

The Bedside Lawyer

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Today's hospital administrator faces a number of challenges including rising costs, labor shortages, increased regulatory requirements and the potential for costly, credibility damaging lawsuits. We live in a litigious time. Disputes are played out in the court system and in the realm of health care, lawsuits can take millions of dollars and years before they are concluded. It is in the best interest of hospitals to do all that is possible to mitigate the risk of litigation. Every hospital will face litigation but there are ways to reduce the opportunity and /or reduce the damages if sued. While in no way a comprehensive list, the following guidelines can help.

Risk management must be facility wide. All Hospitals have Risk Management Departments but risk management cannot be confined to a department to be truly effective. It is not enough to satisfy the requirements of the various governing bodies during times of accreditation. An effective risk management program is embedded into the culture of the hospital. Every employee at every level is in effect a risk manager. Risk management is sometimes viewed as a necessary evil. Hospitals must move beyond doing what is required to adopting a risk adverse culture. This requires active involvement of staff at all levels, continuous monitoring and communication.

Internal Service. Employees that do not feel valued by the organization will not invest in its policies. Studies have shown that employee satisfaction leads to greater productivity and loyalty. Hospitals must make everyone feel like part of the team, physicians, nurses, clerical, every person that works in the hospital must feel like an integral part of the healthcare team. In no other environment is teamwork a life and death matter. More importantly, happy employees treat patients well. Patients that have a positive hospital experience even in the event of a problem are more willing to resolve the dispute without litigation. It is human nature to not wage a hostile battle with someone who has treated you well. Treat your staff well and make them feel valued and patients will receive better care and you will lower your risk of litigation.

Doctor-Patient Relationship. There is a great deal of evidence to support the importance of the impact of the doctor-patient relationship on litigation. This relationship is a significant determinant of the physician's claims experience (Hickson et al., 1997; Levinson et al., 1997; Pontes and Pontes, 1997; Beckman et al., 1994) Hickson et al. found that "high-malpractice" physicians were also likely to be "high-complaint" physicians; meaning in a survey of physicians in one teaching hospital they had the most patient complaints on file. Complaints fell into categories of communication, care and treatment, humaneness, access, environment, and billing. Physicians who have a bad rapport with their patients had a higher incidence of every other type of complaint listed. In other words, patients were more likely to report adverse outcomes or diagnosis problems when the physician was considered rude or communicated poorly.

Quality management. Quality programs must be more than the program du jour. Just as risk management must be embedded in the hospital culture, there must be a bottom up commitment to quality procedures. Quality when viewed through the lens of "must do" policies and procedures becomes devalued as "one more management program." However, an organization that involves everyone in the quest for quality and the pride that accompanies providing an excellent product or service will be far more effective.

Infection Control. In the United States more than 1.7 million people will get a drug resistant infection from a hospital. More people die from hospital infections than AIDS and breast cancer combined. Hospital acquired infections is a well documented problem and disturbingly most can be prevented through the implementation of rigorous sanitary and bacterial testing procedures. Infection control needs to be vigorously monitored and should be a vital piece of the overall risk management strategy.

Any risk mitigation strategy will require an organized, rigorous surveillance and management to be effective. Physicians, and hospital staff all play a part in risk management activities but hospital management must make decisions and provide sufficient resources for risk management activities. Staff and physicians should have an active voice in policy and risk events need to be clearly communicated to all. As risk is identified there also needs to be a clear mechanism for correcting or eliminating the risk. The absence of problem-resolution mechanisms in hospitals is a major cause of poor quality and unnecessary risk.

Managing risk will not only reduce the potential for litigation but will provide hospitals with a clear competitive advantage. A hospital that adopts a risk adverse culture will provide better patient care and that translates to success in the highly competitive marketplace of healthcare.

References: Hickson, GB, JW Pichert, Federspiel, Clayton (1997), "Development of an Early Identification and Response Model of Malpractice Prevention", *Law and Contemporary Problems*, 60/1-2, pp. 7-29