



HEALTHCARE

RISK MANAGER

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Ambulatory Surgical Centers - Risk Management and Insurance Concerns

By: Georgette Samaritan, RN, Senior Risk Consultant

The emerging shift to outpatient surgery in ambulatory surgery centers (ASCs) continues to be reinforced by Medicare and other third party payers. The advantages for patients who opt to visit an ASC are numerous - No overnight stay; usually lower complication rates and procedures are less expensive than in a hospital. However, as the numbers of ASCs increase, the potential for errors and medical malpractice claims also rise. In 2007 MAG Mutual Insurance Company directed its Risk Management consultants to provide special support to its insured ASCs.

According to Dan Wright, VP Risk Management Services for MAG Mutual, "Protecting patients, protecting physicians and staff, and protecting the owner/operator of the practice are central to Ambulatory Surgical Center insurance and risk management issues." Wright also cautions ASC owner/operators to be proactive. "Historically, these organizations have enjoyed good loss ratios and claims histories, and therefore are competitive for purchasing professional liability insurance. However, unless owners/operators of these centers prepare for the risks, they can easily find themselves compromised."

Many ASCs do not have a designated, trained risk manager or specific person in charge of patient safety. Regardless, every ASC that MAG Mutual insures is offered an opportunity to have a risk assessment conducted by an experienced consultant, and provided with a list of resources including: policy and procedure manuals, standards directories, and credentialing resources, all as part of a value-added service.

Regardless of the ASC model, open, closed, and /or specialty-specific, there are key systems & processes which

should be well-established and operating. Our ASC policyholders are encouraged to work with us, your state and accreditation organizations for assistance in evaluating existing systems, and for suggestions and guidelines for implementing additional ones.

Special attention is given to the following areas:

- Patient selection/Pre-operative assessment
- Patient & Staff orientation and education
- Physician credentialing. Every surgeon or anesthesia provider needs to have their own list of approved procedures
- Communication, informed consent and documentation
- Discharge planning
- Patient Follow-up

ASCs should have well-established, well-defined and well-written protocols. ASC operators should have a tight control on the type and number of procedures being performed at their facilities on an ongoing basis. ASCs are also strongly encouraged to seek out and maintain the appropriate facility accreditations.

Establish a Proactive Risk Assessment Program

Establishing a proactive risk assessment program applies to the redesign of existing processes and the design of new processes. For example, if surgeons at a surgery center plan to use a new laser, the organization should evaluate the safety implications and/or risks of using the new device. Make sure you have the proper environment and support, including appropriately trained physicians and staff.

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Take the following steps to create and implement a proactive risk assessment program:

- Determine the high-risk process to be analyzed (such as medication administration or use of new medical equipment).
- Describe the chosen process.
- Identify the ways in which steps in the process could break down (the failure modes).
- Identify the possible effects of the failure modes on patients and the seriousness of the possible effects.
- Prioritize the failure modes for analysis and action.
- Determine why the priority failure modes could occur. This may include performing a hypothetical root cause analysis (RCA).
- Redesign the process and/or underlying systems to minimize the risk of the failures or to protect patients from their effects.
- Test and implement the redesigned process.
- Monitor the effectiveness of the redesigned process.
- Maintain the effectiveness of the redesigned process over time.

One way to determine processes to analyze is to use information published periodically in the Joint Commission on the Accreditation of Healthcare Organization's Sentinel Event Alert. Some sentinel events that might occur at ASCs include wrong-site surgery, medication errors, medical gas mix-ups, and transfusion errors, as well as anesthesia-related and medical equipment-related events.

MAG Mutual's Risk Management consultants advise that the ASC chief administrative officer play a key role in helping to select high-risk, problem-prone processes to be analyzed for proactive risk assessment. Mr. Wright elaborated on the importance of 'buy-in' at all levels. "Because ambulatory care organizations tend to have fewer staff members than other health care organizations, it's likely that organization leaders would serve on the team conducting the annual analysis. However, if they don't they should take an active role by being well informed of the results and recommendations from the assessment and provide feedback and support to the team."

Establish a dissemination policy for critical test results

When critical test results arrive, the ASC should have a policy in place to ensure they reach the correct person who can act on the information. Develop policies to:

- Identify which of your providers should receive the various test results.
- Determine the communication and notification system that works best for your providers.
- Identify who the results should go to when the provider who ordered the tests is not available.
- Educate providers about the policy.

ASC Malpractice Claims

Regardless of inpatient or outpatient care, the patient who undergoes a surgical procedure will have the same expectation of the level of care they will receive. Treatment complications and bad results appear as the most frequent allegations in ASC claims, followed by infections, product or equipment malfunction or failure, and incorrect type of treatment.

Here are two examples of how a minor outpatient surgical procedure could become a major legal headache.

