UCSF Health Risk Management Bulletin

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FROM EXECUTIVE DIRECTOR
KIMBERLY DIMINO. MSN. JD

Happy New Year to you all! This issue provides important updates on the risk program and information on how to minimize the likelihood that you become involved in litigation arising out of providing consults. This information pertains to the outside provider/curbside consult. The next will focus on internal curbside risk. We also share with you information about the risk of using e-mail for patient related communications.

I hope you will take a few minutes to review this edition's important information to better understand how you can minimize your risk. ~Kim

Claims and Suits are UP

In FY 23/24 we saw a 25% increase in new claims and a 150% increase in new lawsuits over FY 22/23. We also saw an increase in the number of claims and suits that we needed to settle and settlements are higher.

What can you do to maximize our ability to defend our cases?

- Be thorough in your documentation. Make sure your documentation is reflective of the patient's condition. Don't just cut/paste/copy forward irrelevant information.
- Document all pertinent calls and communications about a patient in the medical record. Don't rely on text messages and emails.
- Check/double check that you are in the right patient's record before entering orders.

What's a Special Permit Holder?

The California Medical Board issues special permits to international physicians to allow them to practice in an academic health system in California. UCSF has a number of renowned international physicians practicing under this special 2113 permit. The permit is not a license.

2113 permit holders are defined as "visiting faculty" by the MBC and a UCSF name tag must designate the physician as "visiting faculty." They cannot work outside of UCSF or formal affiliate locations.

The law requires that "notice" be provided to patients about special permit holders. Here at UCSF there is language in our terms and conditions of service document signed by patient. Any faculty practicing with the 2113 permit should utilize a dot phrase in their documentation that reflects the patient's acknowledgement that they hold a special permit to practice.

I DIDN'T EVEN SEE THE PATIENT… WHY AM I BEING SUED?

The danger of inadvertently creating a patient/provider relationship through an informal consult with outside provider

It isn't uncommon for a patient/plaintiff to name numerous providers as defendants in a malpractice action—no matter how tenuous a provider's role is in that patient's care. The trigger for being drawn into the mix is the existence or perception of a patient-provider relationship and a "duty of care" owed. In California, a patient-provider relationship and associated duty of care is established when you treat or consult on a patient that you examen, make a diagnosis and/or provide treatment recommendations. That same relationship and duty can also inadvertently arise through informal or "curbside" consults which create *the appearance* of a patient-provider relationship.

With a formal consult, there is no question that a patient/provider relationship and duty of care exists. But when you provide an informal or "curbside" consult, whether a patient/provider relationship and "duty of care" exists is less clear. One of the greatest risks associated with an informal or "curbside" consult is the potential that you are opining and advising based on incomplete information—you haven't examined the patient, likely don't have access to the medical records and there may be outstanding tests/imaging. What if the provider has additional information but didn't think it was important. What if they interpreted labs/imaging or an exam finding incorrectly. Any opinion or advice you give could be off the mark.

If you provide a diagnosis, concur with a diagnosis, or make patient specific treatment recommendations, there is significantly more risk that a patient/provider relationship will be found and a duty of care owed. There is also risk if a diagnosis and/or care/treatment plan is *attributed to you*, or that you concurred with the outside provider's plan when that wasn't the case, and you don't have any documentation to the contrary.

Because your expertise is frequently sought, here are some tips to help minimize your risk when providing an informal consult:

- While your expertise can be very helpful, avoid "curbside" consults for UCSF patients and requests from outside providers prior to accepting the patient for transfer.

- For non-UCSF patients, remember the information shared with you by the outside provider may be incomplete or inaccurate.

  - Ask for objective information you need for an objective evaluation or consider declining the consult.
  - Request that your name not be noted in the patient's medical record or that a consult was obtained from UCSF unless there is formal request for consultation. Inclusion in the medical record greatly increases the risk that a patient/provider relationship could be found.
  - If you provide informal advice about a patient's care, keep it general and not patient specific *unless* you are accepting the patient for transfer. Give general standard of care advice for the likely condition. Remember that patient specific advice which is based on incomplete or potentially inaccurate information dramatically increases risk.
  - Don't ask for follow-up or updates unless the patient has been accepted for transfer.
  - Be clear with the caller that you are not confirming or agreeing with any diagnosis and that the advice being given is standard of care based on their diagnosis.
  - When contacted, if you determine that a physical examination and other studies are indicated for a diagnosis, care/treatment plan, take a pause. Keep it general or offer to connect the outside provider with the Transfer Center.

A Word of Caution about Email

The use of UCSF e-mail to discuss a diagnosis or treatment plan with colleagues or a patient and their family is not without risk and should generally be avoided.

First, UCSF e-mails are not guaranteed to be secure or fully HIPAA compliant, so the amount of PHI included should be limited to the minimum amount necessary. Second, these e-mail exchanges are not privileged or protected and will be discoverable if there is litigation and will need to be produced. How will your email look on the big screen in front of a jury?

The MyChart portal in APeX is the preferred method for patient communications. All clinically relevant electronic communications between a patient and their care team/provider need to be retained within APeX. If you do have e-mail messages with clinically relevant information with the patient or the care team, take the necessary steps to get that information into the medical record so other members of the patient's care team can benefit from that information.

PEER LITIGATION SUPPORT PROGRAM AT UCSF

- Being involved in litigation during your career is not unexpected and it doesn't mean that you are a "bad provider". We have some existing support systems to help support those involved in litigation but will soon be launching a more formal program to bolster this essential support. If you have been involved in litigation and are interested in volunteering, email Kimberly Dimino at kimberly.dimino@ucsf.edu