

WVU Risk Management

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Today's Discussion Outline

- What is Risk Management?
- Brief Legal Primer
- Areas of concern – How to Avoid being “Sued”
- What if
 - There is an injury
 - I get “sued”

Who Do You Work For?

Differentiating the Organizations

■ Three Separate Legal Entities

1. WVU – The University – **Your Employer**
2. WVUH – The Hospital – “Ruby” – Where you will see inpatients – **Not** Your Employer
3. UHA – Medical Corporation – Where you will see outpatients – **Not** Your Employer.

What does the WVU Risk Management Office do?

- Manage medical malpractice claims involving faculty, staff, residents & students.
- Help obtain and preserve evidence to defend claims
- Answer your questions about legal issues related to patient care
- Monitor and investigate compliance with applicable laws
- Provide educational programs and in-services

Goals

- Improve quality of health care and patient safety
- Identify and assist in solving systemic problems
- Identify potential claimants in a timely manner
- Decrease number of lawsuits filed
- Decrease financial impact of the lawsuits that are filed

You are a big part in how well we meet our goals

- Practice within standard of care
- Prevent problems before they occur
- Communicate with patients, other providers
and the RM Office
- Form good relationship with patients
- Give Informed Consent
- Provide good Documentation

Why is Risk Management and Patient Safety Important?

- According to the Institute of Medicine, more deaths occur each year from medical errors than from motor vehicle accidents, falls, drowning and airplane accidents combined.

Brief Legal Primer

- Forums – Criminal v. Civil
- Laws – Statutory v Case Law
- Anatomy of a malpractice lawsuit

Forums

■ Criminal law

- State is always plaintiff
- i.e. child abuse cases, gunshot, etc
- Criminal penalties

■ Civil Law

- Patient or family is plaintiff
- i.e. medical negligence or medical malpractice
- Money

