

# Introduction to Medical Law and Ethics

Dr. Gary Mumaugh

## Objectives

- Explain why knowledge of law and ethics is important to health care providers
- Recognize the importance of a professional code of ethics
- Distinguish among law, ethics, bioethics, etiquette, and protocol
- Define *moral values* and explain how they relate to law, ethics and etiquette
- In a general sense, state the consequences of illegal and unethical behavior
- List some bioethical concerns to health care providers

## Why even study law and ethics?

- To help you function at the highest possible level of professionalism
- To help you avoid legal problems that would threaten your ability to function and succeed
  - We live in a **litigious** society, and in order to function in healthcare we all must C.Y.A.
  - We are all at risk of litigious involvement

## Knowledge of law and ethics helps us gain perspectives in the following areas:

- The rights, responsibilities and concerns of healthcare consumers
- The legal and ethical issues facing society, patients and health care providers are constantly changing
- The impact of rising costs on the laws and ethics of health care delivery

## Court Cases Illustrate Risk of Litigation

- Plaintiff – the person bringing the suit
- Defendant – person against whom the suit is brought
- Liable – legally responsible
- Precedent – a case that serves as a model for future cases
- Summary judgment – a decision made by the court in a lawsuit in response to a motion that pleads there is no basis for a trial
- Fraud – dishonest or deceitful practices in depriving, or attempting to deprive, another of his or her rights

## Court Cases

- Patient sues hospital
  - Lichti v. Schumpert Medical Center (LA Court of Appeals, 1-26-00)
- County liable in ambulance delay  
Koher v. Dial, 653 N.E. 2d 524 (IN Court of Appeals, 6-26-95)

## **Law**

- A defined rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority
- Governments enact laws to keep society running and to control behavior that could threaten public safety
- Laws are considered the *minimum standard* necessary to keep society functioning
- Many laws affect health care providers, including criminal and civil statutes as well as medical practice acts

## **Ethics**

- Are concerned with standards of behavior
- The concept of right and wrong
- Over and above what is legal in any given situation
- An illegal act by a healthcare provider is always unethical, but an unethical act is not necessarily illegal
- Code of ethics
  - A system of principles intended to govern the behavior of those entrusted with providing care to the sick

## **Moral Values**

- One's personal concept of right and wrong
- Formed through the influence of family, culture and society
- Serves as the basis for ethical conduct
- Acting morally towards others requires that we put ourselves "in their shoes"

## **Definitions of Law, Ethics and Morals**

- Law - set of governing rules
- Ethics – principles, standards, guide to conduct
- Moral Values – beliefs formed through the influence of family, culture and society

## **Main Purpose of Law, Ethics and Morals**

- Law - protects the public
- Ethics – to elevate the standard of competence
- Moral Values – To serves as a guide for personal ethical conduct

### **Standards of Law, Ethics and Morals**

- Law - minimal to promote smooth society functioning
- Ethics – builds values and ideals
- Moral values – serves as a basis for forming a personal code of ethics

### **Penalties for Violation of Law, Ethics and Morals**

- Law – civil or criminal liability
  - Fines, imprisonment, penalties, revocation of license
- Ethics – suspension from or eviction from medical society membership
- Moral Values – difficulty in getting along with others

### **Definitions of Bioethics, Etiquette and Protocols**

- Bioethics – discipline relating to ethics concerning biological and healthcare research
- Etiquette – courtesy and manners
- Protocols – rules of etiquette applicable to one's place of employment

### **Main Purpose of Bioethics, Etiquette and Protocols**

- Bioethics – to allow scientific progress in a manner that benefits society in all possible ways
- Etiquette – to get along with others
- Protocols – to get along with others engaged in the same profession

### **Standards of Bioethics, Etiquette and Protocols**

- Bioethics – leads to the highest standards possible in applying research to medical care
- Etiquette – leads to pleasant interaction
- Protocols – promotes smooth functioning of workplace routines

### **Penalties for Violation of Bioethics, Etiquette and Protocols**

- Bioethics – penalties can include all those of law and ethics
- Etiquette – ostracism from chosen groups
- Protocols – disapproval of professional colleagues and possible loss of business

## **Examples of Bioethical Considerations**

- Is human experimentation essential, or even permissible, to advance biomedical research?
- What ethics should guide organ transplants?
- Should certain people have lower priority on the transplant list?
- What ethics should guide fetal tissue research?
- Do reproductive technologies offer hope to the childless, or are they unethical?
- Should animals ever be used in research?
- How ethical is genetic research?
- Others?

## **The Role of Ethics Committees**

- Most healthcare providers are able to resolve a majority of the issues they face in the workplace from their own intuitive sense of moral values and ethics.
- Some ethical dilemmas are not so much a question of right and wrong, but more a question of “which of these alternatives will do the most good and the least harm?”
- In these ambiguous situations, healthcare providers may ask the advice of a medical ethicist or members of institutional ethics committees.

## **Medical ethicists or bioethicists**

- Specialists who consult with physicians, researchers, and others to help them make difficult decisions

## **Ethics committees**

- Made up of individuals involved in a patient’s care
- Includes physicians, nurses, social workers, clergy, members of the patient’s family, community members, and other providers
- Committees decisions are not binding, but they do help to resolve situations
- They may also be involved in conflict resolution
- They do not function as institutional review boards or morals police looking for health care workers who have committed unethical acts

## **Qualities of Successful Health Care Providers**

- Three C’s of successful practitioners
  - Courtesy
  - Compassion
  - Common sense

## **Qualities of Successful Health Care Providers**

- Three T's of great patient care
  - Talk
  - Touch
  - Time

## **People Skills Needed in Healthcare**

- Present time consciousness
- Relaxed attitude when meeting new patients
- Good communication skills
- Patience
- Tact
- Ability to impart information clearly and accurately
- Ability to keep information confidential
- Ability to leave home at home
  - "Flashlight always on the patient"
- Trustworthiness
- Sense of responsibility

## **Technical Skills Needed in Healthcare**

- Computer literacy
- Proficiency in language, science and math
- Willingness to learn new skills and techniques
- Must be a lifetime learner
- Aptitude to work hands on
- Ability to document well

## **Ethics Guidelines - Allocation of Medical Resources**

- The benefit of the patient must always be placed above policies allocating limited medical resources
- Decisions should consider only
  - Likelihood of benefit
  - Urgency of need
  - Change in quality of life
  - Duration of benefit
- Nonmedical criteria that should never be used to make allocation of resources
  - Ability to pay, age, social standing, perceived treatment obstacles, patient's contribution to their illness, past use of resources

**Ethics Guidelines - Futile Care**

- Healthcare providers CAN NOT deliver care, that in their professional judgment, will not provide benefit to their patients
- Patients should not be treated simply because they demand treatment
- Denial of treatment should be based on ethical principles and standards of care

