

## Risk Management Support at Your Fingertips

Risk management has always been a central component of CAP’s strategy to help its member physicians. Through its Risk Management Program, CAP provides a unique blend of services designed to help member physicians control the risks inherent in today’s practice of medicine and, thus, mitigate potential claims.

An emphasis on risk management and patient safety promotes an environment of caring, competence, and compassion. Prioritizing patient safety as the primary core value of your practice means that everyone wins.

CAP’s Risk Management and Patient Safety team is available to offer support and consultation through risk practice surveys and assessments, adverse events support, targeted compliance education, and more.

Our Risk Management Program is facilitated by experts whose backgrounds encompass a cross-section of the healthcare and legal professions.

With years of experience in evaluating office systems, documentation, patient experience and more, CAP’s Risk Management and Patient Safety experts are highly proficient in identifying areas of risk exposure and offering risk reduction strategies in a variety of healthcare settings. As the industry changes, our dedicated team maintains a proactive approach to staying on top of emerging risks.

These are some of the risk management services available to our member practices whenever they are needed:

<b>Practice Survey</b>	An assessment of office practice systems and medical records with recommendations for improvement.
<b>CAP Cares (Apology and Disclosure Program)</b>	An early intervention program that provides support to members in the immediate aftermath of an adverse outcome.
<b>Risk Management/Adverse Event Hotline</b>	Available 24/7 for risk management questions and concerns.
<b>Patient Assistance Services</b>	A program designed to assist patients with incidental costs incurred due to an unanticipated outcome.
<b>Practice Survey of Hospital Specialty Services (Radiology, Pathology, Hospitalist, Anesthesiology, Neonatology)</b>	An onsite review (or phone assessment) review of identified risk issues of specialty and hospital-specific risk issues.
<b>Office Staff In-Service</b>	Physician/staff education in a scheduled, formal presentation of specific risk management issues with distribution of related risk management materials.

CAP’s Risk Management and Patient Safety Department is here for you. If you need advice or have questions regarding medical professional liability risk, call the CAP Hotline at **800-252-0555** or send an email to [riskinternet@caphysicians.com](mailto:riskinternet@caphysicians.com) to address the needs of your practice. ↩

# Risk Management — and — Patient Safety News



## Be Mindful of Pandora's Box – EHR Audit Trails and Litigation

by Joseph Wager, MS, RCP and Ann Whitehead, RN, JD

*The physician alleged she spoke with the RN and "reviewed the records from home." The audit trail revealed her claim was inaccurate. The defense was compromised.*

The increasing use of electronic health records (EHR) has resulted in an increased ability to electronically track activities that occur within a specific medical record. This is accomplished by review of the metadata, audit trails, or audit logs.

Ways that EHR audit trails are used:

- Medical malpractice attorneys using audit logs to obtain evidence for use in medical malpractice litigation. Plaintiff's attorneys request the audit trail of the patient's EHR to find evidence that the EHR has been altered, thus supporting a claim of spoliation of evidence, fraud, and most recently to prove liability by questioning the practitioner's truthfulness and credibility; and
- The Office of the Inspector General (OIG) and Centers for Medicare and Medicaid Services (CMS) are encouraging the use of audit logs for identifying fraudulent coding and billing.

The definitions and technical differences between metadata, audit logs or audit trails, and access logs and reports are as follows:

- **Metadata:** Metadata is the computer-generated and computer-stored "data about other data."
- **Audit Logs/Audit Trails:** Audit logs/audit trails are a type of metadata that provide documentation

of sequential activity within a software application including when the data was created, accessed, revised, etc.

- **Access Logs/Reports:** Access logs can be used to create a report of all users who have accessed a specific patient's medical record within an EHR.

There are many regulatory requirements providing how and why security audit trails are conducted and maintained, including HIPAA, meaningful use, CMS and new e-discovery rules. Because of the volume we will not go into detail on any of these federal regulations.

An audit log/audit trail is a chronological record that provides a permanent record of all user activity, including who accessed the electronic medical record and from where; log on and log off times; what was viewed and for how long, as well as, any changes, additions, or deletions; to enter new data or modify, or delete existing data; printing; and whether alerts or warning were overridden, etc.

Audit logs, when analyzed properly and within appropriate context, can be useful for incident investigation, clinical workflow, to jog the practitioner's memory and/or discuss what occurred in the case. But they also are now becoming part of the litigation process.

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Here are several examples:

**Plaintiff A** sued the Defendant hospital on behalf of the Plaintiff's decedent, who presented at the hospital with nausea, abdominal pain, and vomiting and was released several hours later without being seen by a doctor. The Plaintiff's decedent collapsed and died the following day. The Plaintiff's complaint alleges that the Defendant was negligent in its failure to have procedures in place requiring a patient like the decedent to be seen by a doctor before being discharged. The Plaintiff sought production of the audit trail for decedent's medical records to determine whether a doctor reviewed decedent's records before she was discharged.

