications take time to evolve, and we can do a better job at educating patients about potential signs and symptoms to look for. By ensuring that our patients recognize and understand what complications can occur, we draw them closer into a healthcare partnership with us. This can change the narrative from "what's happening to me," or worse, "what did you do to me?" instead to, "I think I'm having one of those problems we discussed."

It is especially important to inform the patient of complications that may not manifest in the immediate postoperative period. Infections, bowel perforations, and ureteral complications typically do not appear while the patient is in the PACU. Radiant energy from cautery, EMI/RFI, retractors, chemical agents, and other sources may have affected surrounding organs, structures, or devices, e.g., tubes. The damage caused by these sources may not be evident at the time of surgery, but arrive days later and often after the patient was told, and thinks, they are fine. In cases where the patient was not informed of the potential complications and now needs a referral to another physician, should it be any wonder why the patient does not like us anymore?

The wise approach is to teach your patient during the consent process that some complications are immediately obvious, while others are insidious with delayed manifestation days, or even weeks later. In the immediate postoperative period, you can reiterate this point by saying, "while there are no immediate observable complications, we're not out of the woods yet." Such a strategy primes the patient to review the list of potential complications shared with the patient during your preoperative discussion and prompts the

continued on page 2

May 2022

Continued from page 1

patient to alert you if symptoms of complications arise. Early identification of complications can reduce the time between your response and treatment. It could be the difference between a small bowel repair versus one with peritonitis and sepsis. While the patient's experience may be disappointing, it should not come as a shock or horror to the patient with your name attached—which could happen if you told the patient postoperatively that everything was fine and subsequent complications occur. The key is to manage the patient's expectations in advance and let adequate recovery time to pass so that you in fact know you are truly beyond the clinical timeline for complications.

This brings us full circle to the concept that "good consent is expectation management." It's a harmonious compilation of: (1) your assessment of the patient's expectations; (2) a discussion of the risks and benefits of, and alternatives, to the proposed procedure; and (3) education on what is or could be expected postoperatively. If patient expectations are not appropriately managed, the immediate patient mindset can be "you did me wrong."

As for the consent form, it is just that – a form. It is not conclusive evidence that you discussed and obtained informed evidence from your patient. You also need to document in the record your consent discussion and refer to the form for details about the discussed risks and complications.

We need to shift away from the paradigm of being the architects of our own problems by failing to understand patient expectations to one of balancing those potential versus actual results. In the end, it creates a better patient experience and fewer patient complaints and claims.

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.

COVID-19 Vaccine Legislation

by Gabriela Villanueva

Public Policy

Over the past two and a half years, significant shifts have occurred in addressing of the COVID-19 pandemic. Public health experts can rely on data trends that have emerged and will continue to emerge while the virus remains a public health and safety concern. State agencies are also basing and modifying their protocols and recommendations on such long-term data and analysis, rather than relying on acute or short-term trends in reported cases.

At the start of this legislative year in January, we were entering yet another spike in cases and hospitalizations due to the rapid proliferation of the Omicron variant. In response, a group of legislators introduced a bevy of strict COVID-19 bills, which are now looking less likely to garner the necessary support. The current lull in cases and the waning pandemic conditions in the state and throughout the country are making some of these legislators reconsider their efforts at stricter vaccine and testing requirements.

Some of the proposed measures legislators have considered include:

- Requiring all workers to be vaccinated against COVID-19 — **AB 1993** by Buffy Wicks (D-Oakland).
- Giving children 12 years and older the ability to receive any approved vaccination, including COVID-19, without parents' approval — **SB 886** by Scott Wiener (D-San Francisco).
- Requiring COVID-19 vaccine for K-12 students to attend school and eliminate the personal belief exemption — **SB 871** by Richard Pan, MD (D-Sacramento).
- Requiring schools to develop COVID-19 testing plans — **SB 1479** by Richard Pan, MD (D-Sacramento).

At the time of this writing, some legislators have pulled their bills from policy committee hearings while others are considering whether to have the bill follow the usual legislative course.

While tensions around this legislation remain high, members of the legislative vaccine caucus—a group of seven lawmakers who have introduced bills designed to reduce the virus' spread and combat vaccine misinformation—say they're committed to pushing ahead. We can expect some COVID-19 and vaccine-related bill proposals to continue.