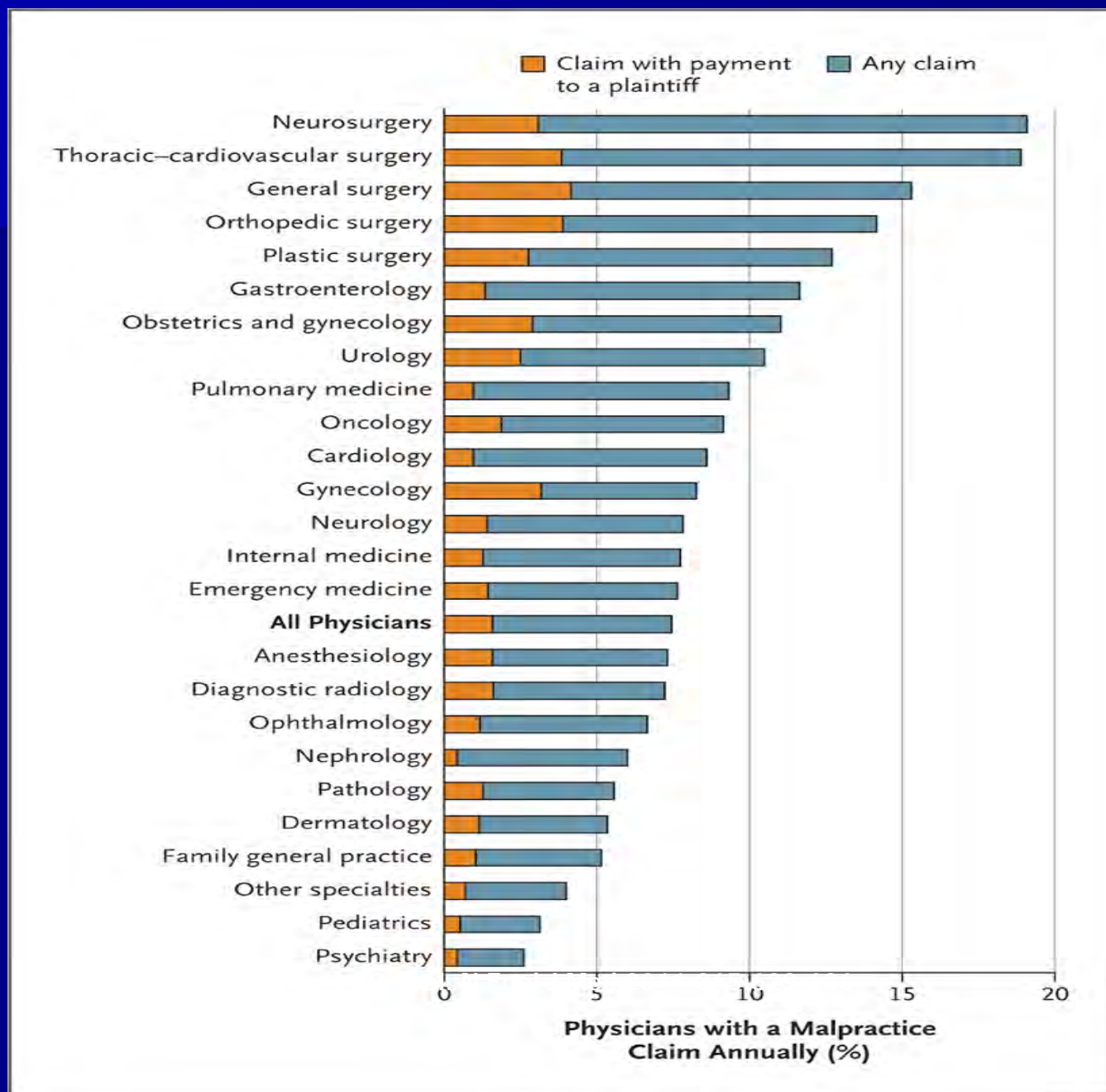
Laws

- Confidentiality is not absolute – there are certain mandatory reporting requirements
 - Child abuse
 - Incapacitated adult abuse
 - Contagious diseases
 - HIV
 - Stabbings/gun shot wounds
 - + many more
- WV Board of Medicine
- Hospital Bylaws/Rules/Regulations

Laws/Rules/Regulations relating to practice of Medicine in WV

- WV Medical Professional Liability Act (MPLA)
 - Standard of Care
 - Statute of Limitations
 - Expert witness requirements
 - Cap on non-economic damages
 - Notice of Claim/Certificate of Merit
- Health Care Quality Improvement Act of 1986

Proportion of Physicians Facing a Malpractice Claim Annually, According to Specialty.



Anatomy of a Civil Lawsuit

The Process

(WV – Medical Malpractice)

- Notice of Claim – we intend to sue you
- Certificate of Merit – another physician has reviewed the medical record and states that you have deviated from the standard of care and that deviation harmed a patient.
- Summons & Complaint – the Lawsuit
- Answer – Defendant's responses to the allegations
- Discovery – Gathering information through Interrogatories & Depositions
- Mediation – an attempt to resolve the case.
- Trial

Anatomy of a Civil Lawsuit

The Substance

(Elements of a Civil Case)

- Duty
 - is there a patient physician relationship?
- Breach
 - was the standard of care breached? Skill & care - Negligence – absence of reasonable care - malpractice
- Causation
 - did the breach cause the injury?
- Damages
 - to what extent did the injury cause damage

Standard of Care

- Health care provider must exercise that degree of care, skill and learning required or expected of a reasonable prudent health care provider in the same profession acting in the same or similar circumstances
- Question - did the provider act reasonably under these circumstances?
- Malpractice - Negligence is the absence of reasonable or ordinary care in the diagnosis and/or treatment of a patient

Legal Documents You May Receive & What to do with them

- **Notice of Claim** – call and send to RM
- **Certificate of Merit** – call and send to RM
- **Summons & Complaint** – call and send to RM
- **Subpoena** – a court order to appear and testify – call and send to RM

What do I do if I get any one of these? Call 293-3584.