**Plaintiff B** sued the Defendants for the wrongful death of decedent, an Alzheimer's patient living in one of the Defendants' nursing facilities. The facility kept poor, false, or incomplete records of the decedent's condition, and ultimately, he died of sepsis from untreated wounds. After certain counts were dismissed and others sent to arbitration, discovery began as to the wrongful death claim. With respect to the requests for production, the Plaintiff sought, among other things, a full and complete copy of the audit trail for the decedent's medical records, including information about when his chart was accessed and by whom. Part of the Plaintiff's claim rested upon her allegation that his chart was falsely documented, and she asserted that the audit trails were relevant.

**Practitioner C** indicated in deposition that they were in the room during a cardiac arrest, but the audit trail indicates they were working on another floor or involved in a delivery that day.

With electronic recordkeeping growing continuously more complex, it is critical that practitioners understand the electronic discovery rules and issues. Be aware that every action related to the EHR is recorded.



We offer the following risk management strategies:

- Understand that all EHRs must have an operational audit trail feature;
- Conduct regular audits to track user changes, deletions, or modifications;
- Establish policies and procedures for coding and documentation;
- Realize every keystroke leaves an electronic footprint;
- Have an office policy that prohibits turning off or overriding the system's audit features, alerts, and warnings; and
- Know your hospital's policy related to accessing a medical record of anyone other than your patient. ↩

*Joseph Wager is a Senior Risk Management and Patient Safety Specialist for CAP. Ann Whitehead is CAP's Vice President, Risk Management and Patient Safety.*



# Continued Attempts at a Federal Good Samaritan Law

by Gabriela Villanueva

**At this time, both houses of Congress are in the “lame duck” session, having returned from the post November 6 elections.**

Prior to departing in early October, the House managed to pass and send to the Senate HR 6378, a bill to reauthorize the Pandemic and All Hazards Preparedness Act, also known as PAHPA. The reauthorization of PAHPA became a central focus in the efforts to pass the Good Samaritan Health Professionals Act, a multi-term effort to help fill a gap and extend liability safeguards to licensed health professionals crossing state lines to volunteer during a federally declared disaster.

Ultimately, the language of the Good Samaritan bill that made it into Section 208 of PAHPA was not as robust as its original intent to reduce barriers for willing healthcare providers to assist in emergent situations. The language clarifies that healthcare professionals who provide medical services within the scope of their license to an individual in need of those services as a result of the emergency or disaster would only be subject to liability laws of that state and not any other state with respect to any alleged act or omission. But in order to be in full compliance, the healthcare professional volunteering his or her services must also register with the state’s

Emergency System for Advance Registration of Volunteer Health Professionals (ESAR/VHP). Because of the late addition of this registration requirement, many willing to cross state lines to volunteer their services could encounter the burdensome step of accessing the ESAR/VHP to register in the affected state’s system and become activated in their system before being able to render their help and assistance.

It is expected the Senate will move the bill during the lame duck session and unless amended, Section 208 will not be as robust as the original Good Samaritan legislation aimed at protecting medical volunteers from lawsuits during a federally declared disaster.

For information on the **Emergency System for Advance Registration of Volunteer Health Professionals**, visit [www.phe.gov/esarvhp/Pages/home.aspx](http://www.phe.gov/esarvhp/Pages/home.aspx) ➔

*Gabriela Villanueva is CAP’s Public Affairs Analyst. Questions or comments related to this article should be directed to [gvillanueva@CAPphysicians.com](mailto:gvillanueva@CAPphysicians.com).*

# You Asked. We Delivered! Introducing Dental and Vision Coverage for You and Your Staff



As you know, being an independent physician brings many rewards, as well as some challenges, including securing affordable health benefits for you and your employees.

In response to requests made by CAP members throughout the years, we are pleased to report that you and your employees can soon secure affordable dental coverage through MetLife Dental and vision benefits through EyeMed Vision Care. Keep your eyes open for emails from CAP over the next couple of months with details about these two outstanding new coverages and instructions on how to enroll.

Even if you already have vision and dental plans in place, we encourage you to compare your current plans with the high-level coverage and group rates that CAP offers. We believe you'll be pleasantly surprised by the significant savings. And if you do not already offer dental and vision benefits, there are a number of good reasons to consider enhancing your current employee benefits package.

1. Good health-related coverage helps attract and retain quality employees.
2. Businesses get the tax advantage of deducting plan contributions.
3. Employees often will accept better benefits in lieu of a higher salary.
4. You'll also be able to personally take advantage of these discounted rates for you and your family members.

