OFFICE STAFF ROLE IN MALPRACTICE CLAIMS

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Disclosures

The faculty have no financial disclosures.
Objectives

• Explain the role of OMP in the informed consent process

• Describe steps OMP can take to improve communication with special needs patients: elderly patients; minors; and limited English patients;

• Explain the role of OMP in helping triage patients who call the practice seeking care/treatment
What Prompts Lawsuits

Breakdown in communication was associated with 71% of all malpractice claims

- failure to understand the patient or family perspective (13%)
- desertion of the patient (32%)
- devaluation of the patient or family view (29%)
- delivering information poorly (26%)

Beckman et al (1994), Archives of Internal Medicine
Lessons Learned by Insureds in the Informed Consent Process

- I now ask patients what they expect from planned surgery, to see if they have unrealistic expectations
- Being open with patients about complications
- Longer pre-op discussions
- I now have one for my chart done regardless of what is required at the facility where I operate
- Being even more emphatic with patients than ever
We DEFINITELY never want to hear:

“My doctor told me that it could happen...”

But “The girl” said not to worry about it!”
What do patients want?

Recommendations

– Control patients’ expectations and understanding of treatment

– Informed consent process must contribute to accurate patient expectations
What roadblocks do we face?
What do patients hear?

– Very little information can be retained and recalled correctly by the patient even 1 day after the surgery
What do patients hear?

Patients want to feel comfortable with decision

– Hear (and remember) what enhances positive attitude
– Devalue (and forget) objections
– Believe in and hope for the best
What do patients hear?

- Information processing selective and biased in favor of already chosen alternative
- People prefer and give excessive weight to information that favors their decision
- Decision-making process involves selective perception and cognitive information processing
What do patients hear?

- But claim in court would not have consented if knew of risk.
- Or claim discussion never took place
What can we do to reduce the risk of unhappy patients and malpractice claims?
Informed Consent: Voluntary

ELEMENTS OF INFORMED CONSENT

Voluntary

– Time to ask questions and decide
– Decision-making capacity
  • No mind-altering medications
  • Ask and answer pertinent questions
Informed Consent: Informed

ELEMENTS OF INFORMED CONSENT

Informed

– Condition
– Proposed treatment
– Risks, benefits, and alternatives including no treatment
PATIENT’S ACCEPTANCE OF RISKS

- I understand that it is impossible for the doctor to inform me of every possible complication that may occur.
PATIENT’S ACCEPTANCE OF RISKS

• By signing below, I agree that my doctor has answered all of my questions, that I have been offered a copy of this consent form, and that I understand and accept the risks, benefits, and alternatives of the procedure.
"I won't lie to you. There's some very risky paperwork involved with this procedure."
Patient rapport is even more important.

- Good doctor patient rapport is important because in 43% of ophthalmic malpractice lawsuits with large monetary awards, the incident occurred less than one month after the initial contact.
ATTORNEY COMMENTS

“IT IS REALLY ALL ABOUT THE RAPPORT AND RELATIONSHIP WITH THE PATIENT IN PREVENTING LAWSUITS TO BE FILED”

“IT IS ALL ABOUT DOCUMENTATION ONCE THEY ARE FILED!”
Risk Management: Cultivate the Relationship

- What does the patient want/need?
- What do you think is wrong?
- What bothers you the most?
- How do you use your eyes (work and hobbies)?
- What do you feel should be done? When?
- What is your goal for this surgery?
Risk management: Cultivate Understanding

- What does the patient know or believe about surgery?
- What have you heard about the surgery?
- How will your daily life will be affected?
- How will your life change if you have it?

– DOCUMENT THE ANSWERS
Patient Education Materials: Attorney Comments

“VERY HELPFUL WHEN MATERIAL IS CLEAR, ACCURATE, UP TO DATE, AND THOROUGH”

“SHOULD BE DEVELOPED BY RELIABLE PROFESSIONAL SOURCE... PROFESSIONAL SOCIETY”

“HELPS IMPROVE UNDERSTANDING OF CONSENT FORM RISKS”

“SERVES AS “EXTENDER” OF THE ORAL CONVERSATION WITH PATIENT”
Risk Management: Cultivate Understanding

EDUCATE EARLY

• Show videos
• Provide brochures
• Give copy of the consent form to take home and read before the preoperative visit
  – Document education
Risk Management: Cultivate Defensibility

SURGEON MUST PERSONALLY OBTAIN CONSENT

• Know the patient’s ocular and medical history, expectations, goals
• Discuss any characteristics that put the patient at increased risk for a complication
• Address any misunderstandings
Staff Role in Consent

• Help determine expectations
• Educate about condition, treatment, expected outcome
• May provide copy of consent form
• May obtain patient’s signature
Risk Management Recommendations

LISTEN FOR PROBLEMS

• Share concerns with the surgeon
• Trust your instincts
• If surgeon, staff, or patient not comfortable, either delay or refer patient to someone else
Signature Rules

• Any authorized staff member may obtain

• Obtain only after the surgeon has orally obtained the patient’s informed consent

• Ask patient to tell you their condition and procedure to ensure understanding before signing
Signature Rules

If patient is dilated and/or cannot read:

- Read form to patient (document)
- Ask questions to ensure understanding
- Ask to sign
- Document name/relationship if family member read document to patient
- Document any staff or family present when document read
Ophthalmic Specific Consent Forms
ATTORNEY COMMENTS

“THEY ARE HELPFUL IN PATIENT EDUCATION ASSUMING THEY ARE GIVEN TO THE PATIENT AT LEAST A DAY OR TWO (PREFERABLY A WEEK OR MORE) BEFORE THE PROCEDURE”

