How to Improve Medical Office Communication and Decrease Your Malpractice Liability

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The Doctors Company
TDC GROUP

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Objectives

Identify the types of communication breakdowns that lead to malpractice claims

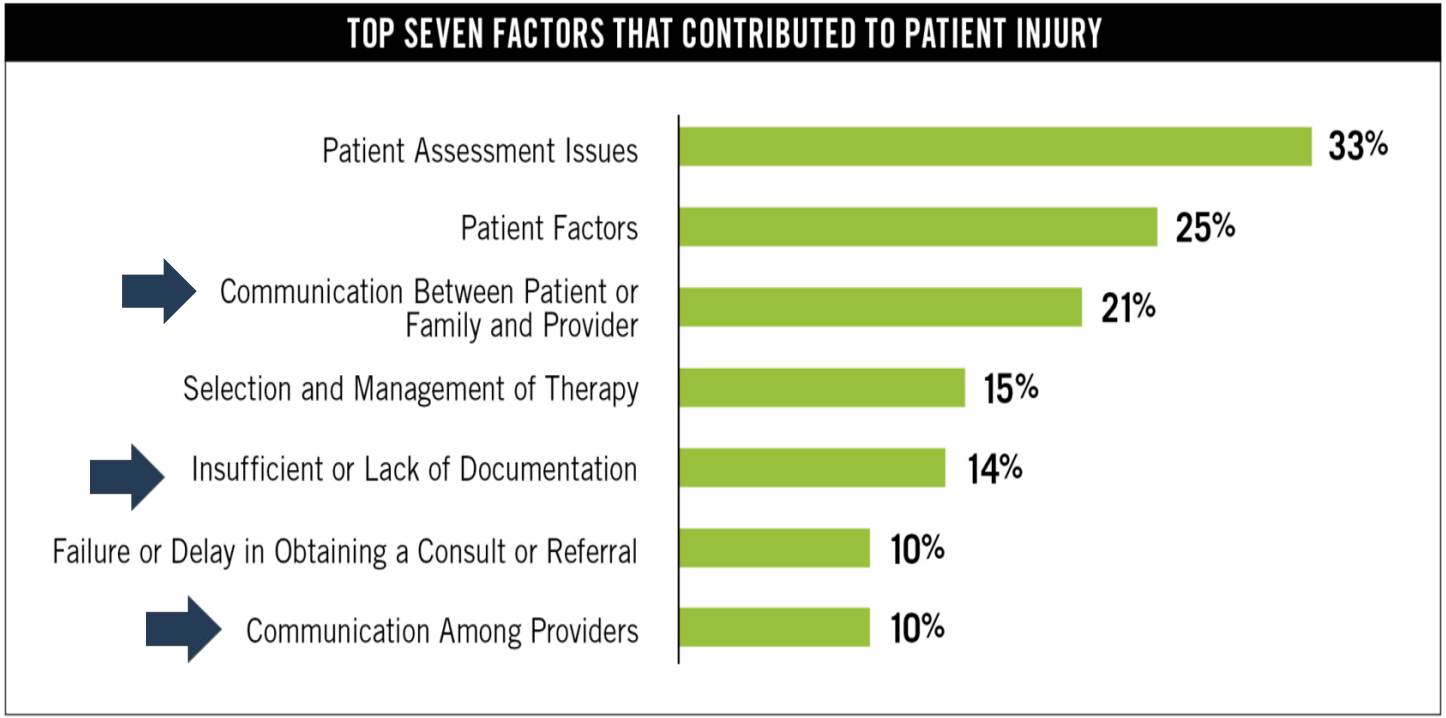
Review common challenging patient situations and how best to manage them in the office setting

Discuss how documentation techniques can be your best communication even years later

"The single biggest problem with communication is the illusion that it has taken place."