**Ethics Guidelines - Costs**

- Healthcare providers should be conscious of costs and should not prescribe unnecessary services

**Ethics Guidelines - Unnecessary Services**

- Healthcare providers should never provide, prescribe, or seek payment for medical services they know are unnecessary

# Working in Healthcare

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## Objectives

- Define *licensure, certification, registration* and *accreditation*
- Explain the purpose of the medical practice act
- Explain the purpose of medical practice boards
- Learn licensure for your profession
- Cite reasons a physician can lose a license
- Discuss the doctrine of *respondeat superior*
- Discuss two federal acts that prohibit fraud and abuse in health care billing
- Define three types of managed care plans
- Define *telemedicine, cybermedicine, and e-health*, and discuss their roles in today's health care environment

## Key Terms

- Licensure
  - A mandatory credentialing required by law, usually at the state level, that grants the right to practice certain skills and endeavor
- Certification
  - A voluntary credentialing process whereby applicants who meet specific requirements may receive a certificate
- Registration
  - An entry in an official registry or record, listing the names of persons in a specific occupation who have satisfied requirements
- Accreditation
  - Official authorization or approval for conforming to a specified standard

## Medical practice acts

- State laws written for the express purpose of governing the practice of medicine
- In all 50 states, medical practice acts have been established by statute to govern the practice of medicine

## Medical Boards

- Boards established by the authority of each state's medical practice acts for the purpose of the health, safety, and welfare of health care consumers through proper licensing and regulation of physicians and other health care practitioners

## Unprofessional Conduct

- Each state's medical practice acts define unprofessional conduct for medical professionals
- Laws vary from state to state. Examples:
  - Physical abuse of a patient
  - Inadequate record keeping
  - Failure to recognize or act on common symptom

## **Unprofessional Conduct**

- Prescription of treatment in excessive amounts
- Failure to meet continuing education requirements
- Performance of duties beyond the scope of license
- Dishonesty
- Conviction of a felony
- Delegation of practice to and unlicensed individual

## **The Physician's Education**

- Four year degree – usually a science concentration
- USMLE – US Medical Licensing Examinations
  - Part 1 – After first year of medical school
  - Part 2 – In fourth year of medical school
  - Part 3 – During first two years of residency
- Residency
  - First year is called internship
  - Residency can last two to six years
- NBME - Diplommat
  - Certifies after passing all three parts and finishing internship
- ABMS – American Board of Medical Specialists
  - Specialty examination after residency for board certification in area of specialty

## **Physician's State Licensure**

- After physician's have finished their education and passed all national boards, their continued licensure falls under the state jurisdiction medical boards
- Federal government has no medical licensing authority except for the permit issued by the DEA for physician's to RX controlled substances, narcotics and non-narcotics
- State criteria for licensure
  - Must be 21 year old and of good moral character
  - Completed four year degree and medical degree
  - Completed residency
  - Be a US citizen or have filed a declaration to become
    - Some states have waived this requirement
  - Must be a state resident and passed all state examinations for registration

## **Reciprocity**

- The process by which a professional license obtained in one state may be accepted as valid in other states by prior agreement without examination
  - Can be full reciprocity or partial reciprocity
  - May only need to test out on certain state board sections, such as jurisprudence

## **Endorsement**

- The process by which a license may be awarded based upon credentials judged to meet licensing requirements



### **Special Situations**

- There are some special situations in which a state license is not granted but permission to practice is given
  - When responding to emergencies
  - When trying to establish state residency requirements
  - When employed by the US Armed Forces, VA, Public Health Service, or other federal facility
  - When engaged solely in research and not treating patients

### **License Revocation or Suspension**

- License can be revoked (canceled) or suspended (temporarily recalled) for conviction of a felony, unprofessional conduct, or personal or professional incapacity
- Unprofessional conduct
  - Gross immorality, falsifying medical records, fee splitting, sexual misconduct, betrayal of patient confidentiality, unprofessional methods of treatment
  - Fraud examples
    - “Intent to deceive”
    - Falsifying diplomas, credentials or licenses
    - Falsifying medical records and reports
    - Falsely misrepresenting patient “cures”
- Personal or professional incapacity examples
  - Senility
  - Injury
  - Illness
  - Chronic alcoholism
  - Drug abuse
  - Other conditions impairing ability to practice

### **Respondeat Superior**

- Under the doctrine of respondeat superior, which is Latin for “let the master answer”, physicians are legally responsible (liable) for their own acts of negligence and for negligent acts of employees working within the scope of their employment
- The test used to determine whether an employee was or was not acting within the scope of their employment when a negligent act was committed is whether or not the employee’s behavior serves the interest of the employer or in some way furthers the employer’s business

### **Four Basic Types of Medical Practice**

- Sole proprietorship
  - Practices alone assuming all business benefits and liabilities
- Partnership
  - Two or more practice together under a written contract and share all benefits and liabilities

## **Four Basic Types of Medical Practice**

- Associate practice
  - Two or more practice together to share space, resources and employees but practice individually
- Group practice
  - Three or more practice together sharing collective income, expenses, personnel and liabilities

## **Managed Care**

- Managed care health plans are corporations that pay for an deliver health car to subscribers for a set fee using a network of providers
- The network coordinates and refers patients to its providers and hospitals and monitors the amount and patterns of care delivery
- Before managed care plans, private insurance policies were traditionally written as third-party indemnity health insurance
  - Indemnity means the insured person is covered for potential loss of money from medical expenses for an illness or accident
  - Indemnity benefits are paid in a predetermined amount of money rather than in specific services

## **Common Insurance Terms**

- Coinsurance
  - The amount of money insurance plan members must pay out of pocket, after the insurance pays its share
- Co-payments
  - The flat fees insurance plan members pay for certain services
- Deductible
  - Amounts are specified for each plan and subscriber
- Formularies
  - A plan's list of approved prescriptions that it will pay or reimburse for
- Utilization review
  - Is the method used by a health plan to measure the amount and appropriateness of services

## **Health Savings Accounts**

- Were created by the Medicare bill signed by President Bush on December 8, 2003 and are designed to help individuals save for future qualified medical and retiree health expenses on a tax-free basis
- Advantages to people who are enrolled in a High Deductible Health Plan
- Deposits to an HSA may be made by any policyholder of a *minimum deductible health plan* or by their employer, or any other person
- The 2007 statutory limits are \$2,850 individual and \$5,650 family
- There are several ways that funds in an HSA can be withdrawn. Some HSAs include a debit card, some supply checks for account holder use, and some allow for a reimbursement process similar to medical insurance.

