



Professional Liability and Patient Safety for Hospital Sponsored Clinics

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PROFESSIONAL LIABILITY

Legal obligations arising out of a
health care professional's
errors, negligent acts, or omissions
during the course of their practice
that cause injury or suffering.

PATIENT SAFETY DEFINED

Actions

undertaken by individuals and organizations
to protect health care recipients
from being harmed
by the effects of health care services.

The Basics of Patient Safety: How You Can Improve the Safety of Patient Care,
http://www.brownspace.com/powerpoint/patient_safety_files/frame.htm (Last accessed 2/2/2010)

AAFP & AMA Desired Attributes of Retail Health Clinics

- Well-defined and limited scope of clinical services.
- Clinical services and treatment evidence based and quality improvement-oriented.
- Standardized medical protocols derived from evidence based practice guidelines.
- Health care practitioners have direct access to and supervision by physicians.
- Formal connection with physician practices in the local community or other entities appropriate to the patient's symptoms beyond the clinic's scope of work.
- Encourage all patients to have a "medical home."
- EHR system that communicates the patient's information with the family physician's office.
- Patients informed in advance of health care practitioners qualifications & limitations.
- Appropriate sanitation and hygienic guidelines and facilities.

American Academy of Family Physicians, Policy, 2007, 2010

<http://www.aafp.org/online/en/home/policy/policies/r/retailhealthclinics.html> (Last accessed 2/5/2010)

American Medical Association, Reference Committee G REPORT 7 OF THE COUNCIL ON MEDICAL SERVICE (A-06), Store-Based Health Clinics, June 2006

National Business Group on Health: Convenience Care

- Care conforms to accepted standards of practice and medical evidence
- Care is delivered in a setting and in a fashion that is safe
- Referral is appropriate and information transfer is timely
- Health information protections are appropriate
- Conflicts of interest resulting from the retail setting or clinic affiliations are scrupulously avoided

<http://www.businessgrouphealth.org/pdfs/Convenience%20Care%20Clinics%20Position%20Final.doc> (last accessed 2/5/2010)

The Joint Commission National Patient Safety Goals

- Improve the accuracy of patient identification.
- Improve the safety of using medications.
- Reduce the risk of health care–associated infections.

http://www.jointcommission.org/NR/rdonlyres/CB66FD84-B071-4AEA-8EF4-FD00AC050470/0/RevisedChapter_AHC_NPSG_20090924.pdf (Last accessed 2/5/2010)

Convenient Care Association Quality and Safety Standards

- All providers credentialed for license, training and experience
- Verification of training and licensing
- Quality monitored on an ongoing basis, including but not limited to:
 - peer review
 - collaborating physician review
 - selected quality and safety outcomes
 - patient satisfaction data
 - formal chart review by experienced clinicians
 - medical diagnosis and treatment code auditing

Convenient Care Association Quality and Safety Standards

- Standardized evidence-based protocols and guidelines in clinical assessments.
- Relationships with traditional health care providers and hospitals
- Patients establish a relationship with a primary care provider
- Appropriate and careful referrals for follow-on care and for conditions outside of the scope of the clinic's services.
- Emergency response procedures and relationships with local emergency response service providers.

http://www.ccaclinics.org/index.php?option=com_content&view=article&id=6&Itemid=13 (Last accessed 2/5/2010)

Convenient Care Association Quality and Safety Standards

- Empowered patients to make informed choices about their health care.
- Health promotion and disease prevention education to patients.
- Visible placement of pricing.
- Goal of using EHRs to share patient information and ensure continuity of care.
- Compliance with applicable OSHA, CLIA, HIPAA, and ADA standards.
- CDC guidelines for infection control through hand washing.

Held to the same legal standards as the Hospital

- Negligence/Malpractice
 - Duty to exercise reasonable care: adhere to the standard of care.
 - Duty breached: failure to provide reasonable care.
 - Direct or proximate causation: the failure caused injury.
 - Damages/ injury was sustained.

Held to the same legal standards as the Hospital

- Vicarious Liability/Ostensible Agency
 - The patient looked to the hospital rather than the individual practitioner for care.
 - The hospital “held out” the independent contractor or the LIP as its employee.
- Respondeat Superior
 - “Let the master answer for the acts of the servant.”
 - The hospital is responsible for the acts of employees if the acts are within the course and scope of their employment.