George Bernard Shaw

Factors Contributing to Patient Injury



Source: The Doctors Company

“Communication Between Patient and Provider”

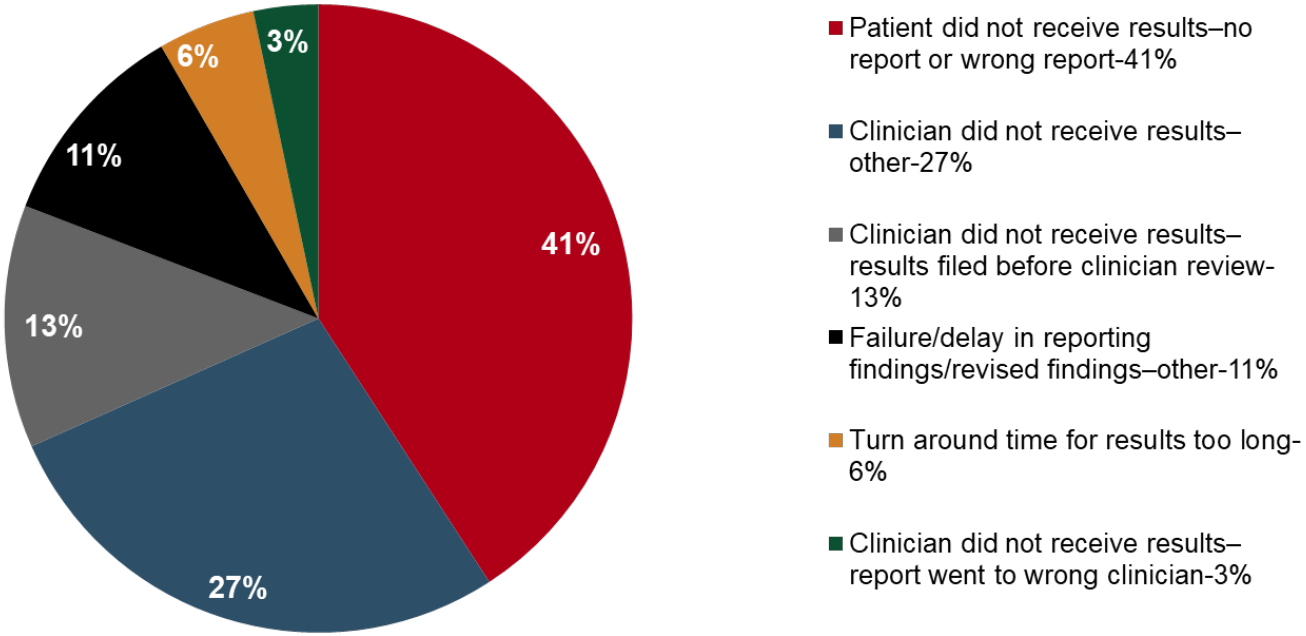
21% of the time, communication breakdowns between the patient and provider played a significant role in the malpractice claim

- Communication breakdown comes in many forms:
  - **Lack of information** (info wasn’t given or patient didn’t retain it)
  - **Misunderstanding** (jargon, hearing, accent, explanation was lacking)
  - **Poor rapport** (tension in the relationship, unable to “click”, distractions)
  - **Cultural/Language barriers** (interpreter needed, don’t question a Dr.)
  - **Comprehension** (feeling ill, fear, anger, stress, low literacy level)

Lack of Information / Misunderstanding / Barriers etc.

- **Lab or test result delays and “lost” results = delay in diagnosis claims**
  - Lab tracking systems must be airtight
- **Lack of or incorrect information on current patient medications**
  - Pre appointment: advise pt. to bring meds, take photos of bottles, or write list
- **Patient did not understand /retain information needed to continue care**
  - Patients forget **80%** of what is said in appointments
  - Create written and/or electronic materials to educate pts. about common issues
  - Provide written notes for patients as they leave your office
    - Review a visit summary printout, use *Ask Me 3*, create note for patient, etc.

