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Cosmetic Medicine: The Beauty and the Beast

By: E. Daniel DeLoach, MD, FACS

The current economic and financial climate affects all practices. At a time when such financial stresses beset all practices, it is more tempting to move beyond the usual measures of increasing patient flow while decreasing overhead expenses. Some physicians are turning to areas of service outside their own specialties where the economic rewards are considered better. Cosmetic medicine, an area where payment is guaranteed, has become such a popular retreat. Often physicians and their office staff attend "Weekend Training Seminars" on injectable toxins, dermal fillers, chemical skin peels and LASER hair removal. With or without direct physician input and supervision, the risks can easily outweigh any and all financial benefits, if the proper training and safeguards are not in place.

MAG Mutual has seen a recent increase in claims resulting from physicians engaged in cosmetic medicine outside their specialty training. Here are a few examples of some of those claims.

Case # 1: A 46 y/o female develops facial scars after undergoing LASER hair removal in her Family Practitioners' office by a LASER Technician. The allegations were that the physician failed to adequately supervise the technician, his employee.
Disposition: Settlement was made on behalf of the physician as he was deemed the supervising physician.

Case #2: A 37 y/o female develops hypertrophic scars on her chest after having a chemical peel in her Internist's office. The procedure was performed by an esthetician employed by the practice without physician supervision.
Disposition: Settlement was made on behalf of the employing physician under the "Captain of the ship" theory.

Case # 3: A 22 y/o college honor student was found dead in her auto at the roadside. She had wrapped her legs in cellophane impregnated with topical Xylocaine from her toes to her upper thighs. She was en route for LASER hair removal. Autopsy revealed toxic levels of Xylocaine in the blood and the cause of death was determined to be a cardiac arrhythmia secondary to Xylocaine toxicity.
Disposition: Settlement was made on behalf of the supervising Urologist, who never saw the patient, but approved the treatment guidelines. The physician's license was subsequently suspended.

Case # 4: A 58 y/o female dies of anesthesia complications while undergoing a facelift procedure by her Ophthalmologist. The CRNA and the surgeon were sued.

Disposition: Settlement was made on behalf of the Surgeon by MAG Mutual and for the CRNA by his carrier. As the CRNA was practicing under the supervision of the surgeon, the jury held the surgeon liable as well.

Claims like these have in resulted in millions of dollars being spent on settlements, and have directly affected physicians' medical liability insurance premiums. While no physician is immune from complications, defending a case outside one's specialty and training is very difficult. Juries generally do not understand why a physician would engage in activities that are outside of his or her formal training and scope of practice. Though financial times may be challenging, quick fixes are seldom effective. We recommend the following guidelines in order to mitigate your risk.

- Carefully weigh the advantages and disadvantages of practicing in areas of medicine that may be outside of, or peripheral to, your formal training.
- Remember that you are responsible for the actions of your employees, including but not limited to your physician extenders, CRNA's, LASER technicians, estheticians, etc. Juries expect the physician to be the overseer of all clinical activities.
- Review your protocols and guidelines regularly, with the involved employees, to keep them updated and to reflect the current practices of your office.
- Ensure that you and your staff have the proper training and credentials in each area of practice, and undergo the appropriate continuing education activities in those areas.
- Establish effective informed consent processes and utilize forms specific to each cosmetic procedure. Inform your medical professional liability carrier if you've added cosmetic medicine services to your practice.

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Suggestions for Selecting Information Technology to Support Your Practice

By: Margie Satinsky, MBA, President, Satinsky Consulting, LLC

Selecting information technology to support your practice is a formidable challenge. Several years ago, four Philadelphia family practice physicians compared their transition from paper to electronic health records to flying an airplane without a pilot! You can avoid their negative experience by paying careful attention to your decision and implementation processes. Here are some suggestions:

- 1. Start with your practice, not the technology.** Clarify your mission and goals before investing in expensive technology. A small practice with one location has different needs from a large practice with multiple sites and aggressive growth plans. Agree on your future direction and let the technology support your efforts.
- 2. Be honest about your technology readiness and receptivity.** In most practices, physicians' attitudes toward technology vary greatly. Some love it, and others hope they will retire before they have to make changes in the way in which they currently practice. Structure your software selection, staff training, and implementation to accommodate everyone's needs.
- 3. Assess your current workflow and fix problems before you automate.** If you assume that automating specific aspects of your practice operations will correct current problems in your workflow, think again. For example, transitioning from paper to electronic health records won't fix human resource problems or poor financial management. If you automate malfunctioning processes, you'll compound the problems. Fix what doesn't work before you automate.
- 4. Plan and implement a total information technology strategy rather than focusing on a single application.** The most important IT applications are your practice management system (PMS), electronic health records (EHR), e-prescribe, your Website, and the way in which these four applications relate to each other. The components are not always discrete, so consider all the applications together rather than on a piecemeal basis. For example, look for a vendor that offers both PMS and EHR applications that are built off the same operating platform so you won't have to worry about building and maintaining an interface between the two applications. Similarly, if you select an EHR that offers an e-prescribe feature, either as an option or part of the total package, prescription information will automatically link to your EHR. If you want a patient portal, you can either build it through your Website or as part of your EHR. You get the picture – everything's intertwined.
- 5. Do your homework before inviting vendors to make a presentation to your practice.** Take time to research the big picture about the applications in which you are interested before talking with specific vendors. Give each vendor comprehensive background information on your practice and a standard list of questions. If everybody gives you the same information, you'll have an easier time comparing the responses. Look carefully at the provisions of ARRA. Although the details are not all clear, your purchase and use of an EHR may make you eligible for incentive funds available through the Medicare or Medicaid programs. To qualify for stimulus money, you'll not only need to have your EHR in place. You must also meet requirements for interoperability and reporting on quality measures.
- 6. Select a vendor that is appropriate for your practice.** Consider vendors that offer applications for your specialty at a price you can afford. Independent organizations like the AC Group or KLAS regularly test and rank the vendors according to specific criteria. Professional associations can be good resources too. For example, the American Academy of Family Practice (www.aafp.org) has a comprehensive Web site that includes input from existing practitioners who are willing to share their experiences, both good and bad.
- 7. Manage the selection and implementation processes carefully.** Identify a lead physician and a multi-disciplinary task force within your practice to manage both your vendor selection and implementation. A physician champion is essential. Seek external expertise when you need it. If you ask a member of your administrative staff to take on additional responsibilities related to IT, temporarily delegate some of his/her functions to another employee so there's time to do the job right.

Remember that IT is a tool, not a solution. People, not computers, will make the experience of selecting new technology a positive or a negative one for your practice. Good luck!

Margie Satinsky, MBA, is a Senior Consultant to MAG Mutual Healthcare Solutions, Inc. Contact her for help analyzing your workflow, questions to ask vendors, and suggestions for comparing vendor responses. Margie can be reached at 1-888-249-7886 or pmconsulting@magmutual.com.

Doctor, Just Say No

By: *Georgette Samaritan, Senior Risk Management Consultant*

When patients demand medication, tests, or something not medically indicated, most physicians have discovered that just telling them “you don’t really need this, because_____,” or “there is no reason to order this [test, procedure]” or to “prescribe or take this [medication] instead” does not always work. There’s constant pressure to say ‘Yes’ to patient demands.

So what strategies can physicians use in these uncomfortable situations?

The Four Habits Model described in the Four Habits of Highly Effective Clinicians¹ serves as a useful communication template for enabling physicians to say no to patients who demand inappropriate drugs or medical procedures.

Establish Rapport

Physicians must help establish the patient’s trust up front, and often in unfamiliar surroundings, such as the emergency department or urgent care department. Under these circumstances the patient-physician interaction may be very brief. Establishing rapport is particularly important because it sets the tone of the interaction during which the patient must develop the trust essential for hearing (and accepting) medical information and later adhering to therapeutic regimens.

Elicit the Patient’s Perspective

A patient’s own explanation of his or her illness is called the Explanatory Model¹ and is an important consideration in delivering effective medical care. The ability to discover the patient’s perspective regarding his or her medical condition is a crucial skill for clinicians because it may prevent or defuse potential conflict with the patient, who usually has a personal reason for requesting a particular drug or medical procedure. The reason may seem illogical to the clinician, but it always deserves to be heard. A patient may, for example, be afraid of catching pneumonia or being diagnosed with incurable cancer if a symptom is left unattended for too long. A patient may be reluctant or unable to express his or her theory and fear about the symptom. Most of the time, the patient wants (and expects) the clinician to relieve symptoms or address their fears. This expectation must be met before the patient can obtain satisfaction; indeed, the emotional needs of the patient must be addressed before any treatment is given. You must listen carefully for the psychological reason why the patient has come to see you. Only then can effective reassurance be given. Questions such as “What do you think is going on?” or “Are you afraid of anything in particular?” may allow the patient to reflect and express his or her own perspective.

Demonstrate Empathy

Empathy is a skill that allows one to understand another person, by identifying with them but to effectively reassure them. By expressing this understanding verbally, physicians can show that they care for

their patients’ well-being and thus promote patients’ trust. For example, a clinician may say, “Since your dad had a brain tumor, you must be thinking that you have one too.”