“SPECIFIC CONSENT FORMS GIVES DOCTOR’S TESTIMONY CREDIBILITY”

“IT IS THE ICING ON THE CAKE... HELPS EDUCATE JURY AND STRENGTHEN DEFENSE!”
omic.com > Risk Management > Consent Forms
Signature Rules

If interpreter used for deaf or limited-English-proficiency patient

- Document name and relationship of interpreter
- Document language
- Document that patient appeared to participate and understand discussion
Limited English Patients

Federal Law

– Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons
Physician Obligations

Limited English patients
  – Reasonable steps to ensure access
  – Analysis
    • Number or proportion of LEP persons served
    • Frequency of LEP persons contact with practice
    • Nature and importance of services
    • Resources available and costs
Deaf patients

– “No hard and fast rule for provision of services
– Does not mandate use of interpreters in every instance
– Special circumstances may need interpreter:
  • Before major surgery
  • Initiating treatment plan for complex condition
– Pt.’s request significant factor
Driving – Vision Requirements
Tips: Document Discussion

Need to document that patient was informed of risk of driving because of his visual impairment

In serious cases put it in writing (letter) and hand/deliver or mail

– Also, 3rd party injured by patient may sue
Academy and AMA Resources

Academy ONE website
– Practice Guidelines
  • Clinical Statements – “Vision Requirements for Driving”

AMA website
– “Physician's Guide to Assessing and Counseling Older Drivers”
Telephone Screening: Liability Issues and Guidelines
On the OMIC website
www.omic.com

“Telephone Screening of Ophthalmic Problems” for:

– Sample screening guidelines
– Patient telephone screening form
– Complaint categories: emergent, urgent and routine
– Office telephone assessment form
– After-hours/On-call Telephone Contact
Introduction

- Patients call their ophthalmologist to report problems and seek advice
- Physicians rely upon their office staff to screen these calls and schedule appointments
- After hours:
  - ophthalmologists themselves field many of these calls
  - cover other physicians’ patients as well as for the Emergency Department
Question

Do you have written appointment scheduling policies and protocols in your office?

Do you notify the physician if a patient requests a same-day appointment?
CASE STUDY
Telephone Screening

• 53 year old female seen for number of years called with complaint of seeing streaks and black spots.

• Given appointment for three weeks later, despite telling receptionist she felt it was an emergency that needed immediate attention
Telephone Screening

• Called back 3 days later to report spots and showers of stars, asked to be contacted if there was a cancellation

• Called again 5 days later to report seeing black over 1/3 of her vision in the affected eye. Given an appointment for 7 days later.
One day before scheduled appointment, showed up at office and was seen.

Ophthalmologist diagnosed retinal detachment and referred her to a retinal specialist for reattachment.

The surgery was successful but the patient was left with a minor loss of vision and diplopia.
Telephone Screening

- Lawsuit against practice only
- Different version of events
- Defense complicated by
  - Addendums added after patient complained to retina surgeon
  - Change in receptionist’s testimony
- Settled for $45,000
Patient “same day” requests

Staff to inform physician when a patient’s request to be seen the same day can’t be accomplished

If physician cannot see the patient when the patient wants to be seen, it is best physician speak to the patient personally

Suggest alternative sources of care

Important: Emergency departments may not be equipped to carefully evaluate ophthalmic complaints; direct patient to source of care that is likely to be beneficial
New Patients

Does practice accept new patients?

– Step 1: Ask caller if current patient

– Step 2: If no, inform caller that practice does not accept new patients

– Step 3: If no, offer caller names of ophthalmologists in the area or the state/local ophthalmology society

– Caution: staff should not discuss caller’s condition or complaint if ophthalmologist is not available to treat caller
When Staff Have Questions

Staff should be encouraged to consult when....

EXAMPLES

- Complaints that are not listed on the screening guide
- Those that fall into more than one appointment category
- Routine patients that want to be seen that day
Interrupting Physician

• Protocol should indicate if physician wants to be notified of emergent appointments or other situations

• Staff should be instructed what to do if the patient requests to speak with physician
After Hour Calls
The “Risk” Challenge

• The health care team does not have access to information obtained from face-to-face contact
• Patient may be a poor historian or may not want to inconvenience the physician
• Patient may be unknown to the ophthalmologist and medical records may not be available
Sample After Hours Contact Form
(In Handout Material)

After-hours/On-call Telephone Contact

Patient name: ______________________________ Date/time of call: _____________

Primary M.D.: ______________________________

Chief complaint: ______________________________

How long has complaint persisted: ______________________________

Related symptoms: ______________________________

Recent tests/procedures/surgery: ______________________________

Previous phone calls or visits to other healthcare professionals about this or related complaints

Allergies: ______________________________

Current medications: ______________________________

Other significant ocular/medical history: ______________________________

Advice or instructions given/treatment or medication ordered ______________________________

Follow-up plan: ______________________________

Above information provided to primary M.D. (M.D. who is being covered):
M.D. name: ______________________________
Date/time information communicated: ______________________________

On-call M.D. signature/initials: ______________________________
Patient Care Phone Call Record Pad

PHONE CALL RECORD  DATE__________________ FOR DR.______________________________

CALLER ________________________________ PATIENT _______________________________

PHONE ________________________________ TIME RECEIVED____________________ AM

TIME RETURNED______________________ AM PM

HISTORY______________________________

______________________________

ALLERGIES?_________________________

REGULAR RX?________________________

RX &FU_____________________________

______________________________

______________________________

PHARMACY__________________________ PHONE ________________________ INITIALS

OMIC
“O.K., fellers, we shoot first, then Q. and A.”
THANK YOU!