

WHAT WOULD YOU DO?

A PRACTICAL RISK MANAGEMENT DISCUSSION

Presented by:

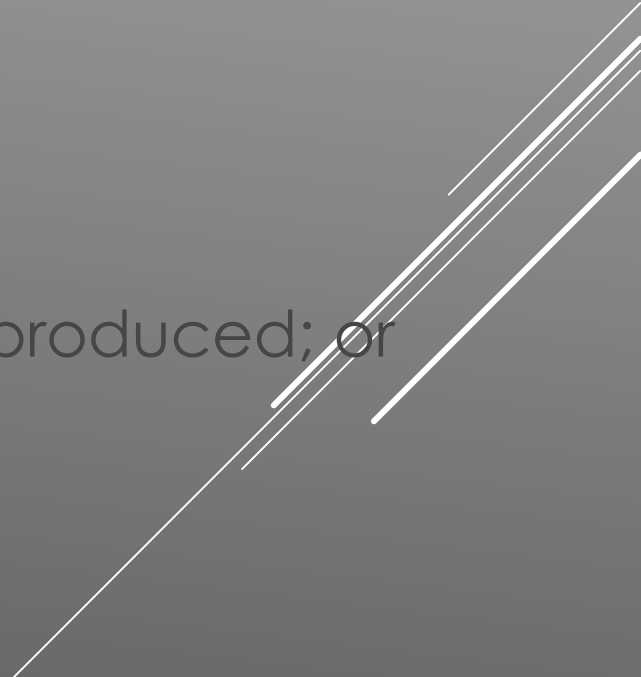
KEYSTONE MUTUAL INSURANCE
COMPANY

James Bowlin, CEO

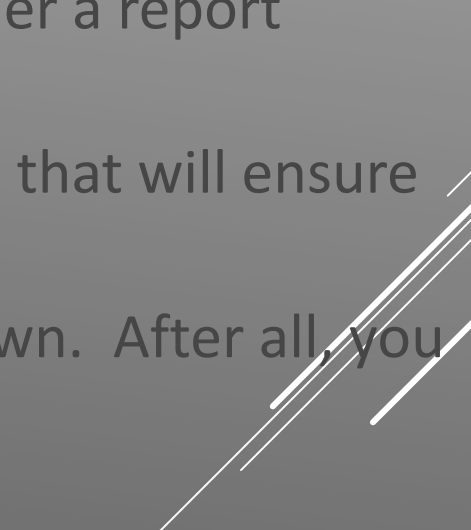
Kevin Rejent, General Counsel



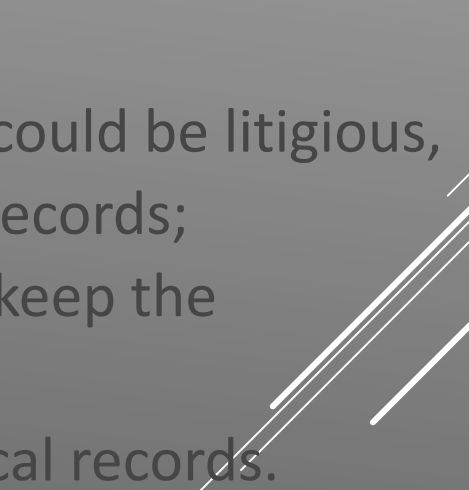
YOU HAVE RECEIVED A REQUEST FOR RECORDS FROM A PATIENT THAT HAD ONE UNPLEASANT EXPERIENCE OVER THE COURSE OF MANY VISITS. DO YOU:

- a) Send all records immediately;
 - b) Send records relating to the unpleasant experience;
 - c) Pick and choose what records you believe should be produced; or
 - d) Call your carrier.
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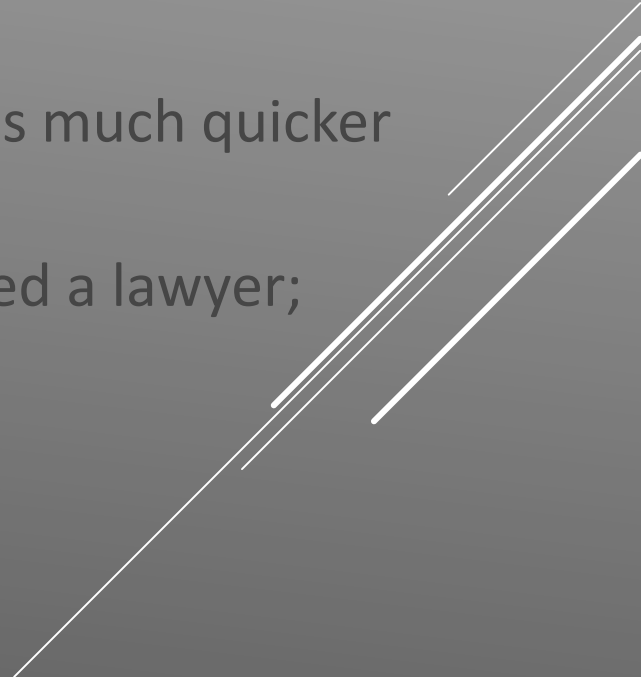
A CLAIM IS FILED AGAINST YOU WITH THE BOARD OF HEALING ARTS THAT APPEARS TO BE THE RESULT OF POOR INTERNAL COMMUNICATION OR A POOR OFFICE PROCEDURE. DO YOU:

- a) Charge the office manager with investigating and putting together a report specifically identifying the problem;
 - b) Charge the office manager with creating a new office procedure that will ensure that type of incident never occurs again;
 - c) Do nothing about the issue and respond to the Board on your own. After all, you did nothing wrong.
 - d) Call your carrier.
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IN THE COURSE OF TREATING A PARTICULAR PATIENT, YOU OBSERVE A SPOUSE OR OTHER FAMILY MEMBER EXPRESSING THEIR OPINIONS QUITE VOCALLY, AND IN A VERY ACCUSATORY MANNER. DO YOU:

- a) Make a mental note of what they are saying in case you need to remember it later;
 - b) Write a personal record of the comments. They seem like they could be litigious, so you don't want to provoke them with entries in the medical records;
 - c) Turn on a recording device whenever you speak with them and keep the recordings somewhere safe; or
 - d) Note the family member's comments and concerns in the medical records.
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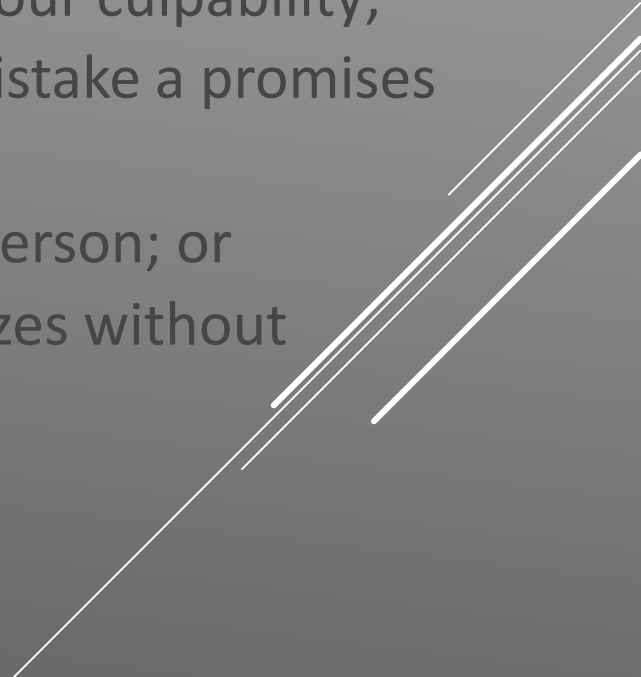
A LONG-TIME PATIENT WISHES TO MEET WITH YOU TO DISCUSS RESOLUTION OF A POTENTIAL CLAIM (FOR WHICH THEY HAVE ALREADY REQUESTED RECORDS). DO YOU:

- a) Speak with them. We're reasonable people. We can resolve this much quicker than lawyers;
 - b) Agree to meet with them only if they promise they have not hired a lawyer;
 - c) Meet with them and record the conversation;
 - d) Politely decline and call your carrier.
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THE WIFE OF A PLAINTIFF IS ALSO A PATIENT. SHE SAYS THEY REALLY WANT THE END THE CASE, BUT HER HUSBAND JUST NEEDS TO KNOW THAT YOU ARE SORRY FOR PROVIDING SUB-STANDARD CARE. SHE PROMISES THEY WILL INSTRUCT THEIR LAWYER TO ACCEPT A LESSER SETTLEMENT, OR EVEN DISMISS THE CASE, IF YOU WOULD JUST APOLOGIZE. DO YOU:

- a) Tell the wife to relay to her husband how sorry you are;
- b) Tell the wife to get out of your office and never return;
- c) Give a coy “non-apology apology.”
- d) Tell her that you appreciate that, and if she means it, please have her lawyer contact your lawyer to see if something along those lines can be arranged.

