# Claims Management 104: Common Causes of Malpractice Claims

**FTCA University, June 2, 2017**
**Louisiana Primary Care Associates**
**1:45 p.m. – 2:50 p.m.**

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# Polling Question 1

## What is the 3rd leading cause of death in the US?

a) Cancer

b) Heart Disease

c) Automobile Accidents

d) None of the above

# Polling Question 2

## What is the leading cause of Medical Malpractice Claims?

a) Poor documentation

b) Error in medication administration

c) Failure to diagnose

d) Failure to treat

# CREDENTIALING AND LICENSING

- Under Joint Commission Standards the Hospital is Responsible for the oversight and delivery of health care rendered by licensed independent practitioners.

- Taken a step further, care rendered by improperly licensed physicians can be considered fraudulent under a variety of Federal Statutes.

- At least 30 states recognize the tort of negligent credentialing.  Only two have actually rejected it.

# CREDENTIALING AND LICENSING

- Trust but verify.
- Do your due diligence/background checks.
- Example 1: Prospective employee had a license in one state but then did not get a license in the new state.
- Example 2: Employee did not maintain hospital privileges.

# LOSING MEDICAL RECORDS

- Hard Copies have been lost.
- It is less common to lose electronic records.
- But there have been instances of records being lost off the servers. Be sure to have insurance.
- This creates a real problem.
- Be sure to send the ENTIRE record when requested.

# CONTINUITY OF CARE

- **If a patient with multiple co-morbidities comes to the Health Center, all complaints must be addressed, not just what the provider thinks is most important. Otherwise, an issue can be missed and there may be no follow up on it.**
- **Example 1:** A patient comes to the Health Center for the first time with a long laundry list of complaints, and one issue is not addressed (tingling in legs) and there is no follow up on it. It was a tumor which caused paralysis.

# CONTINUITY OF CARE

## Ignoring Past Developments in Subsequent Interactions

**Many physicians will properly make a note of a new complaint, yet fail to revisit those developments in subsequent interactions with the patient.**

- **Example 1: One provider sees a lump and there is no follow up with the next provider on that issue. The lump is cancerous.**

# Polling Question 3

**Does your Practice or Institution have a system in place to insure that test results are received, evaluated and acted upon?**

a) Yes

b) No

c) Not sure

# COMMUNICATION

**Failure to communicate**

**Example 1:** Test results not being communicated to a patient.

**Example 2:** If additional testing can be offered to a patient, communicate this to him or her and document it in the records. If a patient declines a recommended treatment, it must be documented.

**Example 3:** Litigation hold letters not being disseminated within the Health Center.

# COMMUNICATION

- Develop a strict and uniform “tickler system” to insure that test results are received, evaluated and acted upon.
- The system should (a) track ordered tests and referrals (b) ascertain why reports are not received on a timely basis and secure them.  Once the report is secured, the system should also require that no test can be filed by the practice until it is reviewed by the ORDERING physician.

# DOCUMENTATION

**Example 1:** Illegible records. Many handwritten notes are illegible. This provides challenges in defending the case.

**Example 2:** Failure to sign off on notes: Does your state require a physician to sign off on patient visits by a nurse practitioner or physician assistant?

**Example 3:** Failure to document conversations.

# DOCUMENTATION

**Example 4:** Failure to fix electronic records so if it shows an error it keeps repeating, or the same history repopulates. The provider may be just checking boxes vs. completing a narrative.

**Example 5:** Late entries to medical records – these can be challenging to defend.

**Example 6:** Missed appointments – document that the provider tried to get in touch with the patient and put a copy of the letter in the file, i.e., If a colposcopy appointment was scheduled, and the patient did not show up, send the patient a letter noting this.

# DOCUMENTATION

**Example 7:** No written consent in the file.

**Example 8:** Promptly obtain documentation from a hospital or other provider, i.e., an EKG performed at the hospital. Be sure to get a signed consent from the patient to get the records.

**Example 9:** Document the treatment options available – i.e., the patient can get a biopsy.

**Example 10:** If the patient declines testing due to financial concerns, document that the provider wanted to run additional tests.

# FOLLOW UP/REFERRALS

**If you are sending the patient for tests, schedule a follow up appointment. Also, the Health Center needs a system for tracking referrals, and ensuring that the patients go to the referrals. We do not want the patient to be lost to follow up.**

- **Example 1:** The patient is referred to a specialist, but does not go to the referral.
- **Example 2:** Patient returns to the Health Center and sees another provider for a twisted ankle and there is no follow-up on his cough, for which he originally came into the Health Center. The doctor should call to make sure an urgent referral is made. Do not rely on the patient to see a specialist.
- **Example 3:** Be sure to schedule follow up at an appropriate time – in 1 week, not in 2 months. Document in the medical records that the patient is to return if worse, or go to the Emergency Room.