Lab and Test Tracking as a Communication Failure



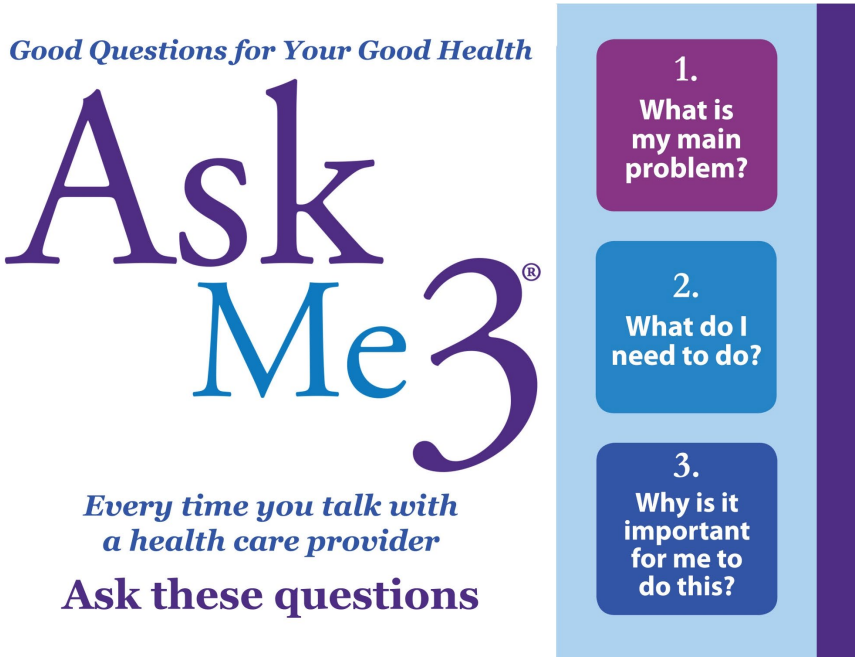
Source: The Doctors Company

Lab and Test Tracking

MR #	Name	DOB	Date	Test Ordered	Results	MD review	Patient notified	Follow-up
123	Joseph Schmo	4/3 1962	12/15/23	CBC	12/20/23	yes		appt. 1/30
123	Joseph Schmo	4/3 1962	12/15/23	BMP	12/20/23	yes		appt. 1/30
456	Donald Quijote	2/25 1970	12/17/23	ALT	12/21/23	yes	RN called 12/26/23	U/S ordered
456	Donald Quijote	2/25 1970	12/17/23	AST	12/21/23	yes	RN called 12/26/23	U/S ordered
789	Mary Contrary	6/9 1950	12/19/23	PT				
789	Mary Contrary	6/9 1950	12/19/23	PTT				
1011	Pete Rose	8/7 1986	12/20/23	CMP	12/23/23	yes	MA called – 12/23/23 wnl	Keep annual appt.
1012	Homer Simpson	3/18 1969	12/21/23	Cholesterol	12/26/23	yes	MD called 12/26/23	New RX

“Communication Between Patient and Provider”

Ask Me 3®



- Institute for Healthcare Improvement (IHI)
- Complimentary resources
- Materials in Spanish also
- www.IHI.org

Unspoken Communication

Aloof / disinterested
Rushed / uncaring
Rough / impatient
Gruff tone
Listening
Eye contact
Body language

- hand on the door or standing near it
- didn't sit
- didn't seem to have time to talk
- looked only at the computer

“Patient Factors”

Patient contributory factors that are, for the most part, beyond the control of a provider. Examples:

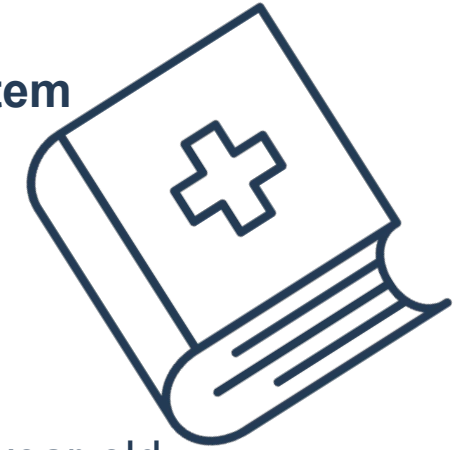
- Non-adherence with ordered test or procedure*
- Patient refuses care based on belief system
- Family interferes or disagrees with care plan
- Socioeconomic barrier to care
- Unrealistic expectations or bizarre misperceptions

If the patient does not comply with instructions because they were not properly given or understood, the claim would also fall into the “Communication between Patient & Provider” category.

