

# 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
- Assist and help; not discipline or punish.

# 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/Rules/Regulations
- Anatomy of a malpractice lawsuit

# Forums

## ■ Criminal law

- State is always plaintiff
- i.e. child abuse cases, gunshot, etc
- Criminal penalties
- You are a fact witness

## ■ Civil Law

- Patient or family is plaintiff
- i.e. medical negligence or medical malpractice
- Money
- You might be a defendant

# 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

# 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

- Call Risk Management:
  - If an unexpected complication occurs.
  - If a patient is upset or angry even after attempts to resolve a problem.
  - If there is something we can do to help you.

# 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



# 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



# 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