

Managing Medical Risk: A Few Stories from Oregon

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Disclosures

Faculty Disclosure Statement:

We, Troy Bundy and Mark Bonanno, declare that in the past 24 months we haven't had a financial arrangement or affiliation with any ineligible company offering financial support or grant monies for this continuing medical education activity or with any corporate organization that might have an interest in the subject being presented.

The information presented is evidence-based. If we give an opinion, we will note that it is my opinion based on the evidence that we have reviewed.

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OMA is your statewide physician and PA professional association advocating on the A to Z of issues in medical practices

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A Few Stories From Oregon

- ▶ Writing Off Medical Bills
- ▶ Documentation and the EHR
- ▶ Mental Health Services
- ▶ Access to Health Information
- ▶ Social Media and Professionalism
- ▶ To Text or Not to Text
- ▶ Ambient Listening in the Exam Room
- ▶ Professional Boundaries

Writing Off Medical Bills

What is the issue?

- ▶ Perception that writing off a patient's medical bill due to bad outcome might avoid risk
- ▶ Writing off bills carries its own legal risks which should be carefully evaluated

Writing Off Medical Bills

What should you know?

- ▶ Bills may be reduced for a variety of reasons such as charity care
- ▶ Actual cost of care has nothing to do with negligence
- ▶ High patient out of pocket costs may foster dissatisfaction
- ▶ A write off could be perceived as an admission of medical error
- ▶ A write off may constitute an “advance pay” and will operate to toll the statute of limitations for malpractice claims
- ▶ A write off involving Medicare may require approval from Medicare
- ▶ **Query:** Does an appropriate write-off demonstrate goodwill?

Writing Off Medical Bills

What should you know?

- ▶ Protocols should be in place and periodically reviewed
- ▶ Consult with your carrier when there is an adverse event
- ▶ Writing off a bill should not be done without a clear rationale
- ▶ Services such as Oregon's EDR program may be a resource

Writing Off Medical Bills

Where may you get additional guidance?

- ▶ Always check in with your carrier

- ▶ MagMutual Article

<https://learning.magmutual.com/content-library/article/how-organizations-culture-drives-reporting>

- ▶ Early Discussion and Resolution Resources

<https://oregonpatientsafety.org/healthcare-resources>

Documentation and the EHR

What is the issue?

- ▶ A clear and accurate medical record is important for patient safety, clinical decision-making, and the ability to get paid
- ▶ The demands of electronic record-keeping can lead to bad habits and even unintended issues that create clinical and legal risk

Documentation and the EHR

What should you know?

- ▶ The key to a good medical record is accuracy
- ▶ Tension between too much and too little documentation
- ▶ Be mindful of issues related to pre-populated fields, copy/paste, “carry-forward” and “note bloat”
- ▶ Legal implications of deviation from clinical decision support tools
- ▶ Different versions of the printed record produced during litigation
- ▶ Unexpected system downtime or security breaches
- ▶ Lack of uniformity and interoperability with use of different vendors and platforms
- ▶ Some scribes are better than others and scribes cannot obtain consent

Documentation and the EHR

Where may you get additional guidance?

- ▶ Oregon Medical Board Statement of Philosophy
 - ▶ <https://www.oregon.gov/omb/board/Philosophy/Pages/Electronic-Health-Records.aspx>
- ▶ MagMutual Article
 - ▶ <https://www.magmutual.com/healthcare-insights/article/electronic-health-records-and-medical-malpractice-claims>

Mental Health Services

What is the issue?

- ▶ Many medical practices have integrated mental and behavioral health services
- ▶ Integration of services into a traditional medical practice presents clinical and legal risks including challenges related to reimbursement

Mental Health Services

What should you know?

- ▶ Ensuring sufficient resources and planning when intergrating services
- ▶ Mapping out added documentation policies
- ▶ Considering patient care safety procedures and follow up
- ▶ Understanding complex billing barriers and mental health parity rules
- ▶ Advocating for integration of care internally and externally

Mental Health Services

Where may you get additional guidance?