## **Variations in Managed Care Plans**

- Gatekeeper plan
  - The insured must designate a PCP, primary care physician, who becomes the gatekeeper or primary care physician that directs all of the patients medical care and generates referrals to specialists and other providers
- Point-of-Service plan
  - Allows plan members to seek care from non-network providers but pays at a greatly reduced level
- Open access
  - Subscribers may see any in-network provider without a referral

## **Types of Managed Care**

- HMO – Health Maintenance Organization
  - A health plan that combines coverage of health care costs and delivery of health care for a prepaid premium
- IPA – Individual Practice Association
  - An association of physicians, hospitals and providers that contract with an HMO to provide services to subscribers
- PPO – Preferred Provider Organizations
  - Managed care plans that contract with a network of physicians, hospitals and providers that contract with an HMO to provide services to subscribers for set fees
  - Subscribers can go to a providers outside the PPO, but must pay larger out-of-pocket expenses
- PHO – Physician Hospital Organization
  - A health plan in which physicians join hospitals to provide a medical care delivery system and then contract for insurance with more then one commercial carrier or HMO

## **Legislation Affecting Health Care Plans**

- Health Care Quality Improvement Act (HCQIA) 1986
  - The act established professional peer review and limited the liability damages
  - A federal statute passed to improve the quality of medical care nationwide
- National Practitioner Data Bank (NPDB)
  - A provision of HCQIA which set up a national data bank of physicians and dentists
  - Includes malpractice payments, adverse insurance, clinical, and licensure actions
  - Used by state boards for licensure and by hospitals every two years

## **Health Insurance Portability and Accountability Act (HIPAA) 1996**

- Its many provisions go far beyond the mandate
- Improves the efficiency and effectiveness of the health care industry by
  - Accelerating billing practices and reducing paperwork
  - Reducing health care fraud
  - Facilitating tracking of health information
  - Improves accuracy and reliability of shared data
  - Increasing access to computer networks within health care facilities
- Helps workers keep continuous health coverage when they leave a job
- Protects confidential medical information that identifies patients from unauthorized disclosure or use

## **Controlling Health Care Fraud and Abuse**

- Laws have been passed to control three types of illegal conduct
  - False claims in billing
  - Kickbacks
  - Self-referrals
- Violations of laws of health care fraud and abuse can result in jail, fines, loss of license, loss of privileges, loss of involvement in federal programs

## **Risk Management**

- Steps taken to minimize danger, hazard and liability
- Reduces the likelihood of malpractice
- Involves identifying problem practices and behaviors and then eliminating or controlling them
- Common health care facility activities that affect the likelihood of litigation
  - Medical record charting
  - Patient scheduling
  - Writing prescriptions
  - Communication with patients
  - Financial disputes

## **Telemedicine**

- Telemedicine
  - Remote consultation by patients with physicians or other health care providers via telephone, the internet, or closed-circuit television
- Cybermedicine
  - A form of telemedicine that involves direct contact between patients and physicians over the internet, usually for a fee
- E-health
  - The term for the use of information from the internet as a source of consumer health and information

## Ethical Guidelines

- Advertising
  - Professionals may ethically advertise, as long as advertisements are truthful and are not misleading or do not deceive
  - Advertisements may include
    - Educational background and training
    - Available credit and payment options
    - Other nondeceptive information
- Allied Health Professionals
  - It is ethical for physicians to consult with or employ allied health professionals who are appropriately trained and licensed
  - Physicians may teach in recognized schools
  - It is inappropriate to substitute the services of a physician with an allied health professional
- Forgiveness or waiver of insurance co-payments
  - It is common practice in patient financial hardship
  - It is unethical to advertise this
  - This may violate policies of some insurance carriers
  - Routine forgiveness or waiver of co-payments may constitute fraud under some state or federal statutes
- Nonscientific Practitioners
  - It is unethical for any health care practitioner to take part in treatment that has no scientific basis and
    - May be dangerous
    - Intended to deceive by giving false hope
    - May cause a delay in the patient seeking proper care
- Nurses
  - Are able to question attending physician's orders without penalty if the orders appear to be in error or contrary to standards of practice
  - Physician has an ethical duty to explain orders
  - In emergencies, they may act contrary to orders
- Referrals
  - Physicians may refer patients for diagnostic or therapeutic services to other physicians, limited practitioners, CAM practitioners or any other health care providers
- Sports Medicine
  - Sports medicine professionals are obligated to protect the health and safety of athletes without considering the desires of teams, coaches, or spectators
- Students performing procedures on other students
  - Students must consent to procedures from other students
  - Instructors must explain procedures and privacy and confidentiality must be present
  - Students may decide to not participate and cannot be punished for non-participation

# Medical Records and Informed Consent

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## Medical Records

- A medical record is a collection of data recorded when a patient seeks medical care
- Entries – as a legal document, the records could be subpoenaed as evidence in court
- Medical records prevail over a patient's recollection of events
- When there is no entry in the record to the effect that something was done, there is a legal presumption that it never happened

## Five C's for Entering Information

- Concise
- Complete (and objective)
- Clear (and legibly written)
- Correct
- Chronologically ordered

## Photographs and Videotaping

- It is common to take patient photos, videos, digital images and other visual recordings
  - Surgeons, orthodontist, dentist, plastic surgeons, etc
- These images are a part of the patient's file and are subject to all privacy and HIPPA laws
- Photographing or recording the patient's image without consent is an invasion of privacy
- These images cannot be used for commercial pictures
  - Before and after pictures must have consent

## Photographic Consent Form

- The patient understands that the images may be taken to document care
- The patient understands that ownership rights to the images will be retained by the health care facility, but that the patient may view them or get copies
- The images will be securely stored and kept for the legal time period
- Images cannot be used outside the healthcare facility

## **Records Corrections**

- Errors made in the medical record or errors discovered later can be corrected, but correction must be made in a certain manner
  - Draw a line through the error so that it is still legible
  - Write or type the correct information above or below or in the margin
  - Note near the error why it was made
    - “error, wrong date”, “error, interrupted by phone call”
  - Enter the date and time and initial the correction
  - If possible, ask another staff member to witness the correction

## **Records Ownership**

- Records are considered the property of the owner’s of the healthcare facility where they were created
- The patient owns the information they contain
- Upon signing a release, patient’s may obtain access to their records or get copies of the records
- Doctrine of Professional Discretion
  - Courts have held that in some cases patients treated for mental or emotional conditions may be harmed in seeing the records, so the provider can use their discretion and not release the records

## **Retention and Storage**

- At a minimum, records should be kept until the statute of limitations has run out
- Records of minor children must be kept until they reach legal age

## **Technological Threats to Confidentiality with HIPPA Penalties**

- Copiers
  - Do not leave papers on the copier
  - Don’t discard copies – shred them
  - Must remove and shred all paper jams
- Fax Machines
  - Never fax confidential material or do not fax if others can see the fax
  - Use a fax cover sheet stating “Confidential: To addressee only”
- Computers
  - Monitors must be in an area where others cannot see the screen
  - Do not leave the monitor unattended
  - Sending any patient information via email is never recommended
- Printers
  - Do not print confidential patient information on a shared printer
  - Do not leave printer unattended when printing
  - Do not discard printouts in a shared trash – shred them