"Because of our members' need for affordable health-related benefits, CAP Agency staff has worked diligently to secure dental and vision coverage at significantly discounted rates that leverage the group buying power of your nearly 12,000-member cooperative," says Deidri Hoppe, president and chief executive officer of CAP Physicians Insurance Agency, Inc. ➦



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# Your Privacy with the Cooperative of American Physicians, Inc.

The Cooperative of American Physicians, Inc. (CAP) promotes a range of products and services designed with the welfare of physicians in mind. From the professional liability coverage provided through the Mutual Protection Trust (MPT) and the CAPAssurance Risk Purchasing Group (CAPAssurance) to the range of services and products offered through CAP and its affiliates, CAP's goal is to match healthcare providers with the best products and services — all tailored to fit their needs.

## Information We Collect

When you join CAP, you provide us with personal information. We collect and use that information to service your needs at CAP, MPT, and CAPAssurance. We treat this personal information as confidential, limit access to those who need it to perform their jobs, and take steps to protect our systems from unauthorized access. The personal information we collect falls into two general categories:

- Information we receive from you on the application and other forms relating to CAP enrollment and professional liability coverage through MPT and CAPAssurance – such as your first name, last name, organization, phone number, address, email, and CAP identification number; and
- Information about your transactions with CAP, MPT, CAPAssurance, and CAP's affiliates, including the CAP Physicians Insurance Agency, Inc. and the Cooperative of American Physicians Insurance Company, Inc.

## Reasons We Share Your Information

We want you to feel secure about the non-public personal information you give to CAP. There are several reasons we may need to share this information:

- For CAP's everyday business purposes – for example, to process your requests, maintain and service your records and accounts, administer CAP benefits, and respond to court orders or legal investigations;

- For everyday business purposes of MPT, CAPAssurance, and CAP's affiliates;
- For CAP's marketing purposes with service providers we use, including affiliated group purchasing organizations and vendors – to offer our products and services to you.

## To Limit the Sharing of Your Information

All CAP members and participants have the opportunity to tell us they do not want to receive direct marketing offers from CAP's own affiliates or other affiliated service providers. You may choose not to receive marketing offers by any method, be it direct mail, email, or fax.

### To tell us your preference, you may:

<b>Write us at:</b>	CAP Membership Services 333 S. Hope Street, 8th Floor Los Angeles, California, 90071
<b>Call us at:</b>	800-252-7706
<b>Email us at:</b>	ms@CAPphysicians.com
<b>Fax us at:</b>	213-473-8773

In order to ensure that we accurately fulfill your request, please provide your full name and street address, member number, telephone number, fax number for fax requests, and email address for email requests. Even if you elect not to receive product information by direct mail, fax, or email, you will continue to:

- Be contacted as necessary for routine CAP services
- Receive marketing information through our regular monthly CAPsules publication
- Receive notices regarding political activities affecting the medical professional liability industry and solicitations for contributions to CAP's political action committees

Of course, if you wish to continue receiving valuable and convenient product and service offers, no action is required. ➦

# Let CAP Make Your Holidays Cheaper, Easier, and a Little Safer



Holiday time can mean precious time with family and maybe some well-deserved R&R. But for many, this time of year can leave us feeling frazzled from the stress of holiday gift shopping and party planning. To add a bit more sparkle to your holiday season, CAP is pleased to offer you a plethora of discounted programs that appeal to the budget-conscious and the safety-conscious.



## Gift Giving Made Easier — and More Affordable

Show your appreciation for staff and loved ones by giving them a gift from one of the many companies under the **1-800-Flowers.com**, Inc. brand – at a 15% or more savings! In addition to beautiful floral bouquets and arrangements, you can also purchase:

- Stunning gift baskets and delicious edibles from **Harry & David**
- Buckets of deliciousness from **The Popcorn Factory**
- Personalized gifts in all shapes and sizes from **Personalization Universe**
- Chocolates, baked goods, fruit bouquets, and so much more!

The panoply of available brands can be found on the top portion of the **www.1-800-Flowers.com** website. To take advantage of your CAP discount, simply enter the code HDMD0089 at checkout.



## Incentive to Get Away — Even for One Day!

If you need to rent a car while traveling or just an extra set of wheels to cart around visiting family, CAP has negotiated a discount of up to 25% off base rates with Avis Rent a Car and Budget Rent a Car.

To book through Avis, visit

**www.avis.com/en/association/S131700**

or call **1-800-331-1212** using Avis Worldwide Discount (AWD) number S131700.

For car rentals through Budget, visit

**www.budget.com/en/association/D870100** or

call **1-800-527-0700**, referencing Budget Customer Discount (BCD) number D871000.

Staying closer to home? Then you'll want to check out **FunExpress** — your one-stop-shop for discounts on tickets to local theme parks, movie theaters, concerts, sporting events, dining cruises, trips to Catalina Island, and much, much more!