Health Literacy

The ability to understand and navigate the healthcare system

- Understanding medication regimens
- Being aware of the need for follow-up
- Understanding precautions and guidance

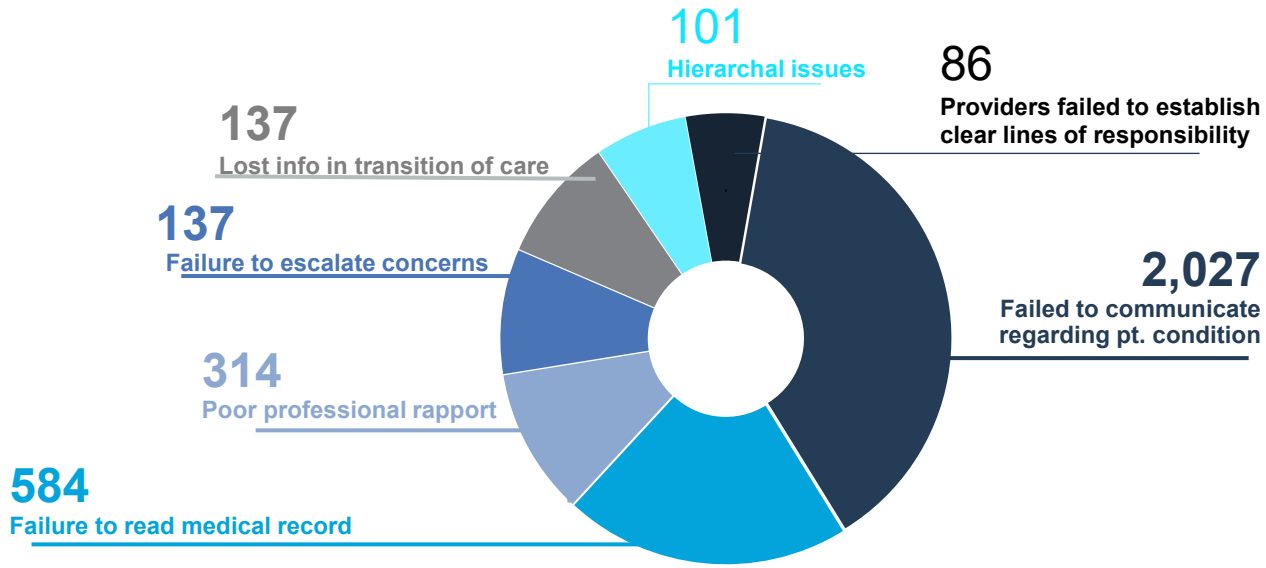


  - In New Mexico, 29% of adults read at the level of a 5 – 7-year-old
    - 39% read at or above a 9 – 11-year-old level*
      - Add in the general population's difficulty navigating healthcare
      - Your written pt. materials should be created at third grade level!

*Program for the International Assessment of Adult Competencies PIAAC

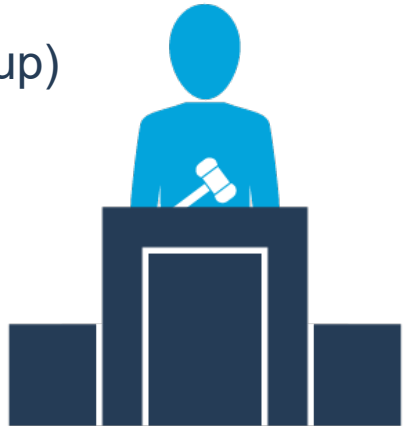
“Communication Among Providers”

A survey of 3,243 Claims with Communication Among Providers Issues



Legal Consequences of Communication Failures

Lawsuits arising from communication failures can be for various reasons. Some of the most common are:



- Delayed diagnosis (lab/test tracking error, pt. lost to follow-up)
- Incorrect treatment administered due to miscommunication among healthcare team
- Inadequate or lacking informed consent discussion
- Medication errors either by the patient at home or by the healthcare team
- More than half of all sentinel events arise from communication failures*

*National Institute of Health

Human Error is Inevitable

Many “Communication Among Providers” claims arise from human error

- Mature systems do not just try to reduce the probability of human error, they accept that errors will occur and then find ways to intercept them.

