Did I Do That?

ISSUES IN COMMUNICATION, DOCUMENTATION, AND RISK IN HEALTHCARE DECISIONS.

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OBJECTIVES

- Describe risk and protective factors in doctor-patient communication
- Understand the importance of appropriate health record documentation in the era of patient-centered care
- Articulate an awareness of how to “expand the field” when involved in difficult healthcare decisions
Medical Ethics

• **4 Principles:**
  
  • Autonomy*
  
  • Beneficence- (Dr. should act in Pt. best interest)
  
  • Non-Maleficence- “primum non nocere”
    
    prē-mūm-, nōn-noː-ˈkā-rā (first, do no harm)
  
  • Justice-fairness (as in, allocation of resources)
Harm

Resulting from the underlying medical condition

Resulting from the care/services provided to the patient

Inherent risk of treatment
Systems failure
Provider performance
How Hazardous Is Health Care?

DANGEROUS
(>1/1000)
- HealthCare

Number of encounters for each fatality

ULTRA-SAFE
(<1/100K)
- Driving
- Scheduled Airlines
- European Railroads
- Nuclear Power

Total lives lost per year

Source: Berwick, D.M.
What happened?

- Duty - A physician has a duty to provide competent care to a patient

- Breach - Did the physician’s conduct, whether by act or omission, fall below the applicable standards of care?

- Causation - “But for...” Proximate cause (foreseeability)

- Damages
Breach - Omissions of Fact and Judgment

- **Fact-**
  
  Did you review all the facts you knew or should have known...

- **Judgment-**
  
  Once reviewed, did you make a reasonable clinical decision, and document such?

- It is recognized that physician’s aren’t perfect and that even with reasonable care, negative outcomes occur.
- You are much more likely to be “forgiven” if you documented how you weighed your decision (based on the facts...)
It has significant clinical and legal implications

- How curious are you?

- (and how does being stressed and busy get in the way?)
Malpractice Risk According to Physician Specialty" Jena et al NEJM 2011
7 common reasons for malpractice in Family Medicine

1) Failure/delay in diagnosis
2) Negligence in maternity care
3) Negligence in fractures/trauma
4) Failure to consult in a timely manner
5) Negligent medication treatment
6) Negligent procedures
7) Failure to obtain informed consent
- Office of Inspector General, Insurance penalties and fines, Accreditation issues, etc..
- Primary areas of concern:
  - Meaningful Use/Privacy/Security
  - Clinical Coding
  - Quality Data Reporting
Enough of the negative stuff already—I’ve barely had my coffee!!

- So, what are protective factors—what can be done?
First, Re: the Systems/Compliance Issues:

Micro

- Obviously:
- Training
- Software
- Support
- Tracking

Macro

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<tr>
<th>Basic Question:</th>
<th>Care? Quality?</th>
<th>What will it take?</th>
<th>Resources? Value?</th>
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<td>Object:</td>
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<td>Outcome:</td>
<td>Achievement</td>
<td>Production</td>
<td>Bottom line</td>
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<td>Service quality</td>
<td>Efficiency</td>
<td>Price/Value</td>
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4* Cs of Risk Management

- Compassion
- Communication (both patients/colleagues)
- Competence
- Charting

Compassion

- Literally, “suffering along with”....(Latin)

- How do people know you “get it”?
Compassion

- Genuine Empathy
- Respect
- Admiration
- Commiseration...
- When to self-disclose...
Communication

- Survey of hospital patients indicated that 39% listed doctor communication skills as a top concern vs. 7% for pain management.
Communication

- Patients-
- Feeling Heard*
- Validated
Communication and Cues

Elements of Personal Communication
- 7% spoken words
- 38% voice, tone
- 55% body language

- Lie to me

Albert Mehrabian, PhD, UCLA
Per Dr. Paul Ekman
Communication-Interruptions

- Study of Family Practitioners: 75% solicited patient concerns, 25% did not. If not, the concerns were late-breaking or missed.