Held to the same legal standards as the Hospital

- HIPAA
 - Failure to protect confidential data
 - Invasion of privacy
- EMTALA
- State Reportable Events
- Accreditation
- Medicare

Creating a Safety Culture

- Top leadership commitment
- *Authority* to make necessary changes
- Swift and visible correction of unsafe conditions
- Established anonymous & non-punitive procedures for reporting unsafe conditions
- Involvement of frontline healthcare workers
- Rewards for adhering to protocols and procedures
- “Near misses” included
- Patient Empowerment

Patients as Partners

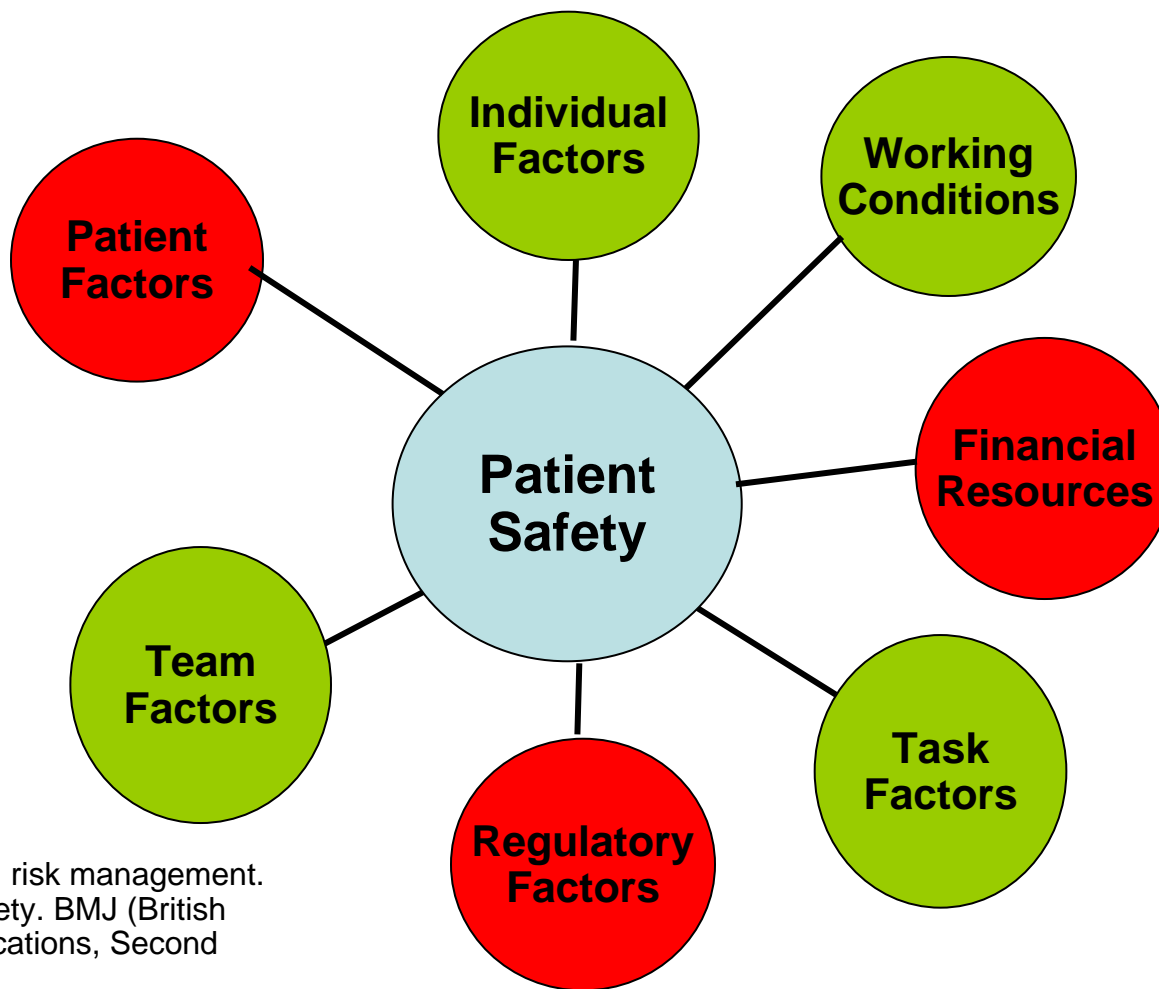
Patients as part of the “team”

- Open discussion
 - Informed consent
 - Care process
 - Adverse events
- Patient Empowerment
- Patient Education
- Cultural Issues
- Patient Grievances

Partners as Champions

- Medical Staff
- Administration
- Every Department that “touches” the CCC
- Epidemiology/Infection Control
- Environment of Care
- Risk Management
- Corporate Compliance
- Quality Improvement

Contributing Safety Factors



Vincent CA ed. Clinical risk management. Enhancing Patient Safety. BMJ (British Medical Journal) Publications, Second edition, 2001

