

Sidestepping Risk

Watch out! These nine pitfalls can trip you up and cause malpractice liability troubles.

The liability landscape for physicians is changing rapidly, as new technology and new restrictions on medical expenditures drive doctors into often-unexplored areas of practice.

But knowing what's looming can help you steer clear of risk management pitfalls. Here's a look at nine particularly troubling areas of liability you face.

1 MEDICAL PROCEDURE LIABILITY STILL DOMINATES.

"If you're a surgeon, your biggest trouble area is and always will be situations where a technical problem or surgical error occurred," says Waldene Drake, RN, MBA, vice president for risk management and patient safety at Cooperative of American Physicians Inc., a malpractice carrier based in Los Angeles. "What often makes unexpected surgical outcomes worse is when patients had high expectations for those outcomes."

In addition, the age-old problem of reimbursement restrictions takes on a new twist at it drives doctors to undertake less familiar procedures. "We see primary care doctors—the family practitioners and the internists—doing more and more of the care themselves, because in an HMO or when the patient has limited or no insurance, it's harder to refer to a specialist."

2 SPA PROCEDURE LIABILITY LOOMS.

Be aware that extensions of your practice come with extended risks.

"Many doctors looking for a way to make a little more money are moving into hair removal, dermabrasion, Botox and new products that make fuller lips and cheeks," Drake says. "We see less-trained people doing that even though by law, only a nurse or physician's assistant can do so under the direction of an MD."

3 COMMUNICATION AND DOCUMENTATION BREAKDOWNS PERSIST.

"One problem is failing to take a complete history and documenting pertinent discussions with patients," says Barbara Worsely,

vice president for risk management at The SCPIE Companies, Los Angeles. "And that includes exchanges of information conducted by telephone, fax or letter."

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Worsely emphasizes that too many doctors fail to record when patients refuse to follow their advice. Too few, she adds, use e-mails wisely. "They're one of the easiest forms of communications to preserve."

4 "BUSINESS PROBLEMS" CAN CAUSE TROUBLE.

Your practice management prowess—or lack thereof—can contribute to medical malpractice claims. In this vein, managing practice details counts.

"Too many doctors don't have processes for getting information from where it was to where it needs to be," says Kathleen Roman, risk management education leader at The Medical Protective Co., Greenfield, Ind. "Too often, those processes depend on who has the time to—and who is willing to—do them. The doctor can end up being blindsided by a test result that never came back or one that did, but was put in the patient's file before he or she saw it."

5 TECHNOLOGY ISSUES CAN VEX PHYSICIANS.

Changes in the standard of care occur as new technologies emerge.

"Some physicians adopt technology right away and some don't," Roman says. "There's the potential for increased liability in both cases. The ones who adopt early make the mistakes caused by being too eager. But the ones who adopt later get in trouble when the new way proves to be superior."

6 ELECTIVE SURGERIES CAN BE PROBLEMATIC.

"Patients tend to have very high expecta-

tions," Drake says. "Doctors tend to think that cosmetic procedures are the only elective surgeries, but we see the most claims from orthopedic procedures—such as an 80-year-old getting a knee replacement."

7 MORE PRESCRIPTIONS MEANS MORE PRESCRIPTION-RELATED LIABILITY.

"Doctors are writing more scripts per patient," Drake says. "And that means there are three places where things can go wrong—the physician writing it, the staffer calling it in and the pharmacist filling it."

8 PATIENT NON-COMPLIANCE CAN LEAD TO SUITS.

Sometimes it's not your performance but the patient's performance that can create liability. "It's a problem when a doctor prescribes a test—and then the patient disappears," Roman says. "We like to see a faxed statement to the referred physician saying the patient is supposed to schedule a test and asking for a response if he or she does not within a certain amount of time or a process for gently nagging the patient a few days later."

Roman emphasizes that processes need to be standardized. "They're very time-intensive," she concedes, "but we need better education so that staff understand the importance of 'owning' messages or information until they're safely transferred to the appropriate individual or place."

9 OBESE PATIENTS REPRESENT A GROWING THREAT.

"There is liability associated with the obese patient," Worsely says, "and because so many are obese, doctors need to take special care in the office environment and in their communications processes about explaining the risks of their condition. These patients need to accept the fact that it's difficult to diagnose or treat obese patients' medical conditions, period."

While there is no sure-fire way to avoid all malpractice risk, experts say being aware of these nine areas can go a long way toward protecting your practice and safeguarding your career. —Russell A. Jackson