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Patient Engagement Strategies are Good for Patient Care… and Support Defense in Malpractice Claims

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What exactly is patient engagement? Even if we can agree on the definition of patient engagement, how is it connected to defending a medical malpractice lawsuit? Patient engagement is a frequently repeated buzzword in the national health care reform conversation.

For example, as part of the implementation measures associated with the Affordable Care Act,the HHS National

Strategy for Quality Improvement in Health Care included “engaging people and families as partners in care” as part of their 6 initial priority areas.[1] Patient engagement has been described as a strategy to achieve the “triple aim” of: (1) improved health outcomes, (2) better patient care and (3) lower costs.[2]

The Healthcare Information and Management Systems Society (HIMSS) defines patient engagement as: “providers and patients working together to improve health”. HIMSS’s statement further claims that “A patient’s greater engagement in healthcare contributes to improved health outcomes…Patients want to be engaged in their healthcare decision-making process, and those who are engaged as decision-makers in their care tend to be healthier and have better outcomes.”[3] In 2013, a study by the Center for Advancing Health (CFAH) found that key health care leaders viewed patient engagement as an “essential strategy for improving health outcomes and the quality of health care experiences, and in some cases, for reducing health care costs”.[4]

A fundamental aspect to patient-centered care is the sharing of power and responsibility between the physician and patient. Over the past several decades, the physician-patient relationship has evolved from a paternalistic one to a patient-centered one. A patient-empowering, egalitarian physician-patient relationship differs from the traditional paternalistic approach to medical care espoused in years past, and encourages mutual participation by the physician and the patient in medical care and decision-making.[5] Studies have shown that involving patients in decision-making leads to positive effects that include: greater patient adherence to medical advice; fewer patient complaints and grievances; fewer and less serious malpractice claims; and improvement in patient health and functional status outcomes.[6]

Evolving relationships between doctors and patients

Traditional views of the physician-patient relationship tended to place responsibility for patient compliance on the shoulders of physicians. Patients passively relied on physician directed advice, reminders and decision-making. W*hy should Mr. Smith remind himself to return for monthly blood tests if Dr. Jones’ office routinely called to remind him? Why would Mrs. Miller need to keep track of her annual mammogram screening if her physician’s office did it for her?* If an adverse event or unexpected outcome led to litigation, it was traditionally risky to point to a sick or injured patient as at least partially responsible for their situation because of a missed appointment or neglected follow-up care. Now, however, the increased emphasis on patient engagement recognizes that patients are actually essential partners with their physicians in maximizing their healthcare. When patients miss appointments, neglect follow-up testing or ignore physician recommendations, they, in effect, make the choice to put their own health at risk. It may be a conscious choice because they do not want to incur the co-payment or they have a large deductible.[7] It could be that the pace of their schedule and daily obligations just push follow-up down the priority list. There could be legitimate, sensible reasons for their decision, but the key is that it is their choice. If the patient suffers an adverse event related to the missed appointment or test, a suit is filed against the doctor who recommended the test, and the issue becomes: who should be held accountable for the delayed diagnosis? Clinical leaders, health policy experts, based in part on the above cited research, say it is clearly reasonable to expect patients to take responsibilities for certain well-defined aspects of their care. They point out that the goals of healthcare reform cannot possibly occur without the patient not only on the team, but engaged!

Evolving focus on defining responsibility in the courtroom

So what does this mean to a physician who is faced with defending against a professional negligence claim? While patient engagement places a greater degree of responsibility on the shoulders of patients which is obviously beneficial to their health, the concept of accountability for care may be transferred to the arena of professional negligence. Careful documentation and specific patient engagement tools[8] enable health care professionals to more thoroughly educate their patients, and also appropriately shift greater responsibility to patients. Many practices are already utilizing effective patient engagement tools including the second generation specialty and procedure specific documentation or at-risk letters. Effective engagement strategies such as these will lend crucial support to those physicians should the patient later decide to claim negligence. They importantly also drive home the negative health implications if patients do not engage as needed. As it turns out, this is a critical success factor in the courtroom.

The legal term for this idea of shared responsibility for negligence is "comparative negligence." The concept is a recognition that accountability for an unfortunate outcome may not be the result of the conduct of just one individual, but instead may be traced to decision-making among several people, including the patient. So the patient/plaintiff's actions are held to the standard of a reasonable patient acting under similar circumstances, just as the physician's actions are judged against the standard of a reasonable physician acting under similar circumstances.

Comparative negligence models vary across the country, however, many jurisdictions permit a jury to consider a patient's fault when calculating damages. Pennsylvania, for example, follows a "modified comparative negligence" model.[9] In other words, as the percentage of plaintiff/patient's negligence increases in the eyes of a jury, defendants may argue that the amount of any award should decrease. If a plaintiff is found to be more at fault than the defendants, all recovery is precluded. So at trial, defendants have the opportunity to reduce the amount of damages claimed by a plaintiff by making the argument that the patient was at least partially responsible for an adverse outcome.

This defense can be dramatically strengthened if the record reflects that the physician specifically documented the shared decision-making process including: introducing specific choices, describing options and providing written educational information about those options, helping the patient to explore and understand preferences and make decisions; using procedure-specific informed consent forms; and documenting clearly explained follow-up care and discharge instructions. Again, this information needs to include the implications of not being engaged which often drives the patient involvement and makes clear that a knowledgeable choice was made. Not only being aware of what one needs to do, but the implications of no doing so.

Clarifying roles and responsibilities benefits everyone – patients & doctors

Patient satisfaction and engagement strongly influence malpractice risk.[10] Thoughtfully exercised strategies to improve relationships with patients and purposely involve them in decisions about their care provides the opportunity to improve outcomes, deliver better patient care and lower costs. Those positive engagement strategies offer the added benefit of reducing liability and supporting an effective defense. Adopting an effective patient engagement strategy is essential for physicians and their patients, to maximizing healthcare delivery in our evolving

world.

As often is the case, the process begins with education of our physicians who have tended to default to “it’s my responsibility”, followed by the incorporation of specific, patient engagement documentation tools and education strategies. Some should be web or portal based, others paper and electronic. It needs not be, in fact should not be, either complicated or resource intensive. We must keep the focus the fact that positive patient outcome is the goal. If at the same time we can better clarify and document relative responsibilities, we have advanced the ball. The last component may turn out to be the most important. We need to measure to assure the use of such tools and strategies. Measurement helps to assure change, which sometimes is our tallest obstacle.

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[8] We thank SE Healthcare Consulting http://www.sehealthcarequalityconsulting.com/ for use of the data and tools.
[9] 42 Pa.C.S. §7102(a).
[10] Jones, V. (2015), Hospital and physician professional liability trends and industry topics. J of Healthcare Risk Mgmt, 35: 7–19. doi: 10.1002/jhrm.21173

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