Safety Self-Assessment

Medical Office Survey on Patient Safety Culture

Agency for Healthcare Research & Quality, HHS

www.ahrq.gov/qual/mosurvey08/medofficeapb.htm - 21k - 2009-12-01

Physician Practice Patient Safety Assessment

Medical Group Management Association

<http://www.mgma.com/pppsahome/>

Risk Management Strategies for the Physician Office

CNA HealthPro

http://www.cna.com/vcm_content/CNA/internet/Static%20File%20for%20Download/Risk%20Control/Medical%20Services/RMStrategiesforthePhysicianOffice.pdf

Potential Liability Allegations

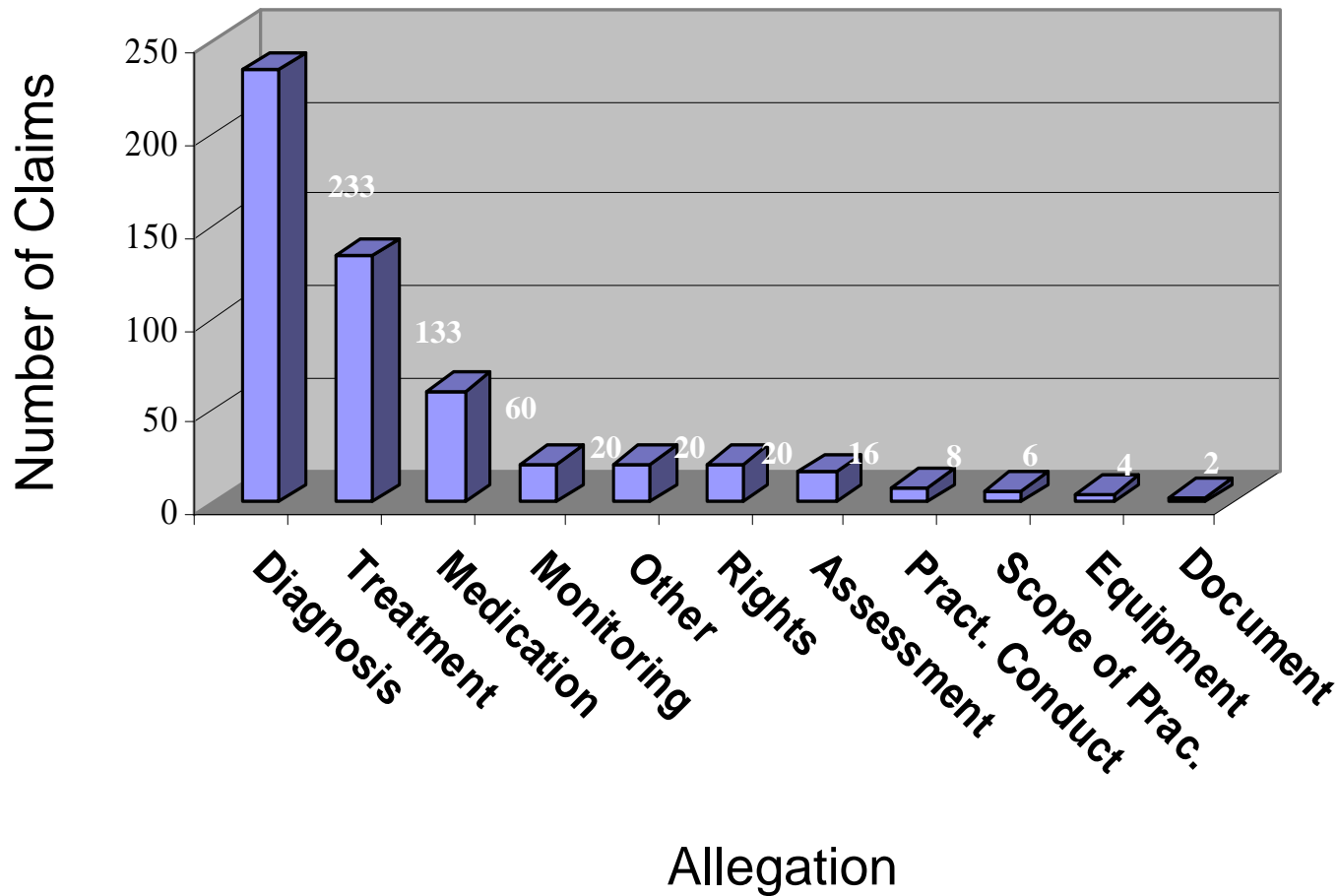
- Failure to diagnose/misdiagnosis
- Failure to refer
- Failure to follow-up, no continuity of care; only episodic care
- Breach of confidentiality
- Failure to provide proper oversight
- Scope of practice exceeded
- Failure to obtain informed consent
- Improper management of emergencies
- Substandard preventive care education