Example #1

The patient was a healthy 38 year-old male with a history of a knee strain three months earlier. Conservative care had not yielded improvement and an MRI revealed a torn medial meniscus. The surgeon presented the patient with the option to have a knee arthroscopy either at the local hospital or an ASC. The patient chose the ASC as it would be more convenient for him. The day of surgery the patient and his wife arrived on time. He met briefly with the anesthesiologist for the first time. The anesthesiologist found the patient was a good candidate for surgery and a low risk for complications. An IV was started and the patient prepped for surgery. The surgery proceeded without incident. The patient was taken to the recovery area. While in the recovery area the patient vomited before his gag reflex had returned. The recovery nurse went to clear his airway by using the bedside suction machine. The machine failed to work. It took the nurses 10 minutes to find a machine that did work. In the meanwhile the patient suffered oxygen deprivation and subsequent brain damage. During discovery it came to light the owners of the ASC had purchased the suction machine from a local hospital and it was outdated. In addition to being used by the ASC, the ASC could provide no evidence that the machine had ever had routine maintenance or inspections. The case settled prior to going to trial for an undisclosed amount.

Example #2

The patient was to have arthroscopic knee surgery on her left knee however the surgery was incorrectly performed on the right knee despite black markings on the patient's left knee to indicate the correct surgery site. The patient filed a lawsuit based on claims that personnel in the room failed to follow an internal time-out policy to verify the correct body part and side of the body before surgery. Although the patient reached confidential settlements with the surgeon who performed the incorrect surgery and the ambulatory surgery center (ASC), she proceeded to trial against the anesthesiology practice, arguing that the time-out policy applied to all surgical staff, including the anesthesia personnel. A jury awarded the patient \$175,000 against the anesthesiology practice.

Roy W. Vandiver, M.D.

Chairman of the Board/Chief Executive Officer

Re: Register today to Improve Patient Safety and Enhance Liability Protection

Dear Colleague:

Medical liability protection requires that you are well-informed about patient safety issues quickly and reliably. **I am contacting you today to make you sure you are aware of a new, free service that should improve patient safety and your liability protection and ask that you enroll as soon as possible.** MAG Mutual has worked with other liability carriers, the FDA, and medical societies to bring this new service--the Health Care Notification Network (HCNN)--to you.

This online network will take important product-related patient safety alerts which are mandated by the FDA and are currently sent to you through the U.S. mail and move these onto a secure, online network. Why join?

1. It's free and only used for patient safety notices (i.e., no advertising or spam).
2. Faster and more efficient than current paper-based delivery of patient safety alerts.
3. Once enrolled, you may designate staff members to receive the online alerts, if you wish.
4. You can opt out at any time.

MAG Mutual supports the HCNN because we believe that more rapid and focused delivery of FDA-mandated product recalls and warnings have the potential to reduce medical liability claims and, ultimately, to decrease your liability insurance premiums. The FDA has asked for our help in enrolling our insured physicians into the online network. **I am asking our insured physicians to enroll today in the HCNN and receive the FDA-related patient safety alerts online.**

To enroll in the HCNN, take the following simple steps:

1. Complete the information on the attached fax-back form.
2. Insert the email addresses you wish to use for these alerts (please print legibly). **This email address will also be your User ID.**
3. **Fax the completed form to 1-866-539-6319.**
4. You will be asked to choose a password for your HCNN account when you receive your first email from the HCNN.

For more information, please visit www.hcnn.net, email info@hcnn.net or call 1-866-925-5155. Thank you for enrolling in the HCNN to enhance patient safety and decrease your risk of liability.

Best regards,



Roy Vandiver, M.D., Chairman,
MAG Mutual Insurance Company

Up-to-the Minute FDA Patient Safety Alerts

Recent surveys of practicing physicians reveal that more than 90% want patient safety alerts sent to them immediately online instead of the current “Dear Doctor letters” they receive via traditional U.S. mail – a process that can be slow and error prone.

In 2006, the FDA endorsed the online delivery of such alerts and developed a program to accomplish the feat: The iHealthAlliance.

Comprised of representatives from medical societies, liability carriers, patient advocacy groups and the FDA, they created the Care Notification Network (HCNN) in order to improve the speed and efficacy of the delivery of FDA-mandated patient safety alerts to physicians and other healthcare providers.

Because the HCNN uses a dedicated online network as the primary alert notification vehicle, subscribers can be confident they will receive recall alerts in a fast and effective

manner, and more importantly, before their patients learn about them in the press. The HCNN may also be used to notify physicians in the event of national public health emergencies or bio-terror events.

HCNN is completely free to subscribers who sign up and guarantees that physician email addresses will not be shared, sold, or leased to any third parties. Physicians are encouraged to send the safety alerts to patients using secure, HIPAA compliant language and tools.