- ▶ Oregon Division of Financial Regulation Mental Health Parity
 - ▶ <https://dfr.oregon.gov/insure/health/understand/coverage/pages/mental-health-parity.aspx>
- ▶ American Medical Association Behavioral Health Resources
 - ▶ <https://www.ama-assn.org/delivering-care/behavioral-health/behavioral-health-integration-physician-practices>

Access to Health Information

What is the issue?

- ▶ State and federal policy changes support greater patient access to medical record information
- ▶ Technology changes also allow for more widespread dissemination of protected health information which can present risks to the medical practice as the original source of the information

Access to Health Information

What should you know?

- ▶ Follow the rules applicable to your practice as a covered entity (under HIPAA) and as an actor (under CURES)
- ▶ Ensure your EHR systems allows for role-based access to maintain compliance with HIPAA's "minimum necessary" standard
- ▶ Be mindful of patient consent and where they opt in or opt out of information sharing
- ▶ Document under what rule someone is requesting access for information

Access to Health Information

Where may you get additional guidance?

- ▶ MagMutual Article

- ▶ <https://www.magmutual.com/healthcare-insights/article/hipaa-key-areas-where-problems-occur>

- ▶ Oregon Medical Board Statement of Philosophy

- ▶ <https://www.oregon.gov/omb/board/Philosophy/Pages/Electronic-Health-Records.aspx>

Social Media and Professionalism

What is the issue?

- ▶ Social media is widespread and an enticing form of influential communication
- ▶ Blurring the lines between personal and professional use of social media creates potential risk for physicians

Social Media and Professionalism

What should you know?

- ▶ Maintain professional boundaries with patients and colleagues
- ▶ Do not provide individual medical advice
- ▶ Provide accurate information
- ▶ Keep personal and professional accounts separate
- ▶ Be aware of surroundings and privacy issues
- ▶ Consider short and long terms implications of a post

Social Media and Professionalism

Where may you get additional guidance?

- ▶ Oregon Medical Board Statement of Philosophy
 - ▶ <https://www.oregon.gov/omb/board/Philosophy/Pages/Social-Media.aspx>
- ▶ MagMutual Article
 - ▶ <https://www.magmutual.com/healthcare-insights/article/how-protect-and-fix-physicians-online-reputation>

To Text or Not to Text

What is the issue?

- ▶ Text messaging is a convenient, easy, and quick way to communicate clinical questions and answers
- ▶ Ignoring legal and clinical guidance associated with text messaging is risky

To Text or Not to Text

What should you know?

- ▶ Utilize an encrypted information system that is able to track clinical information provided by messaging
- ▶ Help patients understand that value of communicating with them securely such as through the office's patient portal
- ▶ Do not utilize personal cell phones or instead use encryption apps
- ▶ Do not share protected health information outside of an approved, encrypted system
- ▶ **Query:** What if a patient asks for test results to be texted to them?

To Text or Not to Text

Where may you get additional guidance?

- ▶ National Coordinator for Health IT Resource Page
 - ▶ <https://www.healthit.gov/topic/privacy-security-and-hipaa/your-mobile-device-and-health-information-privacy-and-security>
- ▶ MagMutual Article
 - ▶ <https://www.magmutual.com/healthcare-insights/article/can-i-text-my-patients-faqs-emails-and-texts>

Ambient Listening in the Exam Room

What is the issue?

- ▶ The benefits of artificial intelligence tools in the exam room such as ambient listening can help a medical practice leap ahead on patient-focused care
- ▶ With any new technology there will be risks too such as proper record review, documentation of informed consent, and assurance of privacy considerations

Ambient Listening in the Exam Room

What should you know?

