

## **ARE YOU AT RISK? LEGAL ISSUES AND CONCERNS WITH WEBSITE AND RECORDKEEPING ARISING FROM NEW TECHNOLOGY**

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. With state medical record laws, confidentiality issues, medical malpractice and now Healthcare Insurance Portability and Accountability Act (HIPAA), it is getting more complex to define the parameters of risk management.

Due to the possibilities inherent in the technology available to modern medicine, the regulation of the practice of medicine and chiropractic, now requires DCs to operate in new dimensions of state and federal laws. These involve standards of care and recordkeeping that carry civil, monetary, and criminal enforcement.

### **Spinning the Website**

Traditionally, a doctor-patient relationship is formed when the doctor accepts responsibility for medical care of the patient. This occurs when the patient goes to the doctor's office and provides information in order to obtain care or, in some cases, when the doctor begins exercising medical judgment on behalf of the patient.

It is universally accepted that there is a difference between practicing chiropractic and providing chiropractic information. There is a tremendous amount of chiropractic information on websites 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 of the possibility that interaction through such websites may establish a physician-patient relationship.

All websites should have clear, specific, and obvious disclaimers setting forth the circumstances in which a doctor-patient relationship may be created through the site. The use of the Internet may 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 recordkeeping and risk management standards as traditional walk-in practices. In either case all aspects of the state statutes, state practice acts, and regulatory board issues 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 multijurisdiction 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.

Most states have laws in place that the unlicensed practice of a health care profession or the performance or delivery of health care services to patient 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. States have Medical and Chiropractic Practice Acts, which, depending on the state, make it a felony to practice or attempt to practice chiropractic without a license. An example, Florida prohibits anyone other than a licensed physician in Florida from ordering from any person located out of Florida for a person in Florida, electronic communications, treatments, or services. If such ordering for any person out of Florida over cyber space (internet), by a physician in Florida, he or she could be committing a felony in Florida. Florida has a long-arm statute that provides for personal jurisdiction in Florida courts for any cause of action arising out of injuries caused within the state by a doctor outside Florida, who actively solicits or provides services in Florida, who is not licensed in Florida. In *Thomas Jefferson University vs. Romer*, 710 So. 2d 767 (Fla. 4th DCA 1998), court upheld a finding of personal jurisdiction over an out of state physician who committed an error in analyzing blood of a patient in Florida. This simply means if an out of state physician practices in Florida from another state without first being licensed in Florida can be prosecuted in Florida courts. Many states have this ability of personal jurisdiction. If you plan to offer services via the internet make sure it does not create a doctor-patient relationship, how you structure your services and what you offer. Remember your site is in all states and the world.

### **Risky Business**

Being a licensed health care risk manager in Florida, I understand the need to establish policy and procedures to address potential risk management incidents in the office or the web site. In addition to standards of care, medical records, and confidentiality, 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 major issue, such patient sign-in sheets and open-bay treatment and therapy areas.

There is a new public attitude that exerts 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 health care as a product rather than a service, as seen in liability cases for relief considered wrongful or injurious. Malpractice claims are filed many times, not because of incompetence of the health care provider, but because of negative perceptions of the process.

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.

### **One Step at a Time**

First, identification of risk or potential risk requires regular reviews of all physical assets of the practice. Create an incident report form that 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 of the file with the designated risk person from your office present. Risk identification is the single most important program element.

Second is risk evaluation/analysis, which 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?

The third step 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.

The key principles in an effective risk management program are:

- Establishing a risk management program that emphasizes the safety and security of patient's and staff;
- Developing a comprehensive system to reduce and control the incident of loss;
- Developing and communicating safety rules and regulations;
- Including patient quality/assurance and clinical record maintenance program; and
- Defining efforts to minimize the incident of liability claims.

Recordkeeping is essential in any risk management program. Never allow original records to be taken from your office or be left 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.

The information in this article is intended for information purposes only and does not constitute any legal advice what so ever. Consult with an attorney in your state to determine your state laws governing such information.