There are deadlines by law, if we miss them we may have to forfeit...no one likes to forfeit...it can be costly!

Risk Management cannot help if they don't know you have a problem!

Communication with Risk Management

- Other times when you should call Risk Management?
 - If an unexpected complication occurs.
 - If a patient is upset or angry even after attempts to resolve a problem.
 - Definitely, if you see something like this:



Why do Patients Sue?

- Unexpected adverse outcomes of care
- Sentinel events
- Medical errors
- Misdiagnosis or delays in diagnosis
- Unexpected deaths
- Dissatisfaction with treatment outcomes or quality of care
- Inability to communicate with providers

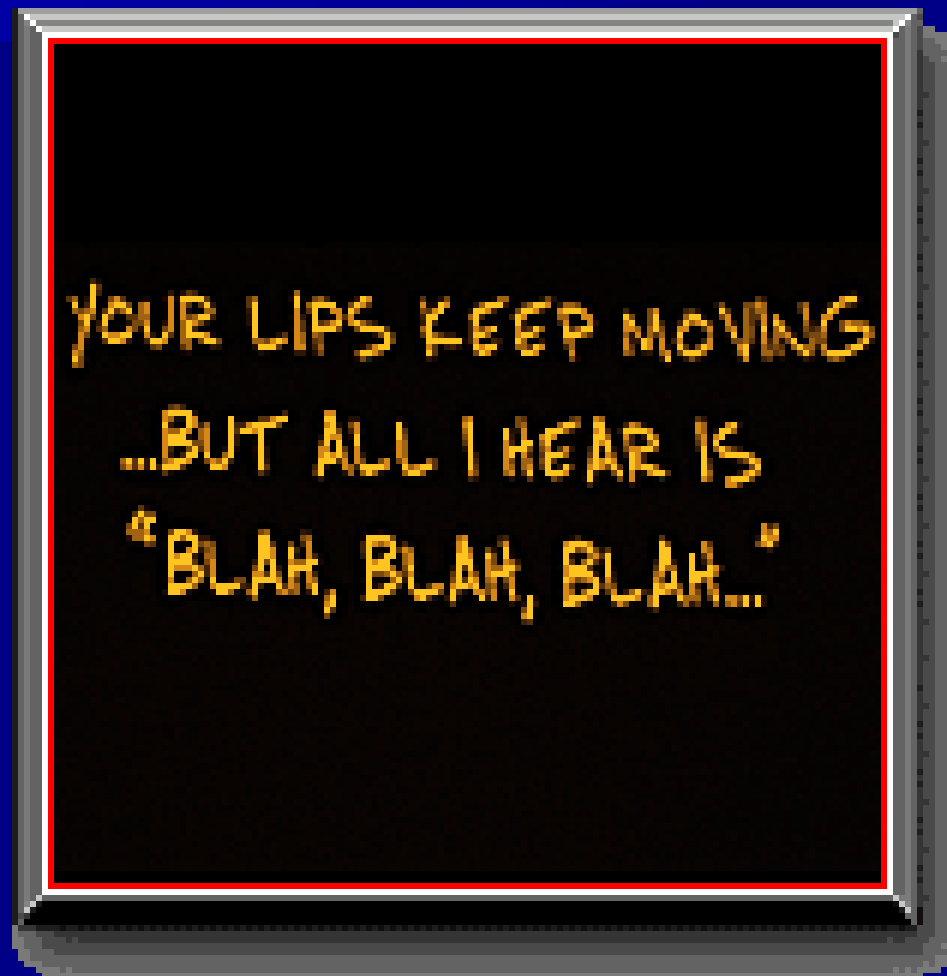
Areas of Concern

- How to Avoid a lawsuit
 - Communication – be good at it with everyone
 - Informed Consent – take your time, explain what you are doing, answer all questions
 - Documentation – so everyone can *read* it
 - Decision making – WV Health Care Decisions Act
 - Confidentiality – loose lips sink ships

Common Communication Concerns

- Don't just talk, listen too.
- Be responsive to patients and families but
- Attitude – educate and convince, do not manipulate and coerce!
- Clarify issues and answer questions using non-technical language
- Follow up

Some Patients have trouble communicating



Patients see things differently than you
or me



Communication

Why are quality physician/patient relationships important?

