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RISK MANAGEMENT NEWS

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A Physician's Guide to Cultural Competency

The American Medical Association (AMA) has designated cultural competency as the fifth competency for physicians. The literature increasingly documents the existence of racial and ethnic disparities in healthcare in the United States. The AMA cultural competence initiative was a response to the changes in demographics of the United States. Its goal is to assist medical professionals and healthcare institutions in developing systems that enable physicians to provide patient-centered care that acknowledges and respects the diverse backgrounds of their patients. Why this remarkable interest in communication and culture? The United States is a highly multilingual country with over 300 languages spoken from which a more diverse population has evolved. There are continuing disparities in the incidence of illness and death among minority populations as compared to the overall population. Approximately 17 percent of the United States population speaks a language other than English at home. Of these 49.63 million people, 45 percent have difficulty speaking English. *[United Consensus Bureau, United States: Selected Social Characteristics: 2004]*

Since our perception of health and disease varies by culture, these individual preferences affect the approaches to health care. Culture guides our everyday behavior and offers a context in which to understand, judge or interpret the action of others. Culture also influences how people seek healthcare and how they behave toward healthcare professionals. Providers must possess the ability and knowledge to communicate and to understand health behaviors influenced by culture. Having this ability and knowledge can eliminate barriers to the delivery of quality healthcare. Education in cultural competence increases one's sensitivity, knowledge, understanding and appreciation of the commonly held cultural beliefs and communication styles of a patient's cultural group. It also assists the physician in assessing how cultural beliefs and behaviors are affecting patients and their families. Patient care is optimized when physicians strive to increase their interpersonal and negotiating skills between a patient's culture and Western biomedicine.

There seems to be no one recipe for cultural competency. It's an ongoing continual adaptation and reevaluation of the way things are done. Cultural diversity tests the healthcare provider's ability to truly care for patients, and demonstrate not only clinical proficiency, but cultural competency as well.

Culture can have important clinical consequences in the patient-clinician relationship. Failure to consider a patient's cultural and linguistic issues can result in inaccurate histories, non-adherence, poor continuity of care, less preventive screening, miscommunication, difficulties with informed consent, decreased access to care, use of harmful remedies, and decreased satisfaction with care.

Recognition of and appropriate response to a patient's cultural values is important because failure to do so can result in a variety of adverse clinical consequences. Rather than being insulted by another culture's perspective, culturally competent providers welcome collaboration and cooperation.

The road to cultural competency may be a long one with many obstacles encountered along the way. However, understanding and demonstrating cultural competency within a diverse patient population may ultimately render enhanced quality of patient care, beneficial outcomes and patient satisfaction. Take for example the Latino cultural belief that the individual can do little to alter fate. Latinos are significantly more likely than whites to believe that having cancer is like getting a death sentence, to prefer not to know if they had cancer, and to believe that cancer is God's punishment. Having such beliefs can result in important adverse health consequences, including less preventive screening and avoidance of effective therapy for cancer and chronic diseases. A culturally sensitive clinician may avoid the adverse consequences of such beliefs by using the patient's own cultural beliefs and values, pointing out that "Perhaps God doesn't want you to get sick and die yet," or "You need to take care of yourself so that you can be there for your family."

Consider the following guidelines as an initial means to enhancing your understanding and mastering of the skills necessary to communicate cultural competency within your diverse patient population.

(Continued on page 2)

(Continued from page 1)