## **Consent**

- Permission from a patient, either expressed or implied, for something to be done by another
- For the provider to examine, perform tests, aid in diagnosis and or treat for a medical condition
- When the patient makes an appointment for an examination, implied consent is given

## **Informed Consent**

- Doctrine of informed consent is the legal basis for consent, usually outlined by state's medical practice acts
- Informed consent implies that the patient understands:
  - Proposed modes of treatment
  - Why the treatment is necessary
  - Risks involved in the proposed treatment
  - Available alternative modes of treatment
  - Risks of alternative modes of treatment
  - Risks involved if the treatment is refused

## **Exceptions to Minors Giving Consent**

- Emancipated minors
  - Those who are living away from home and are responsible for their own support
  - Judge makes determination of emancipation
- Married minors
- Mature minors
  - Those who have been given the right to seek birth control or care during pregnancy or for treatment of reportable communicable disease or for alcohol or drug related problems

## **Other Special Patients and Informed Consent**

- Mentally Incompetent
  - Individuals judged by the court to be insane, senile, mentally challenged or under the influence of drugs or alcohol
- Those Who Speak a Foreign Language
  - Interpreters may be needed
  - Includes ASL
  - Consider ADA (Americans with Disabilities Act)



## **When Consent is Unnecessary**

- In emergency situations
- Good Samaritan Acts
  - Care was given in good faith
  - Acted within the scope of their training and knowledge
  - Used due care under the circumstances

# Privacy Law and HIPPA

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## Privacy Law

- Privacy – Freedom from unauthorized intrusion
- Contrary to popular belief, the term “privacy” does not appear in the Constitution or Bill of Rights
- However the Supreme Court has ruled in favor of privacy interests

## Federal Privacy Laws

- Concern about privacy has led to the enactment of federal and state statutes about the collection, storage, transmission, and disclosure of personal data.
- Common points of all these laws include:
  - Information collected and stored about individuals should be limited to only what is necessary to carry out the function of the business
  - Once collected, access to personal information should only be limited to those employees who must use the information to perform their job
  - Personal information cannot be released without consent
  - When the information is collected about a person, the person should have the right to check and view the information for accuracy

## HIPPA

- Health Insurance Portability and Accountability Act
- Federal privacy law passed in 1996 to protect privacy and other health care rights for patients

## HIPPA Language

- Covered Entities
  - In HIPPA language, health care providers and clearinghouses that transmit HIPPA transactions electronically are called covered entities
  - Includes
    - Hospitals, clinics, physicians, allied providers, PT, OT, labs, alternative providers, health plan payers, health clearinghouses
  - HIPPA makes no exclusion for the size of the office
- Covered Transactions
  - Electronic exchanges of information between two covered entities business partners using HIPPA mandated transaction standards
  - Examples
    - Submitting and electronic claim to a health plan
    - A provider sending a referral or authorization electronically to another provider
    - A provider sending patient-identifiable information to a billing service or another provider

## Other HIPPA Terms

- Notice of Privacy Practices
  - Is a written document detailing a health care provider's privacy practices
  - Under HIPPA rules, every patient visiting a provider must receive a NPP
  - Patients are usually asked to sign the form and it is filed with the medical records
- PHI – Protected Health Information
  - Information that contains one or more patient identifiers and then can be used to identify a patient
  - PHI must be protected whether it is written, spoken or in electronic form
  - Examples
    - Name, DOB, DOT, phone numbers, SSN, email, fax number, med record #, website, photos, voice prints, DL #, health plan numbers and beneficiary, etc.

## HIPPA Standards

### #1 – Transaction & Code Sets

- Primary goal is administrative simplification of billing and coding for health services

### #2 – Privacy Rule

- Protecting the privacy of patient identifying info

### #3 – Security Rule

- Provides for the security of electronic protected health information involving firewalls, encryption, anti-virus software and passwords

### #4 – National Identifier Standards

- Provides uniform national identifiers for the movement of electronic transactions

## Standard #2 – Privacy Rule

- Health care providers and plans can use and disclose patient information, but they must identify a “permission”
- Permission – A reason for each use and disclosure of patient information
- To *use* PHI means that you use the PHI within the facility where you work in the normal course of conducting health care business
- To *disclose* PHI means that the PHI is sent outside the office for legitimate business or health care reasons

## Using and Disclosing PHI Must Fall Within HIPPA Defined Permissions

- Disclosures to Patients
  - PHI to be disclosed to any patient who asks
    - Exceptions exist if the provider believes that the information would do harm to the patient
- Disclosures for Treatment, Payment or Health Care Operations
- Personal Representatives
  - Use personal judgment to determine if a family member, friend or representative is participating in the patient's care
- Permitted Incidental Disclosures Not Needing Patient Authorization:
  - You can talk to patients on the phone or discuss lab results if you are reasonably sure others cannot hear
  - You can leave information on an answering machine, but the information must be kept at a minimum
  - You can ask patients to sign in, but the sign in sheet cannot have the reason for the visit
  - You can announce patients by name in the waiting room
  - You can place charts outside treatment rooms, but you must protect the patient's identity
- For public purpose or for the public good
  - Child abuse or neglect
  - Victims of abuse, neglect or domestic violence
    - Disclosure as a mandated reporter
    - Necessary to prevent serious harm
  - Communicable diseases
  - Law enforcement
  - Coroners and funeral directors
  - Organ, eye and tissue donation agencies
  - Government functions
    - Military, veterans and prison inmates
  - Worker's compensation cases

# Law, the Courts and Contracts

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## Objectives

- Discuss the three primary sources of law
- Differentiate between criminal law and civil law
- Distinguish between plaintiff, prosecution, & defense
- Define intentional and unintentional torts
- Explain the unintentional tort of negligence
- List the four essential elements of a contract
- Differentiate expressed contracts & implied contracts
- Know contractual rights of physicians and patients
- Know how the law of agency and respondeat superior applies to health care

## The Basics of Law

- Federal laws governing the administration of health care derive from powers and responsibilities of all three branches of government
- Legislative Branch
  - Senate (100 seats) Congress (435 seats)
- Executive Branch
  - Can issue executive orders that become law without congressional approval
    - To create administrative agencies or change practices of an existing agency
    - To enforce laws passed by congress
    - To make treaties with foreign powers
- Judicial Branch
  - Enforces and interprets the law

## Sources of Law

- Case law
  - Law established through common law and precedents
  - Common law – the body of unwritten law developed in England, primarily from judicial decisions based upon custom and traditions
  - Legal precedents – decisions made in various cases that become the rule of law and apply to future cases
- Statutory law
  - Laws passed by congress or state legislatures
- Administrative law
  - Statutes enacted to define specific powers and procedures when agencies are created
  - Regulations may be passed that pertain to the functions of one agency (IRS, SSA, OSHA)