Acknowledge Conflict, Be Flexible and Set Boundaries

A physician may sense a patient’s disagreement or dissatisfaction while interviewing the patient or while administering treatment, but may not address it. Unfortunately, if not addressed, those conflicts will probably resurface later. By acknowledging the difficulty verbally both to yourself and to the patient, the patient may take the first step toward negotiating a helpful compromise.² An example of a statement acknowledging a difficult situation could be, “I can see that we are having some difficulty here in agreeing on the treatment plan.” If you say “no” too soon, your flexibility is at issue. Therefore, when a conflict occurs, be conscious of whether you want more flexibility or whether you must set firm boundaries.²

Invest in the End

Physicians are generally more able to identify problems than to communicate findings. Patients who request antibiotic drugs or diagnostic tests are usually asking for symptom relief: They may request medication to cure a cold or may seek reassurance in the form of negative test results (e.g., requesting magnetic resonance imaging [MRI] to prove that a headache is not being caused by a brain tumor). The initial reasons for the patient’s request should be addressed. Treatment goals formulated by the end of the visit should be consistent with the reason that initially prompted the patient to visit the clinic. Use layman’s terms to directly address the patient’s initial concerns. For example, the physician might say, “You don’t have a brain tumor” instead of saying, “There is only a 2% chance that the MRI result would be positive.” Other important considerations are to involve the patient in making the final decision about treatment and to check for adherence to prescribed therapeutic regimens.

Conclusion

The ‘Four Habits Model’ serves as a useful communication template for enabling physicians to say no to patients who demand inappropriate drugs or medical procedures. Physician-patient conflicts, and the non compliance that frequently results from these conflicts, can often be avoided if the physician uses empathetic, clear communication, negotiation based on acknowledgment, shows flexibility and demonstrates the ability to set boundaries.

References

1. Frankel RM, Stein T. Getting the Most out of the Clinical Encounter: the Four Habits Model. *Perm J* 1999 Fall, 3(3):79-88.
2. White MK, Keller VF. Difficult clinician-patient relationships. *Journal of Clinical Outcomes Management* 1998 Sep-Oct, 5(5):32-36.

Is Your Practice HIPAA IT “Secure” ?

By: *Brian L. Tuttle, Systems Engineer & IT Services Consultant*

Due to the critical nature of being in compliance, many healthcare providers are looking for help in developing or validating a HIPAA compliant technology environment in their practices. While not intended to be a comprehensive audit, the following self-assessment tool should help you evaluate whether you should pursue professional IT assistance.

HIPAA IT Security Mini-Self Assessment Tool		
Do you have a designated security person (or system) responsible for:		
• Security policy / procedure development and implementation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Monitoring, auditing, supervising technical system maintenance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Reporting security violations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Reviewing system logs to identify suspect activity and check for security violations, logons, file access, etc?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Managing and supervising the conduct of users/employees as it pertains to the physical security of data and facilities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Do your network security mechanisms (e.g. firewalls, authentication methods, design) ensure integrity of data transmission?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
Is access to your system(s) and network(s):		
• Controlled both internally and externally so that data cannot be intercepted by unauthorized parties?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Restricted only to authorized persons who have a legitimate business need?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Do you regularly verify and retain evidence that all employees using PHI (Private Health Information) meet the training requirements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Do you have a “Disaster Recovery Plan” in place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
Are your systems:		
• Security standards documented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Virus/malware/spyware prevention mechanisms effective?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
Do user accounts:		
• Uniquely identify the individual user?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Automatically terminate after a predetermined time of inactivity (15 min.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Have password protection?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
Is electronic media:		
• Backed up, retrievable and stored in a secure location?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure
• Destroyed or disposed in a manner that protects health information before it leaves your control?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Sure

If you answered NO or Not Sure to any of the above questions your practice is at risk for not being fully compliant. For answers to additional questions or for more information about MAG Mutual’s IT Services designed specifically for medical practices, please visit us at: www.magmutual.com/it-services/ or call us at **1-888-249-7886**.

MAG Mutual does not presume to establish any standard of care or establish rules for the practice of medicine. The particular patient-care strategies or range of patient-care strategies mentioned in this newsletter should be tempered by the physician’s judgment. This publication is produced to inform you of issues relating to medical professional liability insurance and other matters of importance to physicians. Material given in this newsletter does not constitute legal advice or opinion. If you have questions in any of the areas discussed in this publication, you should seek a qualified legal opinion. ©2009 MAG Mutual Insurance Company.



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