Guidelines for Improving Cultural Competency

- "Treat patients in the same manner you would want to be treated," may not hold true when dealing with patients of various ethnic backgrounds. *Culture* determines the roles for polite, caring behavior and will formulate the patient's concept of a satisfactory relationship.
- Establish a more formal relationship with patients of another culture. In most countries, relationships that maintain a distance between the clinician and patient may be desired.
- Except for children and very young adults, use the patient's last name when addressing him or her.
- Be understanding of patients who fail to look you in the eye or ask questions about treatment. In many cultures, it is disrespectful to look directly at another person (especially one in authority) or to ask him or her questions.
- Do not make assumptions about the patient's ideas about the ways to maintain health, the cause of illness or the means to prevent or cure it. Adopt a line of questioning that will help determine some of the patient's central beliefs about health and illness prevention.
- Invite the patient to be open and honest. Do not disregard beliefs that are generally unaccepted in Western biomedicine. Often, patients are afraid to tell Western clinicians that they are seeing an alternative medicine practitioner or taking an alternative medication because they may have previously experienced ridicule.
- Do not ignore a patient's beliefs in the possible effects of the supernatural. If the patient believes that an illness has been caused by supernatural influences, e.g., the evil eye, bewitchment, etc. the patient is not likely to take any responsibility for his or her cure. Belief in the supernatural may result in his or her failure to either follow medical advice or comply with the treatment plan. When this occurs, inquire indirectly about the patient's belief in the supernatural or use of nontraditional cures. Inquire tactfully by saying something like, "Many of my patients from______ believe, do, or visit______. Do you?"
- Ascertain the value of involving family in the patient's treatment. In many cultures, medical decisions are made by the immediate family or the extended family. There is greater likelihood of gaining the patient's compliance with the course of treatment if the family can be involved in the decision-making process and the treatment plan.
- Refrain from relaying bad news or explaining in detail complications that may result from a particular course of treatment. "The need to know" is a unique American trait. In many cultures, placing oneself in the doctor's hands represents an act of trust and a desire to transfer the responsibility for treatment to the physician. Watch for and respect signs that the patient has learned as much as he or she is willing and able.
- Whenever possible, incorporate a patient's harmless alternative medication or home remedies into the treatment plan. This will encourage trust in the treatment and will help assure that the treatment plan is followed.

Cultural Competence Checklist for Success

- ❑ Make your environment more welcoming and attractive based on patient cultural backgrounds.
- ❑ Avoid stereotyping and misapplication of scientific knowledge.
- ❑ Use educational approaches and materials that would benefit your diverse patient population.
- ❑ Understand there is no recipe.
- ❑ Hire staff that reflects your patient population.
- ❑ Accept that cultural competency is continually evolving.
- ❑ Be creative in finding ways to better communicate with population groups that have limited English-speaking proficiency.

– National Center for Cultural Competence, Georgetown University Child Development Center

IMPENDING CHANGES TO CERTIFICATE OF MERIT RULE

In response to the pressures created by the pending medical negligence crisis that has gripped Pennsylvania for several years, the Courts enacted the Certificate of Merit rule in large part in the hopes to truncate the filing of non-meritorious claims. The rule itself requires the attorney representing the Plaintiff to file with the Complaint, or within sixty (60) days thereafter a Certificate of Merit in which they represent that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill, or knowledge exercised, or exhibited in the treatment, practice, or work that is the subject of the Complaint, fell outside of professional standards and that such conduct was a cause in bringing about the harm.

Before November of 2007, attorneys representing health care providers were able to enter judgments of non pros which had the effect of dismissing the lawsuit without first giving any notice to the attorneys representing the Plaintiff. The absence of any prior notice has resulted in a significant amount of cases being dismissed because of Plaintiffs attorneys simple failure to properly monitor their claims and abide by the guidelines set forth in the rules.

The Rules Committee is now proposing a very significant change to the Certificate of Merit rule. Although early indications were that the proposed changes were to be adopted by November 2007, as of yet, no formal adoption has been made. Under the proposed changes, attorneys representing health care providers will now be required to give prior notice of an intention to judgment of non pros before doing so. The unfortunate result of the notice requirement is that it will invariably alert the dilatory attorney to the prospect of his case being dismissed, thus entitling him to seek additional time within which to obtain the Certificate of Merit. Even under the old rule, the Courts have proven to be very liberal when granting extensions of time within which to file Certificate of Merits.

The proposed change of the rule removes a very effective and successful tool employed by defense counsel statewide to having claims dismissed. There is a strong possibility that the new rule will effectively reduce the number of cases that defense counsel can dismiss by way of judgment of non pros.

Courtesy of: Steve Forry, Esq.
White & Williams
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Considerations for Successful Closure of a Medical Practice

Many circumstances may lead a physician to end his/her current practice arrangement. To ensure continuity of patient care, to avoid any allegation of abandonment, and to fulfill contractual and regulatory obligations, you should notify your employees and patients in a timely manner.

Careful planning will be the key to your success. Here are helpful tips for you to consider before you close your doors or move to a different location.