- Impact on care
- Perception of competence
- Image of health care facility
- Practice building - patients are consumers
- Litigation

Informed Consent

- An adult patient with decision making capacity has a right to decide how and when to be treated.
- WV adopted the patient need standard - What does the average, reasonable person need to know to make an intelligent choice?
- Cross v. Trapp, 294 SE2d 445 (WV 1982)

Elements of Informed Consent

- Diagnosis
- Nature and purpose of treatment
- Who will perform the procedure
- Benefits and Risks
- Realistic probability of success
- Alternatives and their benefits and risks
- Prognosis if no treatment
- Answering patient's questions

Other Aspects of Informed Consent

- Shared decision making
- Written v. oral v. implied consent
- Persuasion v. coercion
- Informed refusal
- Exceptions to general rule
 - Mature minors
 - Emergency
 - Privilege
 - Waiver

Documentation

- A complete, well documented medical record improves patient care but is also the best defense to a malpractice suit or claim.
 - (Readability is always an issue – especially if it is not legible by the average person)
 - Write to be read by someone else.
- Be objective
- Document follow-up

Purpose of Records

- Identify patient
- Chronologically document, justify and support care
- Plan and evaluate treatment
- Facilitate communication
- Continuity of care
- Show outcomes
- Provide evidence of care and treatment
- Provide data for education and research

Do's of Documentation

- Complete record as soon as possible
- Be objective - document facts/observations
- Show the thought process
- Be accurate - use clear and concise language
- Chart both positive and negative findings
- Chart anything unusual or unexpected
- Establish a routine of charting
- Use only accepted standard abbreviations

Documentation Do's

- Document telephone calls to/from patients
- Document treatment interruptions
- Document follow up of tests/labs/procedures
- Document discharge and/or post treatment instructions
- Give all information on drugs ordered

Documentation Don'ts

- Use vague, ambiguous or subjective terms
- Make statements against a colleague's interest
- Use abbreviations that offend or can be misunderstood

What If a Patient is Injured?

- Care for the patient
- Notify the attending
- ID defective equipment
- Complete the medical record documents for patient care
- Notify Risk Management ASAP
- Discuss facts - Do not discuss guilt/fault

What If a Patient is Injured?

- Do not release records without proper authorization
- Do not jump to conclusions
- Do not blame or accuse others
- Never make promises or offer to waive bills or make offers of compensation without express approval from Risk Management

What If I “get sued”?

- Trust your attorney but stay involved to assist in the defense – condition of insurance (occurrence v. claims made & tail)
- Understand that the legal process takes time.
- Learn from the process – ask yourself “What can I do differently in the future?”
- Expect an emotional response like:
 - Anger
 - Fear
 - Denial

Summary

Tips for Avoiding Lawsuits

- Create complete, accurate and *legible* medical records
- Maintain current clinical competence
- Know limits - when to consult others
- Address complications as they occur
- Good communication and patient relationships
- Respect patient rights
 - Information
 - Informed consent
 - Privacy and confidentiality
 - Continuity of care

Four stone pillars of increasing height, each featuring a classical relief carving of figures. The pillars are set against a white background with a blue and yellow curved banner at the top.

WVU Health Sciences Center

Applying HIPAA and HITECH

HSC Privacy Office

So, what is HIPAA/HITECH?

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Privacy Rule
 - Security Rule
- Health Information Technology for Economic and Clinical Health Act (HITECH)
 - Adds “teeth” to HIPAA, enforcement, audits, state AG actions



So, what is HIPAA/HITECH?

