

HILL  LAW
The Law Office of Amanda Hill

Conflict Resolution



Texas MGMA
Fall Conference
Houston, TX

AGENDA

Practice tips and guidance from a veteran healthcare attorney

- Negotiating Contracts
- Corporate Strain
- It's Stressful Being Compliant!
- Difficult Patients
- Employment Conflicts

CONTRACT ISSUES

Physician Contracts: non-competes, term provisions, liquidated damages clauses for no notice, compensation structure, lacking duties, no mention of tail coverage
 IGAP Agreements – don't have specific language that's necessary – careful it's not seen as free money to a group / MD

Leases/Subleases– Right terms right values set? We need to talk about FMV

Recruitment Agreements– These can really cost you. Be sure to only pay when doctor starts



CORPORATE ISSUES

Companies not set up incorrectly or not following company by-laws or company agreements correctly (voting/quorum/notice of meetings)

Thinking you can carve out governmental health programs – the OIG is still reviewing these and it only takes one. This can create internal stress with managers

Mergers, Acquisitions, and unique business arrangements – carry with them a high rate of fraud and abuse concerns. Can cause irate managers, thinking you are accusing them of violating the law, “stay out of the business side,” being defensive

Telemedicine – freestanding telemedicine practices are popping up, but remember the standards are the same as an in-person visit. Same standard of care and obligations! And always wrapping in the PCP

CORPORATE ISSUES

Joint Ventures or mergers: some lab and other ancillary providers that getting “creative” – per click, per patient, based on numbers of patients seen. Stress between making money and doing it right. “Everyone else is doing it.”

Rent for Space – What is fair market value anyway? Often based on the wrong things. Business issues conflict with health statutes

Medical Directorships – too expensive, too many to possibly do in a week’s time, jealous over what another doctor is getting

Lab Arrangements – always issues involved here – safe harbors are important! We had “legal review it.”

Payment for Supervision – This can create animosity between midlevels, who don’t want to be “overseen” like nurses, and yet conflicts with TMB guidance



COMPLIANCE ISSUES

Overall Company Compliance Plan: It is now required! It’s not “rattling someone out” to report a possible issue. Don’t get frustrated when your staff files a report
HIPAA Procedures and plan – is it a 300 page monster or one you can actually follow? Are you giving meaningful training?

Coding and Billing Audits – this is the best thing you can do for your practice. Let your auditors be on your team. Consider putting it under attorney / client privilege. Don’t let ego be a barrier, or “we know how to do this.”

Security Audits – You can’t just trust the EMR to do this for you. HIPAA requires it. MU requires it. If you don’t do security auditing you can be left with huge black holes. Huge stress and conflict if a breach, lots of pointing of fingers. Be proactive!

Telemedicine – issues with security and privacy – how well are you vetting these agreements and vendors? Is everyone on board?

ROLE PLAYING

Four Different Types of Difficult Patients

We are going to look at the most common difficult patients and how to deal with them



MANAGING EXPECTATIONS

Medications? I know you're here for medications but...

Just someone to talk to? You did the right thing to come in and discuss this...

Advice? If it were my mother I would...

Weave their expectations into your medical advice – many patients who seem difficult just aren't getting what they expected!

Quick Fixes? This will deal with the immediate issue, but about the other...



REAL-LIFE EXAMPLE



The Angry Patient



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Angry patient – discussion points

- Customer service training for staff
- Listen - don't interrupt.
- Empathetic phrases: "All on the same team"
- Apologize (you can apologize for lots of things aside from the care you provided)
- Offer to review the chart and/or send to peer review to make the patient feel valued and his/her opinion is heard
- Don't sweat the small stuff (An \$80 office visit isn't a big deal in the long run!)
- Explain next steps
- If future behavior is similar, consider whether it's a bad overall fit
- Keep files of "one-time write-offs" so that patients don't abuse this privilege



Hard to handle patient – discussion points


- Develop rapport – jokes about interrupting to get to heart of the matter
- Redirect using kind phrases: "Before you continue, let's go back to something you said earlier that I'd like to know more about. . ."
- Sit down, breathe deeply, and tell her to slowly explain the problem.
- Generally, use "yes or no" questions or leading questions ("So what you are saying is that you are having trouble breathing, but mostly at night. Is that right?")
- Patient can bullet-point concerns in advance of the visit
- Protocol about phones and messages to the office

Hard to handle patient – discussion points, continued

- Do not promise to be his/her savior
- Help the patient to be realistic in expectations (there is no quick fix / this is going to be a slow, steady process)
- Focus on coping skills / mental health referrals in non-threatening way ("someone to talk to" rather than "you should seek mental help")
- Regular, steady appointments to see small improvement
- Praise compliance and follow-up
- Process rather than a one-time solution
- Be positive

REAL-LIFE EXAMPLE

The Non-compliant Patient


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Non-compliant patient – discussion points

- Benefits of staying on a long-term, consistent medication regimen
- Warm letters of purpose ("this medication is important for your long-term health. I urge you to be consistent with its application.")
- Sometimes written directions help – involve caretaker if possible
- What are patient's issues are with taking medicines and address them with empathy (nighttime urination, for example, can be annoying and real)
- Talk about other options, if those exist (value the patient's feelings even though you might explain it's not the most preferred approach)
- Explore barriers to compliance (cost / feeling "weak")

REAL-LIFE EXAMPLE



The Know-it-all Patient

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Know-it all patient – discussion points

- Acknowledge the work they've done! Even if you don't agree or it's based on junk science, you can still thank them for being proactive and thoughtful about their own health
- Don't dumb it down
- Touch upon why the "alleged diagnosis" and internet research might not be the case
- Handouts are helpful
- Direct them to websites you know and trust (such as your academy or society guidelines, etc)

PATIENT TERMINATIONS

Lesser Options First: Discussions, reminder letters – don't pawn off on your partners!

Drug Seeking: Double check the state website and pill count – mistakes are embarrassing for all!

Pain Agreements: It really helps make it black-and-white and there is less to argue about

Wait on pregnant patients– my recommendation is the date of the post-partum visit

Continuity of Care: Thirty days is standard- send certified and regular mail with a date the care will end

Practical Tips

- Acknowledge that the patient is sick and show empathy for their personal situation. This often diffuses anger.
- Recognize when you need a minute to collect yourself. Visit with folks that make you laugh, call your spouse, go outside
- Apologize to patients for being behind / slow and steady approach
- Admit the possibility of differential diagnoses / discuss the need for follow-up
- Remind yourself the ultimate goal is for the patient to be healthy and as functional as possible
- Breathe deeply with difficult patients – they need care too!

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EMPLOYEE ISSUES

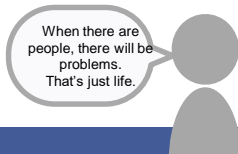
Stop a little problem before it grows: training management on areas of retaliation, overtime, and workplace safety

Physician Firing – what about working though the notice period? What about vacation time? What about the non-compete

Discrimination/Retaliation– People generally know about discrimination, but retaliation is a real nightmare. Requires training!

Performance Improvement Plans and being fair to all– you can minimize your risk by being consistent with your discipline approaches

Sexual harassment – You think you know it when you see it. That's not true any longer! And what about internal handling of these sensitive matters?



Conflict

Resolution

Talking it out, but mostly listening

Working with a trained mediator

Dealing with the problem EARLY rather than waiting until opinions and positions are entrenched

Setting a corporate culture as being inclusive of ideas, never demeaning, never finger pointing, always helpful.

Consider the other person coming from a good place and not trying to screw you. Give people the benefit of the doubt rather than assuming the worst.

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Questions?

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