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

Boost Productivity and Performance with a Free Practice Management Assessment

Clinical excellence aside, the care you provide for your patients may be impacted by the efficiency and effectiveness of your practice operations. A regularly scheduled practice evaluation can help you stay ahead of policies and procedures that support optimal workflow and a healthy bottom line, even when you think your business is running like a well-oiled machine.

As an exclusive benefit, CAP members have access to *My Practice*, CAP's free practice management and business services solutions program. In addition to being available for general practice-related inquiries, *My Practice* offers CAP members a free virtual practice management assessment.

Now is a good time to get your free practice evaluation and improve any areas that might need your attention.

Here's what you can expect to review during your consultation:

- The appointment scheduling process
- New patient intake protocols
- Patient check in/check out best practices
- Billing, collections, and accounts receivable workflows
- Referral procedures
- Patient communications management, and much more!

Practice management consultants can be costly, and the results may not always meet your expectations. Through *My Practice*, you can take advantage of free practice management services, including your practice management virtual assessment.

This service is different from CAP's popular Risk Management Practice Survey and is a great way to become more familiar with all that is available to you through your CAP membership.

My Practice was created as part of CAP's commitment to providing you with valuable products, services, and resources to support a successful medical practice, so you can spend more time focusing on superior patient care.

You or any of your employees may contact *My Practice* to get started with your free practice assessment or to get help with any practice-related challenges, no matter how big or small. Call **213-473-8630** or email **MyPractice@CAPphysicians.com** for immediate assistance.

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

Telemedicine and HIPAA Compliance: The Key Move That Can Ensure Proper Protection

Telemedicine is still a relatively new and quickly evolving method of delivering clinical care. Liability trends, and risk in this area are still emerging. There are a few key factors that cannot be overlooked to ensure that patient care is delivered effectively and securely, including use of the right technology. Make sure that you have the proper medical malpractice coverage if you are practicing telemedicine with patients outside of California, that you are compliant with HIPAA and other federal, state and payor requirements. Virtual delivery of care still requires physicians to comply with HIPAA and applicable federal and state privacy laws.

Many fail to recognize that they are not in compliance with HIPAA or other federal or state privacy laws. With an increase in the number of government audits and patient complaints, a failure to be compliant with HIPAA and other privacy laws is not something you can afford to do. Therefore, it is important for physicians and their staff to be compliant with HIPAA and stay up to date on appropriate safeguards for Protected Health Information (PHI).

According to a recent article from the HIPAA Journal, the biggest cause of data breaches was human error.* For this reason, the most important thing you can do is train all new employees and conduct annual staff training. Every physician and practice must ensure that all staff members understand the importance of patient privacy and the seriousness and potential penalties of even one violation. This training should demonstrate an awareness of and a commitment to HIPAA compliance, diligence regarding data security, and knowledge of best practices to avoid data breaches and cyberattacks.

CAP members and their staff can take advantage of free online courses offered by Tokio Marine HCC CyberNet®, which address the basics of privacy/data security for individuals who handle sensitive information and cyber risk management training covering breaches, data security basics, and more.

To access the trainings, visit https://CAP.nascybernet.com. First-time users will need to sign up for a free account with your CAP member number as your "Sign Up Code." Once you have registered, you will be able to create username(s) and password(s) for your employee(s). Upon completion of a course, a certificate is automatically generated that can be printed or saved.

The licensed professionals with CAP Physicians Insurance Agency (CAP Agency) can help you learn about your own personal cyber risk and about affordable coverage options and services available through Tokio Marine HCC. For more information, please contact CAP Agency at 800-819-0061 or email CAPAgency@CAPphysicians.com.

*https://www.hipaajournal.com/differences-between-small-and-large-healthcare-organizations-on-security/

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Case of the Month

This month, we feature an article from the archives written by CAP's former General Counsel Gordon Ownby

When Your Patient Needs You in Her Corner

When a treating physician believes that a referral to another specialist is appropriate, a denied authorization does not mean that the physician should just quietly soldier on.

A 15-year-old patient who had seen Dr. P, her pediatrician, for many years for routine childhood issues visited Dr. P for left thigh pain. She had recently run a mile in her physical education class and Dr. P prescribed Motrin for the pain. An x-ray of the femur was negative and Dr. P excused his young patient from physical education for two weeks.