## **Classifications of Law**

- Criminal law
  - Laws that involves crimes against the state
  - “Crime” is an offense against the state or sovereignty, committed or omitted, in violation of a public law
  - Felony – an offense punishable by state or federal prison
  - Misdemeanor – an offense punishable by a fine or jail less then one year not in a prison
- Civil law
  - Does not involve crimes, but, instead, involve wrongful acts against person
- Military law
- International law

## **Can knowledge of a crime make you guilty?**

- Knowledge of a crime may, in certain circumstances, also be subject to prosecution
- An accessory is one who contributes to or aids in a crime, directly or indirectly or by watching and not giving aid, or by concealing a crime
- For example, the insurance biller in a medical office may be an accessory to insurance fraud if they take no action, even though they know that a provider is billing for services not rendered

## **Players in the Court Scene**

- Plaintiff
  - The complaining party of a lawsuit
  - Must prove they were wronged or injured
- Government or the prosecution
  - The plaintiff in criminal cases
- Defendant
  - The person or party against whom charges are brought in a criminal or civil lawsuit
  - Must dispute the complaint
- Officers of the court
  - Judges, attorneys, court clerks, bailiffs, court reporters

## **Civil Law**

- Civil law involves crimes involving wrongful acts against persons
- Under civil law, a person can sue another person, a business, or the government.
- Civil disputes often arise over issues of contract violation, slander, libel, trespassing, product liability, personal injury
- Many civil suits involve family matters such as divorce, child custody and support
- Civil judgments often require a financial settlement

## **Tort Liability**

- Civil law includes a general category known as torts
- A tort is broadly defined as a civil wrong committed against a person or property, excluding breach of contract
- The act may have caused physical injury or property damage or deprived someone of their personal freedom or liberty
- Torts may be
  - Intentional or willful
  - Unintentional or accidental
- Tortfeasor
  - The person guilty of committing a tort

## **Intentional Torts**

- Assault
  - Open threat of bodily harm to another or acting in such a way as to put another in the “reasonable apprehension of bodily harm”
- Battery
  - Unlawful, unprivileged touching of another person
  - In health care, battery could be charged for any unauthorized touching a patient, suturing a wound, performing a physical examination, giving a injection
- Conversion
  - Unauthorized taking or borrowing of another’s property
- Defamation of character
  - Wrongful act of injuring another’s reputation by making false statements
  - Libel is expressing in public print, writing, pictures or statements that injure another’s reputation
  - Slander is speaking defamatory or damaging words intended to prejudice others against an individual in a manner that jeopardizes their reputation or livelihood
- Deceit
  - False statement or deceptive practice done with intent to injure another
- False imprisonment
  - Unlawful restraint of another
  - Refusing to dismiss a patient from a health care facility upon their request
- Fraud
  - Dishonest or deceitful practices in depriving or attempting to deprive another of heir rights
  - Health care providers promising cures or accepting fees for powers to heal
- Infliction of emotional distress
  - Intentionally or recklessly causing emotional or mental suffering to others

### **Intentional Torts - continued**

- Invasion of privacy
  - Interference with a person's right to privacy
- Misuse of legal procedure
  - Bringing legal action with malice and without probable cause
- Nuisance
  - Anything that interferes with the enjoyment of life or property
- Trespass
  - Wrongful injury or interference with another's property

### **Unintentional Torts**

- The most common tort within health care delivery
- Are not intended to harm but are committed unreasonably or with a disregard for the consequences
- Negligence
  - When one may have performed or failed to perform an act that that a reasonable person would or would not have done in similar circumstances
  - Charged when a health care provider fails to execute ordinary care and a patient is injured
  - Provider is not necessarily liable for a poor outcome

### **Contracts**

- A voluntary agreement between two parties in which specific promises are made for consideration
- The elements of the contract are important to health care providers because health care delivery takes place under various types of contracts
- To be legally binding, four elements must be present in a contract:
  - Agreement
  - Consideration
  - Legal subject matter
  - Contractual capacity

### **Agreement**

- One party makes an offer, and another party accepts it
- Certain conditions pertain to the offer:
  - It can relate to the present and future
  - It must be communicated
  - It must be made in good faith and not under duress or as a joke
  - It must be clear enough to be understood by both parties
  - It must define what both parties will do if the offer is accepted



## **Consideration**

- Something of value is bargained for as part of the agreement
- In the example given, the healthcare providers consideration is providing services and the patient's consideration is the payment of the fee

## **Legal Subject Matter**

- Contracts are not valid and enforceable in court unless they are for legal services or purposes
- For example, a contract entered into by a patient to pay for services would be void if the healthcare provider was not duly licensed
  - Void means without legal force or effect
  - Often called "null and void"
- Breach of contract
  - May be charged if either party fails to comply with the terms of a legally valid contract

## **Example of a contract**

- For example, a health care provider offers their services to the public by obtaining a license to practice and opening the practice for business.
- Patient's accepts the health care providers offer by scheduling appointments, submitting to examinations and allowing the health care provider to prescribe and perform medical treatment.
- The contract is complete when the physicians fee is paid.

## **Contractual Capacity**

- Parties who enter into the agreement must be capable off fully understanding all of the terms and conditions of the contracts.
- Mentally incompetent
  - Unable to enter into a legal contract because of mental impairment
  - Persons in a drug induced state
  - Persons under extreme duress
- If either of the parties is incompetent at the time of the contract is made, the agreement is voidable
  - Voidable is to be able to set aside or to be validated at a later date
  - A patient entering a contract under the effects of medication

## **Treatment of a Minor**

- Of special concern to health care providers is the treating relationship as applied to minors
- Health care providers can not treat (or even touch) a minor child without the consent of a parent or legal guardian
  - The exception is in the case of an emergency
  - Also if a minor has been deemed to be legally mature
- You can be charged with battery

## **Types of Contracts**

- Expressed contract
  - May be written or oral, but all terms of the contract are explicitly stated
  - In a healthcare facility, some contracts must be in writing, to be legally binding
  - Third party payer contracts
    - A written agreement by a party other than the patient who promises to pay the patient's bill
- Implied contract
  - The conduct of the parties, rather than expressed words, creates the contract

## **Rights and Responsibilities of Health Care Provides**

- After agreeing to accept an individual to be a patient, you can make reasonable limitations on the relationship
- You are under no legal obligation to treat patients who may wish to exceed those limitations
- You are under no legal obligation to treat every patient
- You have the right
  - To set up practice within the boundaries of your license
    - You do not have to practice outside your specialty
  - To set up an office anywhere you want and choose your own hours
  - Specialize
  - Decide what services will be offered and how they are offered

