



## Reducing Risk by Improving Communication

**Communication failures between patient and physician are a significant factor in a patient's decision to sue; however, the risks from communication failures can be prevented or minimized. Physician education can enhance communication and interpersonal skills. Fully informing patients of the risks and benefits of anticipated treatments and being open and honest about adverse events can also improve patient satisfaction and compliance and can reduce the risk of a claim or lawsuit. Implementing systems to ensure patients are advised of adverse test results and are identified for follow-up are other ways to improve patient care and reduce liability exposure.**

Fewer than two percent of patients who suffer significant injury due to negligence initiate a malpractice claim.<sup>1</sup> Nonetheless, the incidence of medical malpractice claims has increased in the last 30 years.<sup>2</sup> Multiple factors cause a patient to file a medical malpractice claim. Of the many factors, however, communication failure has been identified as a key issue. A review of claims data from 1976 to Fall, 1996 for the Controlled Risk Insurance Company (CRICO), the professional liability insurer for Harvard University-affiliated health care institutions, employees, and affiliated physicians, reveals that 12 percent of their total claims involved communication failure as the key risk management issue.<sup>3</sup> In a separate survey, communication problems between physicians and their patients were identified as contributing to many decisions to file malpractice claims.<sup>2</sup> This article explores some of the communication issues relating to patient dissatisfaction and identifies some risk strategies to reduce the likelihood of a claim.

Every physician is not Doctor Marcus Welby. Adopting some of the television physician's communication skills with patients can, however, significantly reduce the likelihood of being sued—particularly for a primary care physician. A breakdown in communication between patient and physician may result in the patient becoming

angry. When poor communication is combined with a bad outcome, the anger may result in a claim or lawsuit. Improving communication skills can improve patient satisfaction and can simultaneously reduce the likelihood of being sued. A recent study of communication behaviors associated with physician malpractice history concluded that routine physician-patient communication for primary care physicians with prior malpractice claims differs from that of those without a claims history. In comparison with their peers who had at least two claims, primary care physicians without a claims history provided patients with more information about what to expect and the flow of the visit, laughed and used humor more frequently, and tended to solicit patients' opinions, to check their level of understanding, and to encourage them to talk.<sup>4</sup> Interestingly, the study also found that primary care physicians without claims spent longer in routine visits than their peers with claims.

Open and honest communication with patients is important for preserving the patient-physician relationship and reducing the likelihood of a claim or lawsuit. Medicine is not perfect, and to err is human. Many physicians, out of fear of attracting a lawsuit, may wish to avoid discussion of mishaps. Similarly, some attorneys recommend not making any state-

ments about an error out of concern for potential liability. By failing to reveal errors, however, a physician may, in fact, increase his or her risk of being sued. A recent survey reported that almost all (98%) of the patients who responded to the survey (149 of 400) wanted or expected their doctor to acknowledge errors, whether or not the error caused any harm.<sup>5</sup> Further, patients who suffered from moderate and severe mistakes were more likely to report the doctor to authorities or consider filing a lawsuit if the doctor failed to disclose the error.<sup>5</sup> In a separate study that evaluated factors that prompted families to file medical malpractice claims after perinatal injuries, 24% of the respondents indicated that they filed lawsuit when they realized the physician had not been completely honest about what had happened, had allowed them to believe things that were not true, or had intentionally misled them.<sup>2</sup> Twenty percent of the respondents to the same survey filed a lawsuit when they decided the courtroom was the only forum in which they could find out what happened to them from the physicians who provided care. Although disclosure will not avoid all lawsuits or reports to regulatory bodies, factual disclosure of an adverse occurrence can minimize a patient's anger and desire for revenge. Disclosure can also avoid the perception that facts were intentionally withheld, a factor that can anger patients and juries and can potentially lengthen the statute of limitations. Of course, information should be limited to facts. Speculation as to cause, characterization of events as negligence, and assignment of blame should be avoided. It is important, however, to consult legal counsel prior to any discussion involving an actual case.

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Aside from interpersonal issues, medical language can present major communication problems. The medical profession uses technical language not readily understood by many patients. Communication difficulties are compounded by differences in the native languages, cultures, and health beliefs of the physician and patient. Simple strategies such as providing written care instructions can go a long way in aiding patient understanding of the detailed information provided during a visit. Ensuring that the patient understands the instructions can be more challenging and may require the physician to check the patient's understanding or may involve use of any number of interpretation services, ranging from the AT&T language line to in-person interpreters for sign or other languages. Use of terms such as “clear liquids” may mean one thing to a health care provider and another thing to an uninformed patient. One health care provider described a patient who denied he had diabetes but informed his physician that he had “sugar.”

Informed consent issues were identified as the risk management issue in 31% of the CRICO communication-related claims. The particular issues included inadequate informed consent for surgical/invasive procedures, inadequate consent for provider identity, lack of any consent, inadequate consent for other treatment options, and inadequate consent for post-mortem procedures. The explicit requirements of informed consent can vary among states due to different state laws or court decisions. However, informed consent requires with limited exceptions a physician to warn patients regarding the risks of contemplated treatments or surgical procedures, acceptable alternate methods of treatment, and the contemplated benefits of the proposed course of treatment. Fully informing a patient of the risks and benefits of the recommended treatment as well as the risks and benefits of alternative therapies not only satisfies legal requirements but also can ensure the patient has appropriate expectations of the risks and benefits of the proposed therapy and can gain the patient's compliance with the treatment program. Knowledge of the risks can avoid a patient's anger and belief that something went wrong if, in fact, a known risk does occur. Documenting the informed consent discussion is necessary to support the physician in the event of a conflict between patient and physician. However, vague or generalized chart notes about the informed consent discussion should be avoided; detailed, specific information is needed. Again, for patients who experience language, cultural, or physical impairments, it is essential to provide adequate interpreter services and to document this fact in the medical record.

Last, but not least, physicians are encouraged to have a reliable method to ensure patients are notified of abnormal test results. In one study, approximately 17% to 32% of physicians reported having no reliable method to make sure that the results of all tests ordered were received.<sup>6</sup> One third of physicians did not always notify patients of abnormal results. Only 23% of physicians reported having a reliable method for identifying patients overdue for follow-up. These practices can put a physician at greater risk of liability exposure.

In summary, although communication failures between patient and physician are a significant factor in a patient's decision to sue, the risks from communication failures can be prevented or minimized. Physician education can enhance communication and interpersonal skills. Fully informing patients of the risks and benefits of anticipated treatments and being open and honest about adverse events can also improve patient satisfaction and compliance, and can reduce the risk that a claim or lawsuit will be filed. Implementing systems to ensure patients are advised of adverse test results and identified for follow-up are other ways to improve patient care and reduce liability exposure. ❖

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