Decreasing Human Error

Improving areas most often seen in medical malpractice claims:

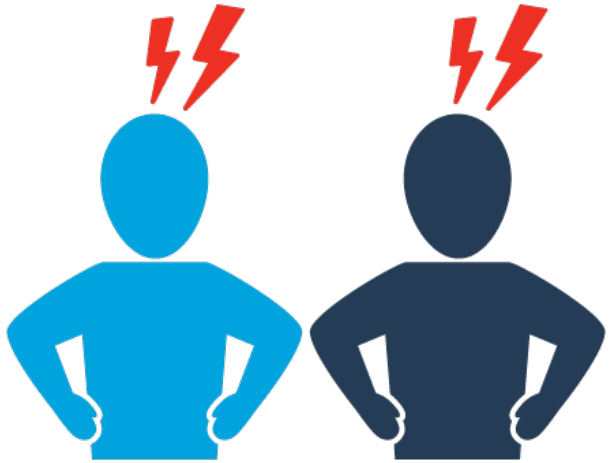
- Laboratory and test tracking systems that are *not* dependent on opening the patient chart
- Documentation of ALL patient phone calls by staff
- A structured handoff routine for on-call or transfer of care situations
- Standardize (make it a *Big Mac*)
- Flatten the hierarchy
- Checklists!
- Simulation drills

Challenging Patients

an added test of communication skills

Challenging Patient Types

- Overly Dependent
- Manipulative
- Angry
- Rude / Threatening
- Non-adherent



Common Physician Responses

A common response to all types of challenging patient behavior is emotional:

- Frustration
- Anger
- Uncertainty
- Feelings of powerlessness
  - **Often the actions taken are counterproductive**
    - Ignore the problem / Avoid the patient
    - Blame the patient for not getting well

The Overly Dependent Patient

- Very needy and often emotional
- Seeks excessive reassurance
- Takes up an unrealistic amount of time
- Can be passive aggressive
- Seeks inappropriate social support

  - Discuss the problem head on
  - Set clear boundaries and time limits – team-up to enforce them
  - Try telehealth visits
  - Possibly schedule patient as last of the day or last before lunch

Response Strategies

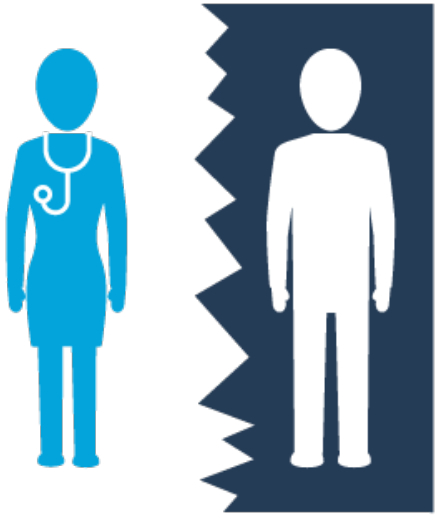
Never underestimate the positive effect that interpersonal communication skills can have on any patient encounter!

- Remain seated during the encounter
- Practice active listening
- Listen for at least 60 seconds uninterrupted
- End encounter with “what questions do you have about what we discussed?”
- Be aware of your own emotional triggers

Termination Of The Relationship

When strategies to improve the relationship fail, you may have to end the physician/patient relationship

- Take the red flags as they come
- Don’t consider it a failure on your part
- Sometimes communication styles don’t mesh
- Sometimes patients have mental health issues that play into their social interactions
  - www.thedoctors.com/articles/terminating-patient-relationships/