## **The Health Care Provider is Not Bound To:**

- Treat every patient who seek your care
- Restore the patient to their original state of health
- Possess the highest skills possible within the profession or the maximum education available
- Affect a recovery of every patient
- Be skilled as a specialist if you are not
- Make a correct diagnosis in every case
- Be free from mistakes of judgment in hard cases
- Guarantee a successful result

**Under an implied contract with the patient, the healthcare provider has an obligation to**

- Use due care, skill, judgment and diligence in treating patients
- Stay informed about the best methods of treatment
- Perform to the best of your ability, whether or not a fee is paid
- Exercise your professional judgment in all cases
- Consider the established customary treatment by your colleagues treating the same condition
- Provide proper instructions for a patient's care
- Take every precaution to prevent the spread of contagious disease
- Advise patient's against needless or unwise care

**Patient's Bill of Rights**

- Receive considerate and respectful care
- Receive complete information
- Receive information necessary to make an informed consent
- Refuse treatment
- Receive every consideration to privacy
- Be assured of confidentiality
- Obtain reasonable responses to requests
- Obtain information about care
- Expect reasonable continuity of care
- Examine bill and have it explained

**Patient's Implied Duties**

- Follow instructions and cooperate as much as possible
- Give all relevant information to the provider to help arrive at a diagnosis
- Follow the orders for treatment, provided that treatment is within the standards of care
- Pay the fees charged for services rendered

## **Termination of Contracts**

- The contract is normally terminated when the care is completed and the bill is paid
- Premature termination can occur in the following:
  - Failure to pay for services
    - Habitually failing to pay bills or make satisfactory arrangements
  - Failure to keep scheduled appointments
  - Failure to follow instructions
  - A patient seeks the services of another provider
- A patient may terminate a relationship at any time
- A health care provider MAY NOT terminate at any time
  - Could be charged with negligence, breach of contract or patient abandonment

# Professional Liability - Medical Malpractice

## Defense of Liability Suits

Dr. Gary Mumaugh

### Liability

- Liable is accountability under the law
- Health providers have general liability for
  - The Practice Grounds and Building
  - Automobiles
    - If employees use their car in the performance of their daily work
  - Employee safety
    - Employers must provide a reasonably comfortable and safe work environment for employees

### Standard of Care

- The level of care expected of a health care practitioner in carrying out their professional duties
- A physician or health provider is expected to conform to the standards of care for colleagues with similar credentials and training
  - Example – GP vs surgeon vs specialist
  - The specialist is held to a higher standard of care

### Duty of Care

- The legal obligation of health care workers to patients and, sometimes, non patients
  - Duty of care toward non patients, family members, former patients and even office personnel
  - Example – proper disposal of needles, etc for custodial worker's safety
  - Example – warning others of a communicable disease or warning family members of a threatening psychiatric patient

### Guidelines for Healthcare Providers

- Practice within the scope of training & expertise
- Confidentiality
- Record keeping and documentation
- Release information legally and ethically
- Maintain and dispose of materials correctly
- CYA and be aware of health care legislation & regulations
- Follow risk management and safety procedures
- Keep up on continuing education
- Develop personnel, policy, and procedures

## **Confidentiality**

- The act of holding information in confidence, not to be released to unauthorized individuals
- Don't disclose any information to third parties without authorization
  - Includes attorneys and insurance carriers
- Do not decide confidentiality on the basis of if you approve or agree with the views and morals of the patient
- Financial information is also confidential
- When talking on the phone, do not use the caller's name if other's can hear
- Be cautious in giving medical results over the phone
- Leave nothing with a patient's name or ID number visible
  - Charts, records, x-rays, financial and insurance reports
- Make confidentiality a non negotiable with employees
- Confidentiality may be waived with the following
  - For a third party exam that is paid by the third party
  - When a patient sues for malpractice and the records are subpoenaed
  - In worker's compensation cases

## **The Tort of Negligence**

- All medical professional liability claims are classified in one of three ways, based upon the root *feasance*, which means "the performance of an act"
- Malfeasance – the performance of a totally wrongful and unlawful act
  - Example – an assistant dispensing samples without authorization
- Misfeasance – the performance of a lawful act in an illegal or improper manner
  - Example – a RN ordered to change a dressing and does not use sterile technique
- Nonfeasance – the failure to act when one should
  - An EMT comes upon an accident and does not act

## **The Four D's of Negligence**

1. Duty - The person charged with negligence owed a duty of care of the accuser
2. Derelict – The health provider breached the duty of care to the patient
3. Direct Cause – The breach of duty of care to the patient was a direct cause of the patient's injury
4. Damages – There is a legally recognizable injury to the patient

### ***Res Ipsa Loquitur* - "The thing speaks for itself"**

- The mistake is so obvious that the negligence is obvious
- Also called the doctrine of common knowledge
- Under this doctrine, no expert witness is called
- Three conditions must exist
  - The act of negligence must be obviously under the defendant's control
  - The patient must not have contributed to the act
  - It must be apparent that the patient would not have been injured if reasonable care had been used
- Examples of *Res Ipsa Loquitur*
- Causing and infection by the use of unsterilized instruments
- Using used needles
- Damaging healthy tissue in an operation
- Accidental burns
- Unintentional leaving foreign bodies in a patient
- Operating on wrong body part

### **The Four C's of Medical Malpractice Prevention**

1. Caring
2. Communication
3. Competence
4. Charting

### **Why do patients sue?**

- Unrealistic expectations
  - Due to the abundance of available information
  - Technological advances
  - Patient's may expect perfection
- Poor rapport and poor communication
  - Very few sue healthcare providers they like and trust
  - If patient's perceive a cold, uncaring or rude provider, they are more inclined to sue
- Greed
  - Money is seldom the reason for medical malpractice, in some cases it may be an influencing factor
- Lawyers and our litigious society
  - Contingency fees means no out-of-pocket expenses

## Why do patients sue?

- Poor Quality of care
  - Poor quality *in fact* means that a patient is truly not receiving quality health care
  - Poor quality *in perception* means that the patient *believes* they did not receive quality health care, even if this is not true
  - Both situation leads to malpractice litigation
- Failure to understand the patient's and family's perspective and devaluing their point of view
- Poor outcome
  - If medical treatment is unsuccessful or adds to a patient's health problems, the plaintiff must provide the 4 D's of negligence
    - Duty - The person charged with negligence owed a duty of care of the accuser
    - Derelict – The health provider breached the duty of care to the patient
    - Direct Cause – The breach of duty of care to the patient was a direct cause of the patient's injury
    - Damages – There is a legally recognizable injury to the patient
  - Attorney's can use the *lost chance doctrine* in medical malpractice actions negligently deprived the patient of a chance to survive or recover from a health problem

## Communicating With Patients

- Patients who see the provider's office as a friendly are generally less likely to sue
- Developing good listening skills
- Be aware of non-verbal communication
- Set aside a certain time to return phone calls
- Thoroughly explain diagnosis, treatment & prognosis
- Always have informed consent
- Avoid statements that could be construed as admission of fault
- Use tact, judgment and professional ability
- Refrain from making overly optimistic statements
- Advise patients as to your long absences
- Make every effort to reach an understanding of fees

## Documentation

- Improper documentation can lose a case
- Referrals
  - Make sure the patient understands who is or isn't making a referral
- Missed appointments
  - Always chart, date and sign "no shows" and "canceled, no reschedule"



## **Documentation - continued**

- Dismissals
  - Avoid charges of abandonment
- Treatment refusals
  - A patient's decision to decline treatment should be documented "Informed Refusal"
- All other patient contact
  - Record all phone conversations, etc.