# CHANGES TO GUIDELINES

**Ensure that your providers are following the current guidelines for their specialties.**

- **Example 1:** In prostate cancer cases, the guidelines for administering the PSA test have changed.
- **Example 2:** The ACOG guidelines have changed, as well.
- **Example 3:** If you are deviating from guidelines, you must document why.

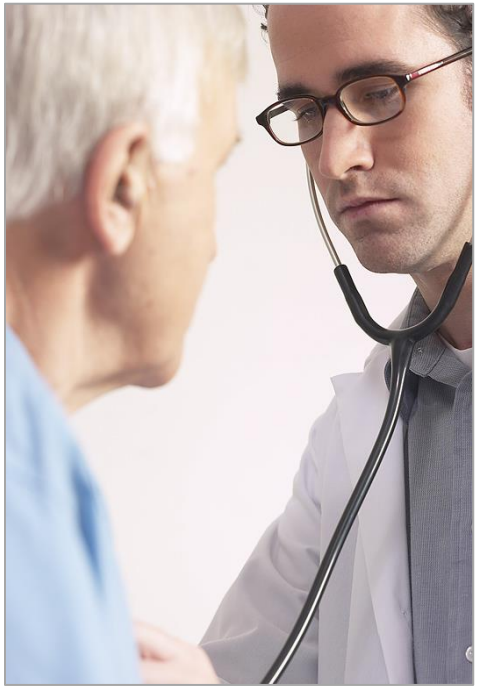
# OTHER ISSUES

**Breast cancer cases. Screening vs. diagnostic testing.**

- **Example 1:** Checking for lumps vs. sending the patient to have a mammogram or ultrasound performed.

- **Example 2:** A 24-year-old woman had fibrocystic breast disease. A mammogram was ordered, which was negative. She developed breast cancer. The only other thing that could have been done was a biopsy. The physician could have offered a biopsy when the mammogram result was negative.

# OTHER ISSUES



**Distinctions between preventive care and sick visits.**

- **Example:** A physical is more comprehensive care than a sick visit.

# OTHER ISSUES

**Physician supervision of P.A.'s**

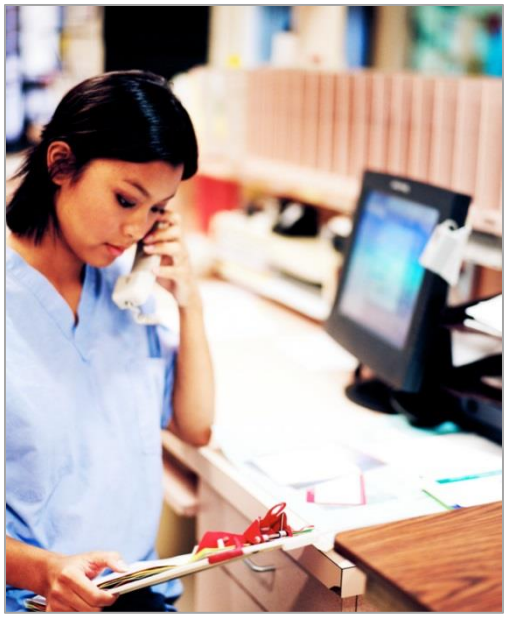
**A physician should check the P.A.'s work, as required by your state's statutes and regulations.**

**Example:** If the patient returns and complains that something is abnormal, have a doctor see the patient.

# OTHER ISSUES

**The health care providers did not follow Health Center or hospital policies and procedures.**

- **Example:** If “urgent” is written at the top of a referral, the health care provider must make sure that the referral is done.



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# OTHER ISSUES

**Language barriers between the doctor and the patient can impede communication.**

- **Example:** A doctor whose first language was Spanish treated a patient whose first language was Mandarin, and who spoke little English. Important information regarding her prenatal treatment was apparently not conveyed to the doctor.

# OTHER ISSUES

**The Health Center did not want to keep treating the patient after a claim was filed.**

# Disclaimer

***We ask you to please keep in mind that this conference is not the appropriate place to discuss detailed case specific aspects of unresolved claims or litigation. Likewise, risk management information provided in this conference is not to be considered legal advice and, as with any information provided is intended as guidance to be used consistent with the internal needs of your organization. This information is not to be viewed as required by ECRI Institute, KEPRO or HRSA. Any detailed fact specific health center issues should be addressed to the FTCA helpline and all questions regarding pending legal cases should be directed to your own organization's private attorneys.***

# Questions?

**BPHC Helpdesk:**

**1-877-974-BPHC (2742)**

**https://www.hrsa.gov/about/contact/bphc.aspx**