- HIPAA Privacy Rule
 - Concerned with maintaining the privacy of patient information (electronic or paper).
- HIPAA Security Rule
 - Concerned with maintaining safeguards protecting electronic PHI.



Why Do HIPAA/HITECH Matter?

- Law
 - Civil, criminal penalties for individuals, institution
- Policy
 - HSC, WVUH, UHA Policies
 - HSC & WVU IT Policies
- Accountability/Transparency/Integrity
 - To patients
 - To the institution
 - To students, residents, faculty, and staff

What's at stake?

- Civil Penalties (Money Damages)
 - Range from \$100.00 to \$1.5 Million!
- Criminal Penalties (Possible Jailtime)
 - Fines from \$50,000.00 to \$250,000.00 and
 - Imprisonment for up to 10 years
 - Criminal charges can be brought against employees of covered entities
- @ WVU
 - Investigation of possible violations by HIPAA Investigative Team
 - **Discipline up to and including loss of employment, expulsion from program**

What's at stake?

- **Incident:** A staff member at St. Luke's impermissibly disclosed a patient's sensitive information concerning HIV status, medical care, STD's, medications, mental health, and other PHI by faxing it directly to the employer without authorization rather than sending it to the requested personal PO Box.
- **Penalty:** The hospital had to **pay \$387,200** in fines and implement a comprehensive corrective action plan.
- **Incident:** A visiting cardiothoracic surgeon working as a researcher at UCLA School of Medicine, viewed a celebrity's records and those of his immediate supervisor and former co-workers.
- **Penalty:** He became the first person **sentenced to prison** for unauthorized access to medical records in violation of HIPAA.

What's at stake?

- **Incident:** Memorial Hermann Health System improperly disclosed a patient's name to members of the media without the patient's consent (This stems from an incident that drew national media attention).
- **Penalty:** Memorial Hermann agreed to pay \$2.4 million and adopt a corrective action plan.
- **Incident:** Lifespan, a company based in Providence, R.I., reported a possible privacy breach of Protected Health Information (PHI) of over 25,000 patients when a laptop containing sensitive patient information was stolen from an employee's car after being broken into.
- **Lesson:** Don't leave laptops, thumb drives, or any other electronic devices you use for work in your car.

The Details

What You Need to Know About HIPAA
as a health care provider

The Devil is in the Details

Objectives

- Recognize the importance of HIPAA regulations.
- Know how the regulations apply in daily practice.

What is “PHI”?

- PHI is
 - Information created or received by a health care provider (that’s us!), health plan, or health clearinghouse
 - **Relating to past, present, or future health of an individual, provision of health care, or payment for health care**
 - **Either identifies the individual or provides a “reasonable basis” for identification**
 - Information in all forms (oral, written, or electronic)

Details – Privacy Rule

- HIPAA Privacy Rule
 - A covered entity may not use or disclose protected health information, unless an exception applies
 - There are **only three reasons** a faculty member, resident, or student could legitimately have PHI outside of the medical record
 - Valid, HIPAA-compliant authorization from the patient for a legitimate purpose
 - IRB protocol in place and being followed as concerns PHI
 - It is not really PHI, meaning it is de-identified
 - If you have it for any other reason, think you need it for any other reason, or know anyone else has it for any other reason, you should seek guidance about what to do **before you do it**

Where SHOULD I be keeping PHI?

- #1 – If it relates to treatment, payment or health care operations in any way it should always be in the medical record and only be in the medical record, unless:
- #2 – You have a legitimate reason to keep it (teaching, research, Boards), it should be either de-identified, you should have a specific authorization on file, or an IRB protocol in place. Period.

The Golden Rules

- Use information only when necessary to perform your responsibilities.
- Use only the minimum amount of information necessary to perform your responsibilities.