## **Types of Defenses**

1. Denial
2. Affirmative Defenses
3. Technical Defenses

### **Denial Defense**

- A defense that claims innocence of the charges or that one or more of the four D's of negligence are lacking
  - Duty
  - Derelict
  - Direct Cause
  - Damages

### **Affirmative Defenses**

- Defenses that allow the accused to present factual evidence that the patient's condition was caused by some factor other than the defendant's negligence
- Contributory negligence
  - Alleges that the plaintiff, through a lack of care or follow through, caused or contributed to his or her own injury
- Comparative negligence
  - Some states allow apportioned damages
  - The patient, through the consequences of their own negligence, contributed 20% to their own injury would have their damage award reduced by 20%
- Assumption of risk
  - The defendant is not guilty of a negligent act because the plaintiff knew of and accepted beforehand any risks involved

## **Affirmative Defenses - continued**

- Emergency
  - If services were provided during an emergency
    - A true emergency existed
    - The appropriate standard of care was met, given the emergency situation
      - Good Samaritan Acts in all states
        - Gave care in good faith; acted within the scope of training and knowledge; use due care under the circumstances

## **Technical Defenses**

- Technical defenses are used based upon legal technicalities
- Release of tortfeasor
  - A tortfeasor is one who is guilty of committing a tort
  - Suppose a third party caused the injury in a MVA, and the provider treats the injured person
  - In most states, the party who caused the MVA is liable both for the injury and for the follow-up care
- Statute of limitations
  - The period of time established by state law during which a lawsuit may be filed
  - 2-6 years in most states / 4 years in Minnesota
  - When does the statute of limitations start?
    - On the day the alleged act was committed
    - When the injury resulting from the negligence was discovered
    - The day the provider-patient relationship ended
    - Must be filed within one year of the minor's eighteenth birthday, but not more than seven years after the date of injury

## **Ethical Guidelines**

- Patient neglect
  - Providers are free to choose anyone they want to treat
  - If treatment is started for emergency reasons, they can not neglect the patient and stop care
- Reporting test results
  - Report results ASAP, consistently, confidentially, and in a language understood by the patient
- Termination of the treating relationship
  - There is an obligation to support continuity of care
  - You cannot withdraw from care without giving notice

### **Ethical Guidelines - continued**

- Patient information
  - Must communicate honestly and openly
  - May inform patient's of a change in diagnosis resulting from retrospective review of test results or other information
- Use of chaperones during physical exams
- Unnecessary services
- Economic incentives and standards of care
  - When economic interests are in conflict with patient welfare, patient welfare always wins
- Racial and gender disparities
- HIV infected patients
  - A physician can not refuse care to a HIV positive patient based solely upon the HIV diagnosis and no fear, prejudice or discrimination

# Workplace Legalities

Dr. Gary Mumaugh

## Employment-at-will

- A concept of employment whereby either the employee or the employer can end the employment at any time, for any reason

## Hiring and Firing

- Employees generally cannot sue their employers because they have been fired and an employer cannot fire an employees for an illegal reason
- Wrongful discharge
  - A concept established by legal precedent that says an employer risks litigation if they do not have just cause for firing an employee
- Just cause
  - An employer's legal reason for firing an employee

## Discrimination

- Discrimination in the workplace or treating employees differently in hiring, firing, work assignments, or other aspects of employment because of personal traits or practices
- Federal laws prohibit employers from firing or discrimination for any of the following reasons:
  - Race, religion, gender, age, disability
  - Joining a union or engaging in political activity
  - Reporting company safety violations
  - Exercising the right of free speech
  - Refusing to take drug or lie detector tests

## Sexual Harassment (EEOC)

- “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature may constitute sexual harassment when
  - (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
  - (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions
  - (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”

### **Worker's Compensation**

- A form of insurance established by federal and state statutes that provides reimbursement for workers who are injured on the job
- Five worker's compensation benefits provided:
  - Medical treatment
  - Temporary disability
  - Permanent disability
  - Rehabilitation benefits
  - Death benefits

### **Employment Interviews – What You Cannot Ask**

- Cannot ask or inquire regarding:
  - Race, color, religion or creed
  - Gender, family, marital status
  - Method of birth control
  - Age, birth date, or birthplace
  - Disability
  - Arrest record
  - National origin
  - Membership in organizations
  - Military experience or discharge

### **Employment Interviews – What You Can Ask**

- Acceptable to ask regarding
  - SSN
  - Qualifications
  - Licensing or credentialing
  - Education
  - Job experience

# Ethical Guidelines

Dr. Gary Mumaugh

## Hospital Relations

- Admission fee - Unethical for physicians to charge a separate fee for admitting patients
- Staff privileges - Unethical for staff privileges to be considered because of potential referrals. Decisions regarding staff privileges should be based only on training, credentials, experience and competence.
- Billing for student services – Ethical to bill for student services under the direct supervision of a physician
- Economic incentives and levels of care – Welfare of patients always take priority over economic interests
- Unnecessary treatment – Unethical to provide treatment solely to increase income

## Communication

- Advertising – Providers may ethically charge for their services
- FTC – The FTC specifies that claims made must be explicitly ( expressed) and implicitly (implied) truthful and not misleading
- Advertisements may include education, fees, training, specializations, credit and payment plans, and other relevant information
- Patient testimonials are questionable
  - They may reflect on results expected
  - Statements that you have treated a large number of a certain type of care may be misleading
- Referral services or panel – Providers frequently provide advisory services through telephone, computer or outside the traditional provider-patient relationship
  - You cannot diagnose or prescribe and the limitation of services should be very clear
- Standards of professional responsibility – Providers are ethically and legally required to protect the privacy and legal right of patients
  - When information concerning a specific patient is requested by the media, consent of the patient or their representative must be in place

## Filming Patients in Health Care Settings

- Films for educating the public about the health care system are encouraged, but only of those patients who consent. Actors should be used if possible.
- Filming patients without their consent is a violation of privacy
- Patients should have the right to stop filming at any time and can withdraw consent at a later time

