



# THE MAGNET™



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## Risk Management Tips

### *The Physician-Patient "Tug of War"*

If you're wondering why so many patient office visits turn into a tug of war, it's partly because physicians and patients are often on different ends of the rope.

To the physician, illness is a disease process that can be measured and understood through laboratory tests and clinical observations. To the patient, illness is a disrupted life. Physicians who can't help bridge communication gaps with patients are more likely to end up in court.

Despite the fact that physicians and patients may be on opposite ends of the healthcare system, physicians who practice the following six strategies can help the physician-patient relationship deepen into a healing partnership:

1. Cultivate a patient-centered partnership – treat patients as human beings
2. While with the patient, check your posture and body language—sit down
3. Ask about his/her concerns and opinions with open-ended questions
4. To improve your patient's willingness to follow your recommendations, build mutual trust
5. Develop a system to communicate all test results to patients
6. Respect patients as experts in the experience of their illness

Aside from the typical challenges associated with bridging communication gaps with patients, some physicians experience this "tug of war" on a broader scale. A new theme in healthcare risk management is the physician whose persistent, problematic behavior can affect medical care delivery, anger patients or co-workers and possibly trigger a lawsuit. The current terminology for this individual is "disruptive physician." Specific treatment programs for disruptive physicians have been developed.

For more information or to see the complete article, visit us at [www.magmutual.com/risk](http://www.magmutual.com/risk). ●

*Coming up in the next MAGNET, The Physician-Patient "Tug of War" Part Two (How physicians can help patients learn to bridge communication gaps.)*

## New Florida Laws

The Florida legislature recently passed laws clarifying the applicability and implementation of Constitutional Amendments 7 and 8 adopted by Florida voters in the November 2004 election. The risk management implications of these bills for physicians are considerable. They are briefly outlined below.

### **Adverse Medical Incidents – SB 938.**

Amendment 7 provides that patients are entitled to access adverse medical incident records of healthcare facilities and physicians. Under SB 938, "adverse medical incident" means medical negligence, intentional misconduct and any other act, neglect or default of a facility or physician which caused or could have caused injury to or death of a patient. Patients are entitled to "final" reports of such incidents. Records that are not final or that contain attorney-client communications are not subject to disclosure. The law applies only to records created, incidents occurring and actions pending on or after November 2, 2004.

Persons may obtain access to the records only from physicians or facilities of which they are patients (past, present or prospective), and the records must pertain to them or to other patients with the same or similar condition, treatment or diagnosis. Physicians must maintain the confidentiality of patients identified in the records (e.g., by blacking out names, etc.) and otherwise comply with patient privacy laws. Records obtained under SB 938 or Amendment 7 are not discoverable or admissible into evidence in any civil or administrative action against a healthcare facility or physician. The new law does not repeal or alter existing restrictions on admissibility or discoverability of peer review records. Physicians are responsible

*(Continued on page 2)*



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(HIPAA Security Rule Compliance, continued from page 1)

for identifying adverse medical incident records in their offices and may require payment for the records before acting on a request. Charges for copies may include a reasonable charge for staff time necessary to prevent disclosure of patient names in the record through redaction or other means.

**Three Strikes – SB 940.** Amendment 8 established the principle that physicians who have been found to have committed (i.e., by court judgment, agency decision or binding arbitration decision, but excluding settlements) three or more incidents of medical malpractice may not be licensed to practice in Florida. SB 940 implements a procedural framework for Amendment 8. Deeming three incidents to be “repeated medical malpractice,” SB 940 applies only to incidents occurring on or after November 2, 2004 that were proven to be medical malpractice by a standard of clear and convincing evidence. Because medical malpractice plaintiffs in Florida circuit court must prove their cases by the lesser standard “greater weight of the evidence,” judgments rendered in those courts would not count as an incident, so the Florida medical board would make a separate determination of medical malpractice under the “clear and convincing evidence” standard.

Under SB 940, multiple findings of malpractice arising from the same wrongful act or series of wrongful acts associated with the treatment of a patient count as one incident. Judgments rendered outside Florida count as an incident only if the standard of care and burden of proof applied in the other jurisdiction equaled or exceeded that used in Florida.

If you have any questions, please contact Michael Meyer or Carol Wiseheart at **800-783-8455**. ●

## DID YOU KNOW?

### **MAG Mutual offers a NEW Businessowners Policy for 2005**

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## Litigation Stress Help on the Internet

Physicians and other healthcare professionals can now go to [www.physicianlitigationstress.org](http://www.physicianlitigationstress.org) for help in coping with the personal and professional stress created by an adverse outcome that may result in litigation. The site lists resources that provide support throughout one's involvement in a medical malpractice case in addition to articles, books and additional web sites.

The non-profit site, founded by physicians, insurance and legal personnel, is provided by the Physician Litigation Stress Resource Center. According to the Center, the website exists to support physicians in professional crisis by offering them:

- The recognition that a wide range of emotional responses to a medical malpractice suit is normal and natural
- Guidance to the objective information they need not merely to survive but, more, to prevail over the litigation process

For more information, please visit [www.physicianlitigationstress.org](http://www.physicianlitigationstress.org). ●

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