Work with Your Employees

Keep employees informed and provide at least three months advance notice of the anticipated closing date. Outline a plan that reviews the following:

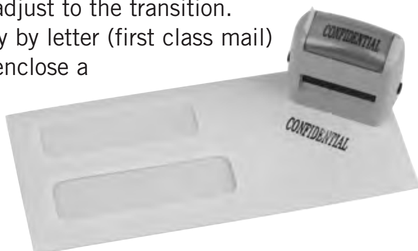
❑ *Severance and benefits.* Consider providing incentives to encourage valued staff members to continue their employment and ease the transition to closing the practice. Options to consider offering are an exit bonus, an increase in base salary or continued employment if you sell the practice.

❑ *Retention of positions.* Negotiate to enable your staff to remain with the practice if it is acquired by another physician. If another physician will be acquiring the practice help arrange for staff interviews. Familiar staff facilitates the transition of patients to the new physician-owner. If necessary, work with an outplacement service to provide resources that assist staff in obtaining other employment.

❑ *Fulfill obligations.* Ensure that all legal requirements are met related to any employment retirement plan, health insurance coverage, and your obligations to pay unused employee benefits such as vacation and sick time.

Notify Your Patients

Notify active patients a minimum of three months prior to your intended closing date, allowing them to locate another physician and adjust to the transition. Notify by letter (first class mail) and enclose a records release authorization form for patients who are currently undergoing treatment or, who were seen by the practice within the last two years. See Figures 1 & 2 on Page 4.



Call or send a certified letter to patients with chronic or complicated medical conditions. Advise them that their condition requires ongoing medical attention and that another physician must be selected to provide for their continuing care. Determine whether it is necessary to actively transfer the care of compromised patients. When establishing an end-date, surgeons must consider the post-operative follow-up period and refrain from scheduling surgical cases beyond that timeframe.

Finally, consider keeping your answering service active between three months to a year to assist with patient inquiries such as retrieval of medical records.

Evaluate Insurance Policies

Review all insurance policies with your insurance broker and request a refund upon cancellation of unexpired policies. In addition, contact Millennium Insurance Company to determine whether the purchase of tail coverage is warranted to protect you should a claim be filed after you stop practicing.

Advertise in the Newspaper

Place a notice in at least two area papers serving your patient population. If you are a specialty physician and see patients throughout Pennsylvania, it is advised that you select periodicals that circulate statewide. The information contained in the notice is not regulated by any entity. The size of the ad should be large enough to reasonably ensure that it is seen. Publish the ad several times within a month and include:

- Date you are closing the office
- Date you will stop scheduling patient appointments
- Information related to transfer of medical records to anther physician
- An explanation of how copies of medical records can be obtained.

Notify Important Organizations

- State Board of Medicine
- State and local medical societies
- Drug Enforcement Administration (DEA)
  - Controlled drugs should be discarded in accordance with DEA procedures and your DEA license returned, if relinquishing.
- Hospitals
- Major insurance carriers
- Professional Associations, AMA, AOA, etc.

Medical Record Transfer, Storage & Destruction

A valid, signed authorization is necessary to provide a new physician with a copy of a patient's medical record. Since the physician-patient relationship is normally an individual relationship, obtain each patient's consent to allow colleagues in a group practice to assume care and access your patients' medical records. Forward a copy of a complete file to the new

physician and retain original records as mandated by the State Board of Medicine, "at least seven years from the date of the last medical services for which a medical record entry is required." Refer to the sample authorization form shown.

Safe storage requires that the confidentiality of the records be protected. Storage options include archiving, using a storage firm, arranging for a custodial physician, scanning into a read-only CD or copied to microfilm. When arranging for physician custodians, develop a written agreement that addresses length of time to maintain records, indemnification provisions and access by a patient or the physician to the medical records. Any relationship established with a firm that handles storage of sensitive information should include a formal written contract outlining the mutual obligations of the storage firm and the physician in addition to a HIPAA business associate agreement. Before contracting with any such facility, verify the contractor's ability to maintain the confidentiality of medical records and its ability to limit access to appropriate persons.

Although it is advisable to maintain hard copy medical records for as long as possible, physicians may consider record destruction once the legal limit has expired. Contact either your local hospital which may have the capacity to safely dispose of medical records, or an attorney to locate a secure record destruction service. HIPAA requires that a business associate agreement be entered into when a destruction service is used.