Verbal

- Be aware of your surroundings at all times when discussing patient information.
 - Do not discuss patient information in hallways, elevators, or the cafeteria.
- Before discussing a patient's condition, treatment, or other protected health information (PHI) with his/her family member(s), determine if the patient would object to such a disclosure, and be as discreet as possible if in an area where other patients / families are sitting.

Verbal

- Do not leave telephone messages that include PHI.
- Know to whom you are speaking (visitor, patient, family member).
 - If information is requested via telephone, confirm the patient's birth date and confirm the disclosure is appropriate.
- Do not discuss ANY PHI with other residents (that are not on your team), family, or friends.

Written

- Dispose of patient information in designated confidential trash bins at the conclusion of each day or at the conclusion the patient's treatment.
 - Do NOT dispose of in regular trash bin.
- Use patients' initials when working up patients.
- If doing a formal patient case presentation, use “Day 0, 1, 2, 3, ...” instead of specific dates, such as March 6, 2014.

Written

- Check printers, faxes, copy machines when you are finished using them.
- Return any paper charts or patient files to their designated areas.

Electronic

- Do NOT search for yourself or any family members/friends on electronic medical record (EMR).
 - Do not view the EMR of patients who are not on/related to your service.
- Ensure you log out of the EMR before leaving any computer unattended.
 - Do not allow others to access the EMR under your credentials, and do not access the EMR under credentials other than your own.

Electronic

- Ensure your computer, laptop, and iPad/tablet are physically secured in locked areas when left unattended.
- Create a strong password and do NOT share your username/password with anyone.
 - Password protect mobile devices
- Do not keep PHI or confidential data on portable devices.
- Ensure your devices have necessary anti-virus and security updates.

Electronic

- Do NOT send PHI via email, text, or otherwise.
- Do not communicate with patients via email.
- Never click on any link in an email from an unknown person or source you don't trust.
- Never open any email attachment from an unknown person or source you don't trust.

Electronic

- Do NOT open, forward, or reply to suspicious emails.
- Do NOT provide your username, password, or other personal information in an email request regardless of who appears to be asking.
- Verify fax numbers before sending a fax.
- Contact the IT Help Desk if you have any questions about the validity of an email.

Electronic

- Social Media Policy: acceptable form of communication if, and only if, the communication is professional and complies with federal and state law.
 - Express only your personal opinions
 - Respect the privacy of others
 - Be honest and accurate
 - Post only appropriate and respectful content
 - Keep your professional activity separate from your personal social media activity.

Privacy Breach

- Physically lost or stolen information
 - Paper copies
 - Electronic devices
 - Anytime, anywhere
- Misdirected information
 - Verbal messages left for the wrong person
 - Mislabeled mail
 - PHI placed on social media

Reporting a Privacy Breach

- Report breaches in a timely manner.
 - Not reporting will result in more severe disciplinary action.
- Report a concern or potential breach of Protected Health Information by contacting the WVU HSC Privacy Office at (304)293-3584 or WVUH Privacy Office at (304)598-4109.
- Mobile devices that have access to PHI and are stolen must be reported immediately, even if personally owned.

What's at stake?

- Emotional toll
 - Questioned by an investigative team who does not know you and ultimately has the ability to make decisions about what the consequences will be
 - Decreased productivity and lost time due to stress and worry
- Physical costs related to potential fines and possibly having to defend yourself in a court case
- Termination from your residency program.



Summary

- It can be easy to dismiss HIPAA as just another law or a required training we have to do at the beginning of every year
- It's very likely you will see violations of HIPAA occur every day while you are on rotations, BUT remember :
 - It never makes it okay or acceptable
 - You are responsible for your actions
 - Don't be afraid to remind your colleagues of their duties regarding patient privacy (we're a team!)
- Please remember there can be serious consequences for a HIPAA privacy breach.

QUESTIONS?

WVU – HSC Privacy Office
(304) 293-3584

WVU – HSC IT Security Office
(304) 293-4683

For useful privacy tips and tools, follow us on Twitter:



@WVUHSCPrivacy