The Manipulative Patient

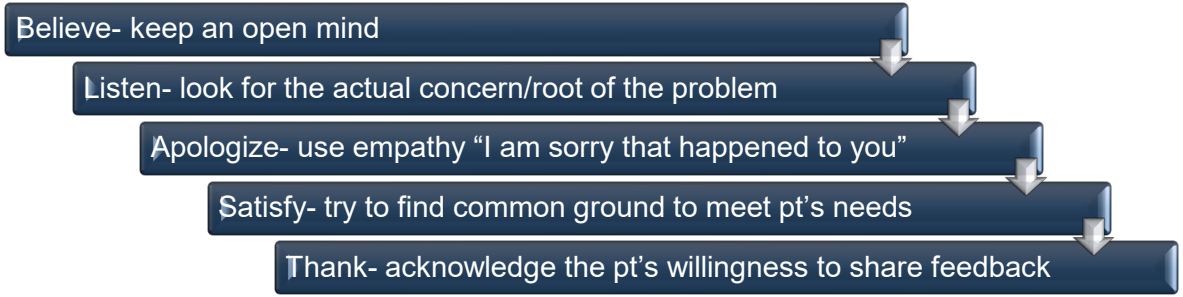
- Acts rude towards or lies about staff but is courteous with the physician
  - Let the patient know that you will not tolerate mistreatment of your staff
- Implies or threatens legal action as a way to get what is wanted
  - Empower staff to address this directly with a script:
    - “I’ll let the doctor know, is there anything else I can help you with?”
- Constantly gives excessive praise “You are the best doctor ever!”
  - Be aware that the patient may be trying to get something from you with this behavior (even though your really are the best doctor ever)

Manipulative behavior stems from a need to take control over a situation.

The Angry Patient vs. The Rude/ Threatening/ Violent Patient

Being upset or angry is allowed, the escalated behaviors that sometimes accompany those emotions should not be

In an otherwise normally behaving patient, an expression of anger should be managed as an opportunity to improve



Advise patients who will not de-escalate that you are listening and willing to work with them at another time when a constructive discussion is possible

The Angry Patient / Complaints

Establish a proactive process to respond to concerns and complaints

- Do not rely solely on frontline personnel to resolve problems
  - Consider appointing a Patient Relations Specialist
- Respond immediately to complaints
- Recognize that a patient's perception of an occurrence is their reality
- Provide the patient with a timeline for follow-up
- Respond accordingly following a swift investigation

Patients who feel seen, heard, and validated in their concerns are less likely to pursue legal avenues to resolve their issues!

Response Strategies

- Improve listening and understanding
- *“What I hear from you is… Did I get that right?”*

- Increase empathy
- *“You seem upset. Could you help me understand why?”*

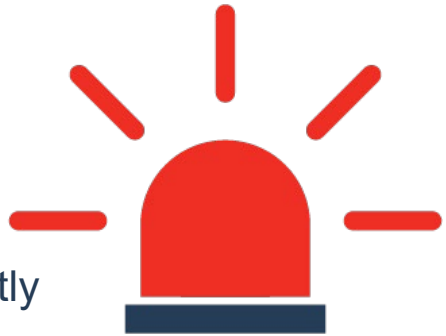
- Improve partnership with the patient
- *“It seems that sometimes we don’t work together well, let’s fix that”*

- Problem solve
- *“Let’s see what we can do to resolve the issues”*

The Threatening or Violent Patient

Zero tolerance and immediate termination of the relationship

- Make sure staff feel empowered to call police if they ever feel threatened
  - This will protect you from an employee liability & general liability standpoint also
  - Call police first, call your Med Mal carrier second!
- Every practice should have a plan for threats of violence, aggressive behavior, and weapons in the practice location
- These patients often give red flags with previous behavior
  - Address inappropriate behavior such as yelling and profanity swiftly
  - Have a face-to-face conversation and send a warning letter



The Non-adherent Patient

Failure to engage in the planned treatment process by

- Missing or canceling appointments
- Not taking medication as prescribed
- Discontinuing therapy regimens prematurely
- Refusing to see specialists or obtain tests as ordered
- Not following MD recommendations

The Non-adherent Patient

Attempt to identify barriers to compliance

- Financial restraints?
- Transportation needs?
- Lack of childcare or elder care?
- Language or cultural barriers?
- Mental competence?
- Lack of understanding?
- Health Literacy/Basic Literacy?
- Elder abuse?

Ask patient to explain any issues preventing them from following your recommendations and work in a respectful manner to address concerns

The Non-Adherent Patient

Assess patient understanding by asking patient to repeat the information back to you "…so I can be sure I've explained it properly"

Gather a list of community resources to share with patients for transportation, in-home care, meals, exercise programs, etc.