Other Considerations

- Review your contracts related to notification requirements. It is always advisable to contact your attorney to review written contracts and ensure compliance.
- Take into consideration the amount of time patients need to establish a relationship with another physician based on the location and availability of other similar practitioners in your geographic area.
- Remember to destroy prescription pads and letterhead after your last appointment.
- Work closely with your attorney or business manager particularly on the tax aspects of closing your practice. Final returns and payments of all federal and social security taxes must be made after the last employee has been terminated and the last payroll paid.

Figure 1.

Letter for Physicians Discontinuing Practice

Dear Patient:

Please be advised that because of ______________________________

I am discontinuing the practice of medicine on __________________. I shall not be able to attend to you professionally after that date.

I suggest that you arrange to place yourself under the care of another physician. If you are not acquainted with another physician, I suggest that you contact the _________________ Medical society.
(local)

I shall make my records of your case available to the physician you designate. Since the records of your case are confidential, I shall require your written authorization to make them available to another physician. For this reason, I am also including an authorization form. Please complete the form and return it to me as soon as possible.

I am sorry that I cannot continue as your physician. I extend to you my best wishes for your future health and happiness.

Yours very truly,

___________________, M.D., or D.O.

Figure 2.

Authorization to Transfer Records

Date: ________________

To: _______________________, M.D., D.O.]

I hereby authorize you to transfer or make available to ____________________, M.D. or D.O. at _____________(address)____________________________, all records and reports relating to my case.

Signed: __________________________________

Discharging Patients Could Leave You Open to Litigation

Although the process of discharging patients should be a last resort measure, it may become necessary when repeated efforts to appease or work with a patient fail. In doing so however, physicians must know how to protect themselves from a potential allegation of abandonment.

Unlike physicians, patients can "fire" any physician they employed, for any reason and with or without advance notice. Since physicians do not employ patients, they cannot "fire" them. But physicians can discharge patients from their medical practice for any legitimate and non-discriminatory reason, thereby terminating the doctor-patient relationship. Whether the end of the doctor-patient relationship is initiated by a patient or the physician, safeguards should be taken to ensure that the separation is legally sound and does not endanger the patient.

Doctor-patient relationships can end for a number of reasons. Patients may end a relationship because they are moving to another location; are dissatisfied with their care; can't afford the fees; are dissatisfied with office practices and policies, such as inability to make a timely appointment; require the ongoing attention of another specialist; or are disappointed when their expectations of the doctor are not met. A patient can end the relationship by giving the physician oral or written notification. When provided, document the notification in the patient's chart. It may be prudent to send the patient an acknowledgment that he or she has terminated the doctor-patient relationship and retain a copy of the letter.

Physicians may likewise end a doctor-patent relationship when certain patient behaviors become apparent including uncooperativeness; failure to follow medical advice; repeated missed appointments; or when staff is subject to abusive, disruptive, threatening, or unpleasant attitudes. Any noncompliance should be carefully documented in the patient's chart and the patient informed of the specific potential consequences of failing to follow medical advice including the need for ongoing care.

A decision to terminate the relationship must be made by the physician, never by the office staff. When possible, discuss the termination with the patient in person explaining the basis for the termination. Objectively document in the patient's chart the reasons for terminating the doctor-patient relationship and, as appropriate, include details of discussions with the patient. You must formally notify the person by mail to avoid a charge of abandonment. Send the letter certified mail, return receipt requested and keep the receipt in the patient's file. Send a second letter by regular mail in the event the patient should refuse to accept the certified letter. See Figure. 3. Write a note in the chart indicating the date the letter was sent by regular mail and by whom. File any returned or unopened letters in the patient's chart.

> ***"A decision to terminate the relationship must be made by the physician, never by the office staff."***

In your letter be sure to include:

- The reason for the decision to withdraw from care. Attorneys agree that providing a brief, but clear reason for the termination avoids confusion and gives the doctor a chance to go on the record.
- A grace period, which provides at least 30 days notice. Tell the patient that you will continue to provide medical services until the termination date, and will see him for any emergencies that occur in that time.
- The need for additional treatment or monitoring and stress any urgency.
- Information on medical resources (e.g., local medical society or hospital) to obtain a list of physicians. Avoid referring the patient to a specific physician. If you recommend a certain physician who later commits malpractice, you may be sued for negligent referral.