## **Other Confidentiality Issues**

- Confidentiality of HIV status should always be maintained
- Patient's history, diagnosis, treatment, and prognosis may be discussed with a patient's layer, with consent
  - The same applies to insurance carriers
- Providers may testify in court or before WC panels
- Confidentiality of computerized or digital records must be diligently protected as are all records
- Providers may not ethically divulge medical data to data collection firms for marketing purposes

## **Fees and Charges**

- Contingent
  - A fee should be based on the value of the service provided and not contingent on the outcome of a claim that does not relate to the value of the medical service
- Fees should be based upon
  - The difficulty and/or uniqueness of the services
  - Fees customary in the geographical area (UC)
  - The total amount of charges
  - The skill and competence of the provider
- When more than one provider is engaged in the care of a patient, each provider can charge separately
- You may charge for a missed appointment
  - Without a 24 hour advance notice
- Providers should complete a standard insurance form at no extra charge
  - Charges for extra forms or more complex forms is customary
- Providers must comply with the Truth-in-Lending Act
- Fee splitting
  - Payment from one provider to another for a referral is unethical
  - MN limits \$50 per year from a supplier per provider
- Waiver
  - The act of intentionally relinquishing a right, claim, or privilege
  - In cases of financial hardship, providers may forgive or waive co-payments, but the waiver must be in accordance with applicable laws
- Lien
  - A charge against real or personal property for the satisfaction of a debt or duty owed by law
- Professional courtesy
  - The practice of treating other providers and their families free of charge or at a reduced fee

## **Practice Matters**

- Providers in management positions and other non-clinical roles must place patient welfare before all other concerns
- Providers should recommend that patients obtain second opinions when needed
- Providers should provide information to enable patients to make intelligent choices
- Both providers and patients are free to accept or decline the provider-patient contractual relationship
  - Once a provider accepts a case, he or she should not neglect the patient
- Providers are responsible for continuity of care
  - Cannot withdraw from a case without advance notification
- When patients need to be restrained to protect them from injuring others or themselves, restraints must be ordered by a physician, except in emergencies
- Providers should not treat themselves or immediate family members, except in emergencies
- It is unethical for any provider to be under the influence of a controlled substance or alcohol
- Providers shall not use treatments that have no medical indication or offer no possible benefit to the patient

## **Conflicts of Interest**

- Conflict of interest – A situation in which a person is faced with choosing between financial gain and their duty to provide the best possible medical care to patients
  - Physicians involved in biomedical research cannot own stock in the sponsoring company
  - Providers can own interests in health care facilities, products and equipment
    - They should not directly refer to facilities that they have interest in
- Gifts to providers from suppliers are accepted if they are related to the provider's work (pens, notepads)

## **Managed Care**

- Providers within managed care networks should
  - Continue to place the interests of patient's first
  - Maintain awareness of the plan decisions about drug selection and durable medical goods
  - Promote full disclosure of information to patients



## **Professional Rights and Responsibilities**

- A provider is free to choose specialties or to limit your practice to specialized services
- A provider may choose who you will serve
- Healthcare practitioners have an ethical duty to expose incompetent, corrupt, dishonest or unethical practitioners
  - Failure to do so could affect your license
- Practitioners who know they have an infectious disease that poses a significant risk to others should not engage in any activity that risks transmission of the disease

# Marketing Plan

Dr. Gary Mumaugh

## What is Marketing?

- Marketing is identifying the needs of your customers and clients and developing programs to meet those needs.
  - Patients, attorneys, employers, referral agencies, third party payers, other health providers
- It is analyzing your clients, your competition and your capabilities and utilizing that information in a plan designed to accomplish your individual goal.
- The four P's of marketing
  - Place
  - Product (Service)
  - Price
  - Promotion

## The Marketing Plan

- **The Analysis** – The first step in applying marketing principles to the promotion of your practice is an exercise in information gathering and critical analysis. To assure your success, the information you collect must be comprehensive, accurate, and unbiased.
- **Define your goals.** These must be YOUR goals and nobody else.
  - How much time do you want for your family?
  - How much free time do you want?
  - How much time do you want for nonprofessional activities?
  - What are your financial needs?
  - What are your expectations on retirement?
- **What are your professional goals?**
  - What level of expertise do you want to achieve?
  - How much time do you want to spend on continuing education?
  - Do you want to teach?

- **What are the goals of the practice?**
  - How many patients do you want to see?
  - What is your bottom line expenses?
  - How much does it cost you to go to work every day?
  - What services do you want to offer?
  - What are your secondary revenue generating centers?
  - How do you plan to start the practice?
  - How do you plan for the practice to grow?
  - What specialties do you want to offer?
  - How accessible do you want to be?
  - What is your philosophy of practice?
  - What type of patient mix do you want to treat?
  - What type of clinical conditions do you really want to treat?
  - What type of clinical conditions are you not comfortable with?
  - Is there a market niche you are most comfortable with?
  
- **Determine both the strengths and weakness** of your proposed practice and of yourself. Be absolutely objective.
  - How accessible is your location?
  - How appealing is the physical facility?
  - How friendly and competent is your staff?
  - How are you and your office unique?
  - Do your office procedures lead to effectiveness and efficiency?
  - Are your procedures customer and patient friendly?
  - Is the quality of your care of the highest standard?

- **Analyze the competition**
  - Who are they?
  - What are their strengths and weakness?
  - What is the history in the area?
  - What do they do better than you?
  - What do they do worse than you?
  - What do they do that you do not do?
  
- **Conduct market research**
  - Talk to the competition
  - Talk to all the area health care providers
  - Talk to potential patients
  - **LISTEN !!!**
  
- **Examine your products and services**
  - What are your current services?
  - What new services could you add to meet patient demand?
  - What expertise could you develop?
  
- **Critically review your pricing**
  - Are your prices in line with your colleagues?
  - Are prices set from a marketing perspective?
  - What do your patients think of your prices?
  - Are your prices openly displayed?
  - Do you have a policy of price adjustment or waiver?
  
- **What are your distribution channels?**
  - How accessible and available are you?
  - How does the public and people learn about you?

## The Market Plan

- **Develop your practice**
  - Create loyal, enthusiastic customers through high quality service
  - Create enthusiastic patients through education
    - Patients who got well rarely refer
    - Enthusiastic and excited patients refer
  - Create a comfortable, appealing, efficient office
  - Develop a high quality attitude and manners of your staff
  - Improve your communication skills
  - Learn to listen to your patients
  - Inform patients of your services
  - Realize the weaknesses of your competition and determine how to use this to your advantage
  - Create the most advantageous accessibility
  - Create the most competitive pricing structure
- **Selling yourself and your practice**
  - Develop and distribute business cards
  - Develop and distribute a practice brochure
  - Provide patient education, including written materials and seminars for your patients
  - Become active in your community
  - Act as though you were running for mayor
  - Write a regular column or article in your local newspaper
  - Be active in professional organizations
  - Join and be active in local service organizations
  - Offer special services

