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Risk Management & Patient Safety Dept. Tips

Legal Brief

Wrong-Site Surgery? Not at My Place

Responding to Law Enforcement Requests for Records

By Thomas S. Harbin, Jr., MD, MBA

They make those mistakes somewhere else. Most doctors think this, but are they right? And, do they follow all the rules all the time to be sure they're right?

MAG Mutual often receives phone calls from medical liability insureds faced with a request for patient medical records. In addition, there are instances where an office manager finds a law enforcement detective or attorney standing in the lobby, demanding records immediately.

A recent article in the Archives of Surgery points out that wrong-site, wrong-side, wrong-procedure and wrong-patient events continue to occur at a significant rate. Several years ago, wrong-site surgery was the most common sentinel event reported to the Joint Commission. Researcher, Julia Neily, surveyed the experience within the Veterans Health Administration medical centers from 2001-2006. There were 342 reported events, 212 adverse events and 130 close calls, evenly split between the operating room and "elsewhere." In the OR, ophthalmology and orthopedics had the highest number of adverse events.

The Federal Health Insurance Portability and Accountability Act ("HIPAA") has set specific guidelines that must be met before medical information can be disclosed by a medical provider to someone other than the patient. The requesting party must demonstrate that he or she has the authority to obtain the information; or, in certain states, that the patient has been notified of a record request and does not object to the disclosure. Plaintiff's attorneys, defense attorneys and their agents cannot obtain protected health information without proper authority.

These authors and others believe that a surgical time out is not enough, noting that, when a time out is performed immediately before "takeoff," the die is cast and it may be too late to change course. They advocate early and frequent communication between the patient and the team well before this stage.

For example, a medical practice may receive a letter from an investigator or detective from the District Attorney (D.A.). The letter asks for confirmation that a person in question is a patient. Not only does the above example ask for HIPAA protected information (confirmation that the person in question is a patient), but the letter (even though it is from the D.A. and is on a Court's letterhead) may not be proper authority.

Couple this article with the recent emphasis on checklists in medicine. Having a checklist is a way to formalize early and frequent communication. Each operation will need a customized checklist for that procedure. For example, in cataract surgery, a checklist would need to confirm not only the patient's name and the eye to be operated, but the correct lens implant type and power.

Although HIPAA is a Federal regulation, interpretation of release of information to a law enforcement authority may vary slightly by state. Your best defense is to know your state specific guidelines. MAG Mutual has done the work for you: refer to your state-specific Risk Management Handbook. These can be found on the MAG Mutual website, or by contacting the MAG Mutual Risk Management Department.

So consider developing a checklist for procedures, both diagnostic and therapeutic. Most importantly, use it, and you may go a long way to prevent mistakes.

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Winter Catalog Mailed Soon

The new Winter Medical Resource Guide will be released in March from **MAG Mutual Healthcare Solutions, Inc.** It features great products and all new publications for 2011:

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Holiday Charitable Giving 2010

In the spirit of the holiday and our long-standing support of the medical community, MAG Mutual made a 2010 charitable donation on behalf of our policyholders. Three organizations received a contribution:

- Heifer International
- Juvenile Diabetes Research Foundation
- St. Jude Children's Research Hospital

Thank you for your continued service to your patients and dedication to the medical profession.

(Wrong-Site Surgery? Not at My Place continued from page 1)

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Julia Neily, et al, "Incorrect Surgical Procedures Within and Outside of the Operating Room," *Archives of Surgery*, Vol 144 (No. 11) Nov 2009, pp 1028-1034

Atul Gawande, *The Checklist Manifesto: How to Get Things Right*, Metropolitan Books. Henry Holt and Company, 2009

Peter Pronovost and Eric Vohr, *Safe Patients, Smart Hospitals: How One Doctor's Checklist Can Help Us Change Health Care from the Inside Out*. Hudson Street Press, 2010

(Responding to Law Enforcement Requests for Records continued from page 1)

When in doubt, or when circumstances arise that leave you uncertain if medical records should be released, do not feel pressured to respond in haste. Contact our Risk Management Department and/or your legal counsel to determine if you have a records request that meets HIPAA guidelines.

For additional information, you may contact Risk Management at **800-282-4882**, Option 3.

Where We'll Be:

March 2-4
Birmingham, AL
AL MGMA

March 13-15
Charlottesville, VA
VA MGMA

April 14-17
Sandestin, FL
AL OB-GYN Society

May 19-20
Lexington, KY
KY MGMA

This is just a sample of the meetings our staff will attend. For more, go to www.MAGMutual.com and click on *Meet a MAG Mutual Representative.*

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