

## **ARE YOU AT RISK? PRACTICE CONCERNS AND GENERAL LEGAL ISSUES**

**When I first started addressing issues in the area of risk management, it always started with an attempt to provide a description of the term. Today, risk management is like so many other phenomena that is in our society. With state medical record laws, confidentiality issues, medical malpractice and now HIPAA (Healthcare Insurance Portability Accounting Act), it is getting more complex to define the parameters or risk management.**

**In this modern world of healthcare, anyone can obtain a prescription, get medical advice and care, even undergo surgery. Due to the limitless possibilities inherent in the technology available to modern medicine, the regulation of the practice of medicine and chiropractic, now requires Chiropractic doctors to operate in new dimensions of state and federal laws the involve standards of care and record keeping that carry civil, monetary and criminal enforcement.**

**Traditionally, a physician-patient relationship is formed when the physician accepts responsibility for medical care of the patient. This most occurs when the patient goes to the physician's office and provides information in order to obtain care or in some cases when the physician begins exercising medical judgment on behalf of the patient. It is generally asserted and universally accepted that there is a difference between practicing chiropractic and providing medical information. There is a tremendous amount of medical and chiropractic information on web sites available to the public. Many of these sites are used to attract patients, and offer, in addition to the information sought, opportunities to obtain evaluation or treatment. Providers should be aware from a risk management point of the possibility that interaction through such sites may establish a physician-patient relationship. Any web site should have clear, specific, and obvious disclaimers setting forth the circumstances in which a doctor-patient relationship may be created through the web site. The use of the internet may well create a cyber office, and with a click of the mouse may create a doctor-patient relationship.**

**Most states will hold cyber practices to the same record keeping and risk management standards as traditional walk in practices. In either case all aspects of the state statutes, state practice act and regulatory board's must be complied with. All states have medical malpractice statutes for determining standards of care to be imposed on the doctor. Most states usually hold the doctor to the community standards of care, either within the community or state wide community. Because of the multi-jurisdiction nature of cyber sites, doctors may be held to a standard of care imposed in another jurisdiction, where the patient is located or even to a national standard of care. In Thomas Jefferson vs. Romer (Fla. 4<sup>th</sup> district of appeals 1998) upheld a finding over an out-of-state doctor who allegedly committed an error in analyzing a blood sample of a Florida patient. Most states have laws in**

**place that the unlicensed practice of a healthcare profession or the performance or delivery of healthcare services to patient's in a state without a valid, active license to practice that profession regardless of the means of performance or delivery of such services is strictly prohibited.**

**Being a licensed healthcare risk manager in Florida, I understand the need to establish policy and procedures to address potential risk management incidents in the office. In addition to standards of care, @ medical records, confidentiality, etc., it is essential to understand the procedures of risk management. The purpose of risk management is to create and maintain a safe, secure and properly insured health service environment, contain cost of insurance and reduce to loss due to litigation. With the new HIPAA laws, confidentiality is a big issue. Just to name a few involves; patient sign in sheets and open bay treatment and therapy areas, which may violate HIPAA laws. There is a new public attitude that exert economic and clinical service pressures on providers. The public expects and has a right to receive treatment that parallels the services promised. Today, the public views healthcare as a product rather than a service as seen in liability cases for relief considered wrongful or injurious. Many times a malpractice claims are filed, not because of incompetence of the healthcare provider, but because of negative perceptions of the process by the healthcare provider.**

**Most programs use the term risk to refer to the possibility of financial loss due to an unexpected contingency. Risk management is viewed as a process of complex task functions and decisions carried out with an objective of reducing unexpected financial loss to an organization.**

**Briefly covering the elements of risk management, the first will be identification of risk or potential risk. This requires regular reviews of all physical assets of the practice. Also create an incident report form and can be used to establish a defense in litigation. You must identify the risk or potential risk that cause an incident, risk, injury or financial loss. If it involves a patient, secure the file in a safe place and allow viewing with the designated risk person from your office present. Risk identification is the single most important program element. The second area is risk evaluation/analysis and can be accomplished by reviewing and categorizing all available incident reports for a period of time. If exposure is significant enough, does it require some form of intervention? Third area is the elimination/treatment of the risk. Once the risk has been determined to exist and it has been evaluated, determine how to best eliminate it.**

**Key principles in an effective risk management program:**

**Establishment of a risk management program that emphasizes the safety and security of patient's and staff. Develop a comprehensive system to reduce and control the incident of loss. Develop and communicate clear safety rules and regulations. Inclusion of patient quality/assurance and clinical record maintenance program. Define efforts to minimize the incident of liability claims. Record keeping**

**is essential in any risk management program. Your record will save or sink you. Never let original records leave your office or unattended while in your office. Remember the facility is responsible for maintaining the integrity of the records in you patient files. Make sure your policy on the release of medical records is adhered to. Whether you have a walk in office or a web site, confidentiality issues will be the same. These issues will be regulated on a state and federal level and as information technology increases we will continue to see changes in the way we practice our profession.**