- Average: After 23 seconds, the patient was redirected. And if so, communication of patient concern was rarely completed.

- Waiting how much longer would have allowed for completion?

- 6 seconds!
Communication-Assumptions

- Re: Study of hospital discharge planning after M.I./ Pneumonia:

- Physicians felt 89% of patients understood medication side effect risks. 57% of patients actually did. Re: resumption of normal activities, physicians felt 95% of patients understood directions. Only 58% did.
“Among the tests she had during the three days she spent there were a spinal tap, a CT scan, an EEG, a chest x-ray, and extensive blood work. Foua and Nao Kao signed ‘Authorization for and Consent to Surgery or Special Diagnostic or Therapeutic Procedures’ forms, each several hundred words long, for the first two of these. It is not known whether or not anyone attempted to translate them, or, if so, how ‘Your physician has requested a brain scan utilizing computerized tomography’ was rendered in Hmong.”
Elements of Informed Consent

- Informed consent should include:
  - Nature of the treatment (procedure/meds...)
  - Purpose of the treatment
  - Benefits
  - Risks
  - Alternative treatments (including no treatment at all)
  - Implies discussion, not just “sign here...”
Orientation-patient education about what to expect, and flow of the visit.
Facilitation-soliciting opinions, checking for questions, encouraging discussion.
Use of humor, slightly longer visits compared to claims
The association held for primary care physicians. It did not for surgeons.

Source: Levinson et al. JAMA 1997; 277:553-559
What do we teach medical students?

- Empathy is important
- You only get one chance at first impressions
- Ask
- Tell
- Ask
Where we often see conflicts with colleagues manifested

- ‘Fighting’ in the patient record
- Unprofessional comments to patients/colleagues
- “Ducking for cover” or “finger-pointing” when negative outcomes occur
What about apology?

- Some say it is a personal decision.
- Others say it is a corporate decision.
- Some say doing so correctly is helpful to all.
- Others say, it is high risk.

Understand State Law

- Discern Greed from Grief
  - Patients/Families typically want two things: validation and assurance against repeats. (what they wanted prior was a caring relationship)
  - If money is a primary motivator, then apology can be problematic
  - Don’t use it as your own confessional. It is about what the patient/family needs, not you.

- Conduct a thorough and timely review

Sources-Medscape Business of Medicine, Sorry Works!, Debra Beaulieu-Fierce Practice Management
Incompetence: “the inability to provide sound medical care because of deficient knowledge, poor judgment, or substandard clinical skills.”
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<td>M+M</td>
<td>State Licensing Boards</td>
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Charting (Documentation)

- Content
  - Intended
  - Unintended

- Timing
### Documentation

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<tr>
<td>Formal and informal</td>
<td>Discoverability</td>
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<tr>
<td>Anticipation</td>
<td>Example: work e-mails, comments on social media...</td>
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Documentation: Timing

- Old adage: If it isn’t documented, it didn’t happen...
- Document as if the patient, patient’s advocate/attorney, and a colleague were reading over your shoulder...

- Issue of Concurrent Documentation
  - Ability to maintain eye contact?
  - Read non-verbal cues?
  - Again, patient feeling heard...
  - Your thoughts?
Culture (okay, a 5th “C”)

- Do you have a culture within your organization that encourages:
  - Systems-review
  - Education re: provider-patient communication
  - Self-reflection, including knowing when you’re stuck...

- Ted Talks:
  - Stefan Larsson: What Doctors Can Learn From Each Other
  - Brian Goldman: Doctors Make Mistakes. Can We Talk About That?
It Often Takes a Village: Knowing When You’re Stuck...

- What are your cues?
- Expand the Field!!!
- Who do you turn to?
Recap

- We discussed risk and protective factors in doctor-patient communication
- We discussed the importance of appropriate health record documentation in the era of patient-centered care
- We discussed the importance of “expanding the field” when involved in difficult healthcare decisions
Questions? Comments?