Ask patients to read their prescription bottle labels and explain to you how and when they take their medications

Documentation

another important form of communication

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Insufficient or Lack of Documentation

14 % of the claims in our study had documentation issues

- In litigation, your defense will be based, in large part, upon your documentation
- Often times litigation ends up focused on things that are *NOT* documented
- Trying to guess or recreate what happened is never optimal
  - Even worse is the *Plaintiff's* lawyer or expert guessing and filling in the blanks for the jury

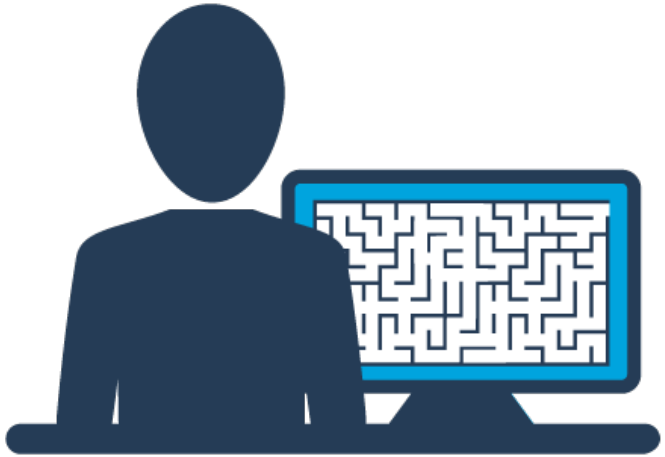
Tell The Patient's Story

The best documentation will tell a clear "story" for others to follow

- Real time documentation is considered inherently dependable by juries
  - Aside from **subsequent treating providers** needing to understand a history…
  - If the record is ever used in litigation, an **Expert Witness** will need to read your documentation, follow your course of treatment, and say "yes, I can testify that this treatment met the standard of care"

When To Document Most Diligently

- Out of the ordinary situations
- When you decide not to follow the advice of a consultant
- Any time patient has a preoccupation with something
- When responsibility is transferred to another physician or provider
- Perplexing symptoms or outcomes
- Consent discussions



Additional Documentation Considerations

Administrative Staff Documentation

- Document every phone call even if no contact
- No Shows/Cancels document 3 efforts to reschedule
- Inappropriate comments from patients: document verbatim
- Keep internal electronic communications professional

What Does Not Belong In The Medical Record?

- Staff issues - “Unit short staffed so patient did not get meds on time”
- Legal issues - “Patient is threatening to sue if he is not given a refund”
- Subjective comments – “Patient’s home life is dysfunctional and toxic”
- Opinions - “It appears patient is looking for a vacation from work”
- Commentary on care by others – “The previous procedure was botched”
- Falsifications of events, dates, times, etc.
- Notes you changed after an event takes place

Dictation Considerations

Medical record errors overlap into the “Communication Among Providers” category

- The average error rate within dictated medical record notes is **7.4%** if the note is not reviewed*
  - Dictation errors drop to 0.4% after transcriptionist’s review*
- Errors in the record are often propagated increasing the likelihood of impact
- *“This note was created using voice recognition software and may contain technical errors”* – does not excuse errors in clinically significant information
- The Joint Commission recommends real time editing by the author of the note as the preferred method of review

*Zhou, et al (Jama 2018)

Telehealth Considerations

Your telehealth note should always include:

- Patient location
  - The state where patient is located
- Informed consent
  - Include limitations of your assessment capabilities
- Patient identity verification
- Others present on the call or video
- Distracted behavior?
- Plan for technology failure
  - Discontinue/convert the visit if either party is unable to hear the other properly

Common Weaknesses in Documentation

- Lack of response to diagnostic study results
  - And how results were communicated to patients
- Missing documentation of after-hours calls
- Sparse notes on patient's response to treatment
- No documentation of informed consent discussion
  - Including patient's specific questions and whether anyone else was present
- Self-serving comments and additions to the record made after a potential claim has been brought forth

Something To Think About

"Perhaps the most important lesson for physicians is to take the time and effort to elicit patients' expectations.

When physicians recognize and address patient expectations, satisfaction is higher, not only for the patient, but also for the physician.

It may help to remember that patients often show up at a visit desiring information more than they desire a specific action."