The patient returned about four months later, complaining that the back of her thigh still hurt. Dr. P diagnosed muscle spasm and treated her again with Motrin. Lab work showed a slightly elevated sed rate and elevated enzymes. When the patient returned a week later with continuing complaints of thigh pain, Dr. P diagnosed fibromyalgia and initiated a trial of Lyrica medication. Dr. P referred the young patient for an orthopedic consult, but the patient's IPA declined to authorize the referral.

The patient returned two weeks later and reported that she had recently been to the ER, where the physician recommended that she use crutches. Dr. P proceeded with his diagnosis of fibromyalgia, treated with Gabapentin and Lyrica, and saw the patient on multiple occasions over the next several months without substantial improvement. During that time, an ultrasound revealed multifocal soft tissue cysts, which Dr. P attributed to likely trauma and hematoma. When swelling of his patient's left leg failed to resolve, Dr. P scheduled an appointment for his patient to see a rheumatologist.

After taking the patient's history and examining her, the pediatric rheumatologist doubted fibromyalgia but was concerned about a malignancy.

Following the patient's return to Dr. P the next day, she was admitted to the hospital where she was diagnosed several days later with synovial cell sarcoma with multiple metastatic lesions in the lungs. The patient underwent surgery and chemotherapy but died two years later.

A lawsuit filed over Dr. P's care was heard by an arbitrator, who considered evidence on both Dr. P's actual care of his patient and on "causation" – that is, whether there was anything Dr. P could have done during the time of his treatment that would have prevented the patient's fatal injury. The arbitrator issued an award for the patient's family.

Certainly, Dr. P's judgment in calling for an orthopedic consult was sound. But when the patient's IPA denied the consultation, could he have done more for his patient than simply accept that denial?

Under California Business and Professions Code Section 510, "It is the public policy of the State of California that a health care practitioner be encouraged to advocate for appropriate health care for his or her patients." The law was written not to establish the standard of care for healthcare providers, but to provide protection against retaliation against those who advocate for appropriate care for their patients.

continued on page 7

Continued from page 6

The law goes on to explain: "For purposes of this section, 'to advocate for appropriate health care' means to appeal a payer's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the health care practitioner, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care, reasonably believes impairs the health care practitioner's ability to provide appropriate health care to his or her patients."

Physicians frequently participate in appeals over denied authorizations by contacting the decision-maker directly or by otherwise assisting the patient and family in their pursuit of the authorization. Physicians should document a discussion with the patient and family on the rationale and importance of getting the test or consultation.

In some situations, to accept a denial without doing more could be like treating a patient with one hand tied behind your back.

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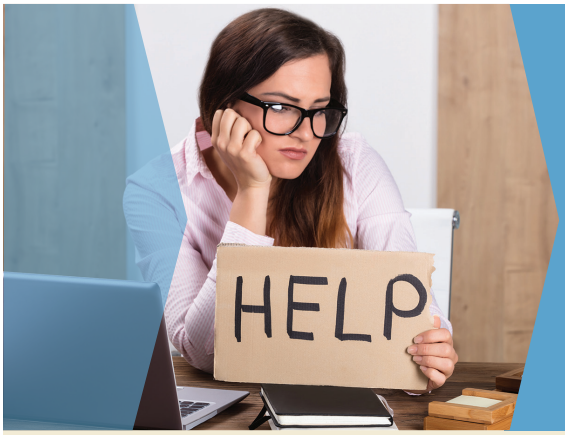
IN THIS ISSUE



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This program offers resources such as experienced counselors offered through LifeWorks—one of the nation's premier providers of Employee Assistance Program services—who can address a wide variety of issues like:

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Or

Log on to metlifeeap.lifeworks.com, and provide the username metlifeeap and password eap, to access free resources online.

CAP Agency partners with MetLife to provide CAP members and their families with some of the value-added insurance benefits automatically received upon joining CAP as well as the personal insurance products available for purchase at competitive large group rates. Call 800-819-0061 or email CAPAgency@CAPphysicians.com to learn more.

Your benefit includes up to five phone or video consultations with licensed counselors for you and your eligible household members, per issue, per calendar year. Any personal information provided is completely confidential.

MetLife and LifeWorks abide by federal and state regulations regarding duty to warn of harm to self or others. In these instances, the consultant may have a duty to intervene and report a situation to the appropriate authority. This service is provided by MetLife and LifeWorks and other limitations may apply.

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