YOU KNOW YOU MADE A MISTAKE. THE PATIENT KNOWS YOU MADE A MISTAKE. HECK, YOUR RECEPTIONIST COULD TELL YOU MADE A MISTAKE. DO YOU:

- a) Begin adding items to the medical records that might mitigate your culpability;
 - b) Write the patient a long, emotional apology that admits your mistake and promises to make it right;
 - c) Ask the patient to meet with you so that you may apologize in person; or
 - d) Call your carrier to see if an apology can be crafted that apologizes without increasing potential exposure.
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YOU HAVE BEEN HACKED. ALL OF YOUR PATIENT RECORDS MAY HAVE BEEN COMPROMISED. DO YOU:

- a) Cross your fingers and hope nothing sensitive leaks;
 - b) Contact only those patients whose records you KNOW have been compromised;
 - c) Contact an IT specialist who deals with HIPAA data breach remediation; or
 - d) Call your carrier to make a claim on your Cyber-Liability policy.
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AFTER TREATING A PATIENT, YOU ARE SUPPOSED TO SEND THE RECORDS TO “DR. STEVEN P. JOHNSON” SO THE PATIENT CAN CONTINUE TREATMENT. YOUR STAFF FAXES THE RECORDS TO “DR. STEVEN D. JOHNSON” AND CONSIDERS THE MATTER CLOSED. TWO MONTHS LATER, DR. STEVEN P. JOHNSON ASKS FOR RECORDS AND SAYS THE PATIENT HAS NOT RECEIVED CARE BECAUSE THE RECORDS WERE NOT SENT. THE PATIENT THREATENS TO SUE FOR VIOLATION OF HIPAA (SENDING THE RECORDS TO THE WRONG PROVIDER), AS WELL AS PAIN AND SUFFERING RELATING TO THE TIME THEY WEREN'T RECEIVING TREATMENT. DO YOU:

- a) Ask them how much they want because you know HIPAA suits are serious;
- b) Contact both Dr. Johnsons to provide them as much information as possible to resolve the situation;
- c) Immediately implement new record-sending policies;
- d) Calmly contact your carrier, realizing that HIPAA does not provide a private right of action and the patient has a duty to seek treatment and will likely be at least partially culpable for any delay in treatment.

YOU ARE PART OF A FOUR-PHYSICIAN TEAM TREATING A HOSPITALIZED PATIENT, AND IT IS NOT GOING WELL. YOU ARE CONCERNED ONE OF THE PHYSICIANS IS NOT MEETING THE STANDARD OF CARE AND WILL CAUSE A LAWSUIT TO BE FILED AGAINST THE ENTIRE TEAM. DO YOU:

- a) Keep personal notes to protect yourself in case a lawsuit is filed;
- b) Note your concerns about the physician and treatment in the medical records;
- c) Suggest to the patient and/or their family that the substandard physician be replaced;
- d) Do the best you can, make thorough entries into the records, and do what you can to move the care in a positive direction.

IT'S 6 PM. YOU HAD ROUNDS THIS MORNING AND HAVE BEEN SEEING PATIENTS NON-STOP SINCE 10 AM WITHOUT ANY BREAK. YOU NEED TO PICK UP YOUR SON FROM SOCCER PRACTICE IN HALF AN HOUR. ACCORDING TO THE RECORDS YOU SKIM BEFORE SEEING YOUR SECOND TO LAST PATIENT, THEY HAVE THE SAME SYMPTOMS AS SEVEN OTHER PATIENTS YOU HAVE SEEN TODAY, AND THE ILLNESS IS EASILY TREATABLE. THEY HAVE BEEN WAITING TWO HOURS TO SEE YOU, AND ARE ANXIOUS TO LEAVE. DO YOU:

- a) Tell them that you have great news! You know what they are suffering from (confirmed by a quick exam), give them a prescription, and let them get back to their life;
- b) Ask them if they're OK with a quick visit since you need to get going, or if they'd prefer to come back tomorrow;
- c) Ask your nurse to run a few tests to confirm what you think the diagnosis will be and let the patient know you will call them with the results;
- d) Treat the patient as someone who values your time and expertise enough to wait several hours to see you. Perform an exam as you would your first patient of the day. Make sure the patient's questions are answered and they understand what they need to do next.

YOU HAVE RECENTLY NOTICED YOUR OFFICE JUST ISN'T CLICKING LIKE IT ONCE WAS. THE STAFF SEEMS LESS COLLEGIAL, WAITING TIMES ARE INCREASING, AND PATIENT SATISFACTION SEEMS TO BE DOWN. DO YOU:

- ▶ a) Tweak some policies and procedures to try to get the magic back.
- ▶ b) Ask your staff who seems to be the problem and get rid of them. After all, one bad apple can spoil the bunch.
- ▶ c) Grit your teeth and push through. This bump in the road will likely pass.
- ▶ d) Ask your patients for feedback on their experience.

QUESTIONS/COMMENTS?
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