MAG Mutual’s Senior Management and Risk Management Consultants recommend policyholders register for HCNN. They believe this system will improve patient safety and reduce physician liability risks. To enroll for the service, please see the inserted letter from MAG Mutual’s **Chairman of the Board, Dr. Roy Vandiver** and follow the instructions or go to www.MAGMutual.com, **click on articles and newsletters, Risk Management News.**

Do You Know Your ASC Patient Selection Safety Quotient?

This brief questionnaire will score your facility and determine how effective your current safety practices are. More importantly, it will help to identify ways to improve safety for your patients and staff.

- Do your policies & procedures conform to inpatient surgical standards and guidelines?
- Does your ASC have general rules and guidelines to ensure that there is uniformity of decision making with regard to patient selection and to ensure that high risk or questionable candidates for outpatient surgery are identified?
- Do you schedule a thorough pre-anesthesia /pre-surgery interview with the patient two to five days before surgery? If the patient cannot come to the facility is there a telephone interview? Are these telephone conversations documented?
- Does your pre-operative evaluation include a physical examination, laboratory and home care assessments to minimize unanticipated complications or unexpected outcomes?

- Are physicians obtaining informed consent in person during the pre-anesthesia/pre-survey interview?
- Do you specify that the procedure will be canceled if preoperative requirements are not met?
- Have you established a system that reminds physicians when preoperative histories, physicals and lab work must be completed?
- Are you addressing unexpected hospital admissions following outpatient surgery in a manner that reflects the quality improvement process?
- Do your policies specify that anesthesia may cancel any procedure that poses a risk to patient safety?

While all practices strive to answer Yes to all the above questions, few can without a thorough assessment and risk management plan. Use these questions as a guide to implement higher safeguards and lower your ASC’s risk.

RM Scoop!

MAG Mutual recommends tracking all patients receiving coumadin (warfarin) therapy, including sending notices to patients for periodic lab testing of INRs, and a documented review of INRs before prescription renewals are approved.

Risky Business: Ending the Employer-Employee Relationship

By: Joe Deroko, Manager, Training and Development

One of the most difficult responsibilities of a manager or business owner is that of terminating an employee. From the decision of who and when to let go, to actually sitting down and delivering the news. It is a process dreaded in the business community. Terminating an employee will test your business judgment, strain you emotionally and often poses challenges to you.

The key is to limit your litigation and business risk, while also managing the emotional side of such a decision. We'll first start with the litigation risk. The best way to avoid any possible legal actions against you or your business is by first asking the question: "Do you have a sound, business-related reason to terminate?"

If you can say yes to this question, and back it up with documentation, you will be on your way to protecting yourself from future litigation. Even with "at-will employment," if an employee files a suit against you, you have to prove you had a good business reason to terminate. Another appropriate step would be to have someone else review the facts surrounding the decision to terminate. This should be someone who is a third party objective observer, such as a business partner, practice manager or legal counsel.

When it comes to managing the risk to your business, carefully review the business functions and responsibilities of the position the employee holds. Does this employee have a lot of customer contact? Are they the key contact for certain vendors? Are they in the middle of a big project? Do they

have the passwords to your computer systems? None of these questions should prevent you from moving forward if you still have a good business-related reason for terminating the employee. However, it is better to think about these factors prior to termination rather than after the employee is gone. Put a plan together on how to tackle these issues so you can begin limiting the business risk as soon as possible.

Once these issues are worked out, it will be time to sit down with the employee to deliver the message. Prior to the meeting, be sure you have your communication clearly worked out either on paper, or at least rehearsed beforehand in your mind.

You should also have supporting documentation and a separation notice in hand. Plan where and when you are going to deliver the message. The perfect time or place doesn't exist. However, make sure you minimize any embarrassment for the employee (Example: don't do it with a crowd of spectators). This simple step could also help minimize any anger that could lead to retaliation. Also, know what items you need to collect from the employee and if you need someone to escort them off the premises. These are not the things you want to try and figure out "on the fly."

Following these steps will help minimize many forms of risk from terminating an employee. It won't make the task any more pleasant, however, it should alleviate some of the trepidation by knowing you took sound steps and carried them out in an appropriate manner.

MAG Mutual does not presume to establish any standard of care or establish rules for the practice of medicine. The particular patient-care strategies or range of patient-care strategies mentioned in this newsletter should be tempered by the physician's judgment. This publication is produced to inform you of issues relating to medical professional liability insurance and other matters of importance to physicians. Material given in this newsletter does not constitute legal advice or opinion. If you have questions in any of the areas discussed in this publication, you should seek a qualified legal opinion. ©2008 MAG Mutual Insurance Company.



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