C. Carolyn Thiedke, MD. What Do We Really Know About Patient Satisfaction?; Fam Pract Manag. 2007 Jan;14(1):33-36.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Resources and Reference

- **Guided Self Assessment for members** (including evaluation of your Lab and Test Tracking procedures) https://www.thedoctors.com/patient-safety/guided-risk-self-assessment-exclusively-for-member-practices/
- **Laboratory and Diagnostic Test Tracking in Ambulatory Practice** https://www.thedoctors.com/articles/laboratory-and-diagnostic-test-tracking-in-ambulatory-practice/
- **Ask Me 3** https://www.ihi.org/resources/tools/ask-me-3-good-questions-your-good-health
- **Patient Experience Survey** https://www.thedoctors.com/articles/patient-experience-surveys/
- **Cultural Diversity in Healthcare: Strategies for Culturally Appropriate Patient Care** https://www.thedoctors.com/articles/cultural-diversity-in-healthcare-strategies-for-culturally-appropriate-patient-care/
- **The Patient Education Materials Assessment Tool from AHRQ** https://www.ahrq.gov/health-literacy/patient-education/pemat.html
- **Contributing Factors to Medical Malpractice Claims: Study Examines Difference Between No Payment and Indemnity Claims** https://www.thedoctors.com/articles/contributing-factors-to-medical-malpractice-claims-study-examines-difference-between-no-payment-and-indemnity-claims/
- **Building a Culture of Safety in Healthcare: Human Factors Engineering** https://www.thedoctors.com/the-doctors-advocate/first-quarter-2023/building-a-culture-of-safety-in-healthcare-part-three-human-factors-engineering/
- **Building a Culture of Safety in Healthcare: Just Culture** https://www.thedoctors.com/the-doctors-advocate/second-quarter-2023/building-a-culture-of-safety-in-healthcare-part-four-just-culture/
- **Checklist Manifesto: How to Get Things Right.** Gawande, Atul. New York, N.Y., Metropolitan Books, 2009.

Resources and Reference continued

- **Effective Patient Communication: Strategies for Challenging Situations** https://www.thedoctors.com/articles/effective-patient-communication-strategies-for-challenging-situations/
- **Combating Workplace Violence in the Healthcare Office Practice** https://www.thedoctors.com/the-doctors-advocate/first-quarter-2024/combating-workplace-violence-in-the-healthcare-office-practice/
- **Set Expectations for New Patients With a conditions of Treatment Agreement** https://www.thedoctors.com/articles/set-expectations-for-new-patients-with-a-conditions-of-treatment-agreement/
- **ASHRM Workplace Violence Toolkit** https://www.ashrm.org/sites/default/files/ashrm/Workplace-Violence-Tool.pdf
- **OSHA Workplace Violence in Healthcare** https://www.osha.gov/sites/default/files/OSHA3826.pdf
- **Nonadherent and Noncompliant Patients: Overcoming Barriers** https://www.thedoctors.com/articles/nonadherent-and-noncompliant-patients-overcoming-barriers/
- **AHRQ Health Literacy Toolkit** https://www.ahrq.gov/health-literacy/improve/precautions/index.html
- **NIH Plain Language Materials and Resources** https://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/clear-communication/plain-language/
- **Prescription Assistance Program** www.newmexciodrugcard.com
- **Rx Assist Prescription Drug Assistance** https://www.rxassist.org/providers
- **United Way of Southwest New Mexico Prescription Drug Assistance Program** https://www.uwswnm.org/familywize-0
- **Patient Assistance Fund Finder App** https://panfoundation.org/fundfinder/

Resources and Reference continued

- **Terminating Patient Relationships** www.thedoctors.com/articles/terminating-patient-relationships
- **A Collection of Litigation Information Articles from The Doctors Company:** https://www.thedoctors.com/articles/litigation/
- **Remember the Basics of Good Documentation** https://www.reliasmedia.com/articles/remember-the-basics-of-good-documentation
- **The Faintest Ink: Documentation to Defend Quality Patient Care** https://www.thedoctors.com/articles/the-faintest-ink-documentation-to-defend-quality-patient-care/