First, register as an "Employee" at **www.funex.com**.

Once registered, choose the event or attraction you want to purchase, then enter your Employee Access Code number (EAC) 12-21058 to take advantage of the impressive discounts!

# Case of the Month

by Gordon Ownby



## Toward a Coordinated Approach to Critical Situations

When the medical approach to a particular situation differs among healthcare providers within a practice, such conflict may surface later – in litigation.

A 50-year-old teacher visited the medical group of his family care physician because of chest pain and a cold. With his regular physician out of the office that afternoon, the gentleman was seen by a physician assistant. The PA noted that the patient's cold symptoms and mid-sternum chest pain (like a "heavy weight") developed the day before. A history showed no previous chest pain but high cholesterol and a prescription for Lipitor that the patient wasn't taking. Though an EKG that day was read by the machine as borderline, the PA interpreted the test as essentially unchanged from three months earlier.

The PA's sparse EMR (the medical office has just recently shifted from paper records) did not document whether the patient was experiencing chest pain at the time of the visit. Blood pressure was 100/74; pulse was 68; and respirations were 16.

The PA diagnosed the patient with chest pain and ordered a check of cardiac enzymes with a troponin draw. Because the patient was adopted, the PA referred him to a cardiologist for risk assessment after ordering a chest X-ray. The PA also prescribed a prescription for hypercholesterolemia. After giving him "ER precautions," the PA discharged the patient home.

That evening after dinner with his wife and child, the patient went to the bedroom to watch television. His wife later found him unresponsive and resuscitation efforts by an emergency team were unsuccessful.

The next morning, Dr. FP, the patient's family care physician, reviewed and signed off on the PA's chart entry as the "supervising provider."

Early that afternoon, however, the lab called the office reporting critical values, including troponins at 4.5 (reference 0 to .04). The PA immediately called the patient's cell phone and reached a brother-in-law, who reported the patient's death the evening before from a heart attack. The coroner's report listed cause of death as myocardial infarction with hypertensive and atherosclerotic cardiovascular disease.

The patient's family sued, claiming that given the gentleman's complaints, the PA should have sent him immediately to the emergency room.

In the ensuing litigation, attention focused on the PA's failure to document whether the patient (whose anxiousness was noted) was experiencing active chest pain during the visit. In her deposition, the PA testified she had a specific recollection that the patient was not in distress during the visit but admitted she did not document the absence of cardiac symptoms. She said that had the patient told her or the appointment staff of active chest pain, she

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would have sent him to the ER immediately.

As for the troponin order, the PA testified that her rationale for the test was not in the context of an urgent or emergent situation, but rather to assist the cardiologist in evaluating the patient's risk factors.

During his own deposition, Dr. FP was asked by the family's attorney about his own practice of ordering cardiac enzymes. Dr. FP testified that he does not order such tests in an office setting, though he understood that the PA and at least one of his physician partners do. Dr. FP and the PA testified the medical office did not have an algorithm dictating how a physician assistant is to treat certain patients.

The case resolved informally.

Dr. FP's deposition offers a somewhat rare example as to how different medical approaches within a single practice (in this case, ordering troponin for a referral versus at the hospital) can surface in litigation. While independent medical judgment must always be valued, medical practices may benefit from discussions on how to keep such differences to a minimum. 

*Gordon Ownby is CAP's General Counsel. Questions or comments related to "Case of the Month" should be directed to [gownby@CAPphysicians.com](mailto:gownby@CAPphysicians.com).*



### Protect Your Identity During the Holidays — and Year-Round

Holiday time is also prime time for cyber criminals who take advantage of the increase of credit and debit card usage at in-store and online retailers. To help protect you during the high-risk holiday season and beyond, CAP is pleased to offer you 24/7 protection and customer support at discounted rates through our newest CAPAdvantage program, **IDShield**. For as little as \$8.95 monthly for an individual plan and \$18.95 monthly for a family plan (regular pricing is \$9.95 and \$24.95, respectively), **IDShield** will monitor your credit and alert you regarding suspicious activity on your:

- Credit (up to 10 credit cards and debit cards and up to 10 retail cards)
- Bank Records (up to 10 bank accounts)
- Social Security Number
- Court Records

**IDShield** is the only identity theft protection company armed with **a team of dedicated licensed private investigators** to restore your identity should it ever become compromised, and is backed by a \$5 million service guarantee to make sure your identity is restored and the issue is resolved.

For more information, visit [www.legalshield.com/info/cap](http://www.legalshield.com/info/cap) or contact Bob Cohen at IDShield at 949-322-2988 or [bob@premiersolutionsintl.com](mailto:bob@premiersolutionsintl.com). 





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*Legal guidance for individual matters should be obtained from a retained attorney.*