CNA HealthPro NP Claim Study

- Claims reported from 1994 – 2004
- open and closed claims evaluated – 523

www.cna.com/vcm_content/CNA/internet/Static%20File%20for%20Download/Risk%20Control/Medical%20Services/NursePractitionerClaimsStudy.pdf

Frequency by Allegation



Severity by Allegation

Allegation Category	# of Open & Closed Claims	# of Closed Claims	% of Closed Claims	Avg Paid Indemnity
Monitoring	20	5	4.7%	\$325,200
Patient Assessment	16	3	2.8%	\$263,167
Medication	60	17	15.9%	\$189,815
Diagnosis	234	49	45.8%	\$187,810
Treatment	133	26	24.3%	\$57,684
Scope of Practice	6	3	2.8%	\$31,667
Confidentiality, Privacy	20	3	2.8%	\$4,517
Equipment	4	1	0.9%	\$499
Practitioner Conduct	8	0	0	0
Documentation Only	2	0	0	0
Other	20	0	0	0

Real Case Facts Retail Clinic Case

- Adult patient accompanied by two teenage minors
- Adult had cholesterol screening exams conducted by NP-C
 - Finger prick to obtain a blood sample
- Teenagers requested to have the same exam performed
- Adult patient said Okay.
- Both teenagers completed and signed the required screening cards.
 - No evidence that adult was parent or legal guardian of teenagers was requested.
 - Company policy requires parental/legal custodian consent prior to performing any procedure on minors.
- Both teenagers had their finger pricked for a blood sample.
- No injury to minors observed at time of finger prick.

Aftermath

- One week later complaint was received from Mother of teenagers.
- Aunt was the adult who had accompanied the children and gave “consent”.
- Mother was very upset that her children were tested without her consent.
- Mother claimed one of the minors suffers:
 - Severe headaches following the finger stick
 - Cellulitis
 - And there are resultant medical bills
- Corporation received a 17 page correspondence from Mother reciting a litany of complaints.

Resultant Complaints

- Malpractice
- Failure to obtain legal parental permission
- Lack of informed consent
- Medical battery
- Child abuse
- Simple assault
- Negligence
- Pain and suffering
- Injury/damage
- Emotional distress
- Harm
- Intent
- Failure to comply
- Invasion of privacy, personal information/DNA
- False representation
- Misrepresentation
- Coercion/duress
- Harassment
- Kidnapping/false imprisonment
- Theft by taking
- Theft by deception
- Right's violations
- Exploitation
- Manipulation
- Victimizing
- Persuasion
- Influencing

Professional Liability Mitigation Practices; Staffing

- Understand scope of practice at the point of hire
- Competent re. scope of treatments and services offered
- Perform duties with minimal on-site supervision
- Age competencies
- Licenses current and not sanctioned or suspended.
- References attest to the person's ability to perform administrative & operational tasks (e.g., billing, referrals, etc.)
- Restrictions on the number of hours a practitioner may work consecutively among all of their professional obligations.
- Legibility is a component of performance evaluations

Professional Liability Mitigation Practices; Communication

- Actively seek out and respond to patient/family expectations throughout the patient's course of care and treatment
- Utilize listening skills to elicit patient information – obtain interpreter as needed
- Use appropriate vocabulary, voice tone and demeanor when speaking with patients and/or families
- Delineate the care, services and treatment modalities that ARE and ARE NOT provided or available
- Obtain informed consent for all tests and treatments

Professional Liability Mitigation Practices; Communication

- Provide clear explanation of diagnosis and prognosis
- Patient's ability to repeat back information and instructions
- Patient awareness of the critical nature of compliance with ordered diagnostic interventions
- Memorialize patient and family contact relating to patient's care or course of treatment
- Enhance communication among patient's healthcare providers both verbally and through comprehensive patient health record documentation

Professional Liability Mitigation Practices; Assessment & Diagnostic Evaluation

- Evidence-based standards/guidelines
- Facility-specific protocols
- Consult with collaborating practitioner and/or specialists as needed to ensure appropriate, comprehensive diagnostic plan of care
- Diagnostic test management
- Follow up missed appointments and patient failure to obtain ordered diagnostic tests/procedures

Professional Liability Mitigation Practices; Medication Management

- Established drug formulary in consultation with physicians and pharmacists to confirm:
 - appropriate drug selection,
 - prescription and ordering,
 - potential drug interactions or contraindications.
- Accurate allergy information
- Medication reconciliation

Professional Liability Mitigation Practices; Patient Health Information

- Patient health records content, order & maintenance
- Release of patient health information
- Memorialize all patient-related communications
- Diagnostic tests, referrals and consultations process
- Patient education and training
- Informed consent process
- Clinical decision-making process leading to diagnosis and selection of treatment modalities

Open Forum

Q&A

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