- ▶ Physician is responsible for accuracy of all medical record entries
- ▶ Use consistent process to review and finalize all A.I. scribed documentation
- ▶ Any new technology should be thoroughly tested and approved as well as documenting compliance with privacy and security standards
- ▶ Ensure sufficient training in utilizing A.I. scribes
- ▶ Update informed consent procedures - how data will be used, protected and stored
- ▶ Be transparent on use of A.I. scribes

Ambient Listening in the Exam Room

Where may you get additional guidance?

- ▶ Oregon Medical Board Statement of Philosophy
 - ▶ <https://www.oregon.gov/omb/board/Philosophy/Pages/Artificial-Augmented-Intelligence.aspx>
- ▶ MagMutual Article
 - ▶ <https://www.magmutual.com/healthcare-insights/article/artificial-intelligence-shaping-healthcare-today-and-tomorrow>

Professional Boundaries

What is the issue?

- ▶ Professionalism always has been an integral part of a medical practice
- ▶ Any complaint or investigation relating to alleged unprofessional conduct should be given proper attention

Professional Boundaries

What should you know?

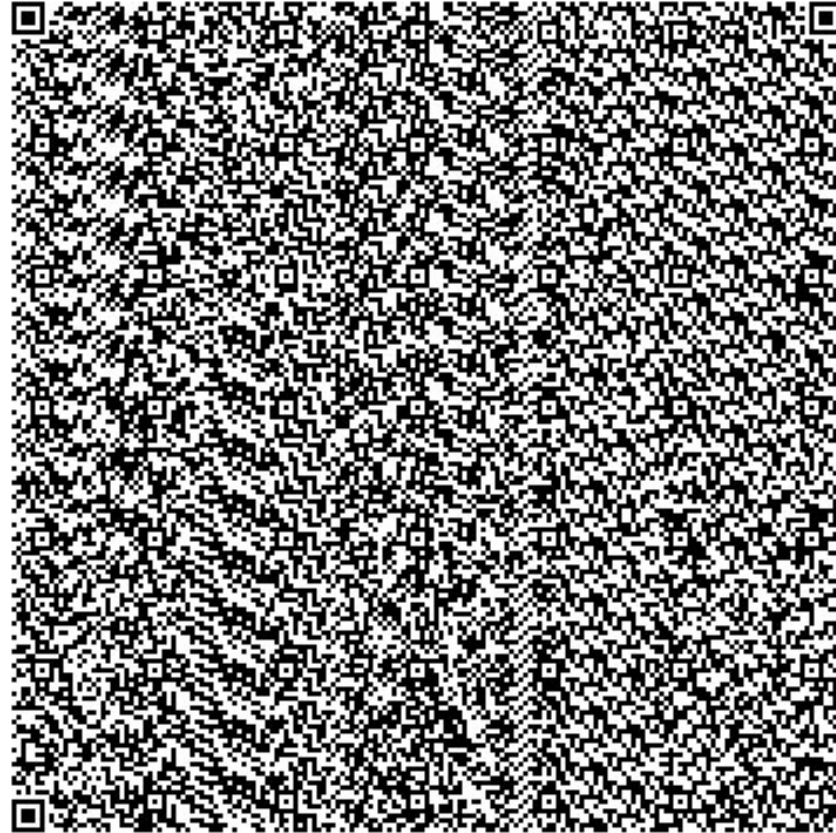
- ▶ Be mindful of the term “unprofessional conduct” as it is added to through agency rulemaking
- ▶ Top medical board complaints are equally divided between “unprofessional conduct” and “inappropriate care”
- ▶ Avoid conflicts of interest - refer friends and family to other clinicians
- ▶ Do not prescribe to individuals who are not in your care
- ▶ Support the use of medical chaperones
- ▶ Document potential conflicts of interest or inappropriate behavior

Professional Boundaries

Where may you get additional guidance?

- ▶ Oregon Medical Board Statement of Philosophy
 - ▶ <https://www.oregon.gov/omb/board/Philosophy/Pages/Professionalism.aspx>
- ▶ MagMutual Article
 - ▶ <https://learning.magmutual.com/content-library/article/attorney-viewpoint-traps-unwary-physician>

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Thank you for listening

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