In addition, patients who were assigned by a managed care plan should be referred back to them for reassignment to another physician.

Whatever the reason you decide to withdraw from a patient's care, manage the process cordially. Offer to promptly transfer an authorized copy of the patient's chart to another physician at *no charge* in order to avoid ending the doctor-patient relationship on a negative note. By no means should you refuse to provide a subsequent treating physician with a copy of the medical record because the patient has an outstanding balance for medical services. Such withholding of the records and/or medical information exposes the physician to liability should the patient suffer an injury because another doctor did not have access to important information in the medical record.

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Figure 3.

Sample Letter for Patient Dismissal

Date

Patient Name
Street
City, State, Zip

Dear:

I am writing to confirm our discussion of (date). At that time I told you I would no longer be able to provide medical care to (you/your children) after (date). If you require medical attention in the next (number of days, at least 30) days, I will be available. After (date), however, I will no longer be able to provide medical care for you.

Enclosed is a list of physicians in the local area who may be able to meet your medical needs. I have no professional association with any of these physicians. If you would like additional information on area physicians, you may contact the local medical society at (address and telephone number).

Upon your selection of a new physician, please authorize us to release (your/your children's) medical records to him or her.

Sincerely,

(Your Name)
(Practice Name)

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Managing Common Patient Complaints

Studies have indicated a strong link between patient complaints and malpractice claims. Here are some of the most common gripes and suggestions on how to prevent them.

- Sitting endlessly in your waiting room. When you're running behind, make sure your staff informs those in the waiting room. If a patient leaves your office in a huff, or threatens to switch to another physician, call to explain or apologize. It helps if patients know how long they'll have to wait, and why. If possible, your receptionist should call patients with appointments and warn them of the delay. When you do see patients who've had to wait an extra 15 minutes or more, acknowledge and be appreciative of their patience.

- Taking phone calls during the exam. When you're in the exam room with patients, they expect your full attention. Show your commitment to providing them with the care and attention they deserve. In the event of an emergency, explain the situation to the patient as they are likely to understand your obligation to other patients as well.

- Lack of respect for personal privacy. Close the door to the exam room in the event you leave the room while the patient is undressed.

- Treating patients as a medical condition rather than as a human being. A patient, for example, won't appreciate if the nurse greets her – particularly within audible range of other patients- with a remark like, "So you're the ear pain right?"

- Providers interrupting while a patient attempts to describe what's bothering her. Give patients one minute to tell their story. Not only will you get quantity of information you will obtain quality as well.

- Making a patient wonder when he'll receive test results. When you decide on a course of tests or treatment, explain what you plan to do, why you're doing it, and what your next steps will be. Tell your patients when you expect the results, and that you or a member of your staff will call with results.

- Patients wishing they could make you aware of unhelpful staff or unfair practices. One way to make your office more receptive to patient comments is to implement a patient satisfaction survey. Or, ask several trusted patients to tell you what they don't like about your practice. You may discover that they find some of your staff rude, or that they hate your efficient but impersonal voice-mail system.

If you receive a letter, phone call, or visit from an unhappy patient, physicians or staff members should notify their office manager, practice attorney, and/or Millennium's Risk Management Department for advice on how to properly address the patient's anger. If the patient's complaint can not be resolved in person, it may be necessary to develop a letter acknowledging the patient's complaints or grievances. Letters should be carefully written as they can later be used as evidence in a lawsuit.

Plaintiff attorneys pay close attention to physician and office staff conduct. Lack of apology or miscommunication after an event can make a case more appealing to them. Conveying respect and empathy towards patients have become important risk management concepts and may considerably reduce the likelihood of a claim.

Discharging Patients Could Leave You Open To Litigation

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Finally, make sure that your appointment schedulers are aware of any terminations so that new appointments are not made to re-establish the doctor-patient relationship.

Physicians or their staff who have general questions about patient discharge protocols may contact the Millennium Risk Management Department at 610-848-7300 for assistance.

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www.millenniumins.com

for the latest information on claims made coverage, application procedures, risk management and claim reporting.

We welcome your feedback!