

Preventive Action

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LIABILITY CONCERN: SCHOOL & SPORT PHYSICALS

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Physicians that conduct school and sport physicals, such as pre-participation physical evaluations, need to be aware of the inherent liability exposure, particularly in the absence of an existing physician-patient relationship.

The most common types of conditions giving rise to malpractice claims involving pre-participation physician examinations are cardiovascular. Failing to discover a latent asymptomatic cardiovascular condition is a prevalent allegation that in most cases requires proof that the physician deviated from the standard of care in terms of the pre-participation evaluation. Depending on the legal venue, courts may

hold that the mere performance of a pre-participation physical exam serves to create a physician-patient relationship with the same legal duties as that of an established, private practice patient. Therefore, it is important to emphasize the precise nature and limited scope of the physician-patient relationship, delineated solely to the examination. Generally, physicians that provide medical clearance for participating in competitive sports are not legally liable per se for injury or death caused by an undisclosed cardiovascular abnormality. Most courts have recognized that the pre-participation screening standards of athletes may follow current consensus guidelines in determining cardiovascular fitness. Again, this will depend on the legal venue.

Cardiovascular screening is the primary, inherent liability exposure associated with school and sports physicals. Congenital aortic valve stenosis is the most likely condition to be detected reliably during routine screening.⁽¹⁾ Primarily, differentiating common heart murmurs from potentially lethal cardiovascular conditions. Of course, other insidious and chronic underlying medical conditions are also a consideration in terms of the liability exposure inherent to these kinds of physical exams.

High-risk Symptoms

Subjects with a personal or family history of the following may be at high risk for cardiovascular conditions (and thus potential claimants for failure and delay in diagnosis):

- exertional chest pain/discomfort
- syncope/near-syncopal episodes
- excessive, unexpected shortness of breath
- excessive, unexplained fatigue with exercise
- history of heart murmur
- elevated systemic blood pressure
- family history of cardiovascular disease

It is important that the parents or legal guardians not only provide their consent for the student to be evaluated, but in doing so acknowledge the limited nature of the pre-participation evaluation, the fact that no physician-patient relationship is created or intended, and that the exam does not replace an annual well-child exam by the student's primary care physician.

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Case Summary

Consider the case involving our insured physician and ARNP who were doing pre-participation sports physicals at an athletic facility on behalf of the local high school. Both had performed school physicals on a young male student whose father had died of an MI at a young age. After being cleared two years in a row by our insureds, the student died while participating in vigorous physical training while on a treadmill at the school. A wrongful death action was filed alleging that the student should not have been cleared for sports activity without further evaluation in light of his family history. Medical experts could not support a defense given the fact that both of the student's examination consent forms noted the family history of MI. Medical clearance to participate in the sports program should not have been granted. Our insureds should have either pursued further diagnostic testing or referred the student to his primary care physician.

Risk Management Guidelines

- Seek an indemnification and hold harmless agreement from the school or facility requesting the pre-participation evaluation
- Determine if you are entitled to sovereign immunity by the school or recreational entity
- Confirm that your existing professional liability coverage does not exclude claims arising from school and sports physicals
- Require that parental consent to conduct the evaluation has been provided and waives creation and expectation of a physician-patient relationship
- Require that informed consent is obtained relating to the purpose and scope of the evaluation
- Ensure that documentation of the evaluation is maintained when evaluations are conducted externally to your practice
- Maintain a log identifying every subject evaluated
- Include a brachial BP measurement in the sitting position, precordial auscultation in both the supine and standing positions, assessment of the femoral artery pulses, recognition of the physical stigmata of Marfan syndrome, BP >95th percentile, systolic murmur equal to or greater than 3/6 intensity, any diastolic murmur, any murmur that intensifies with Valsalva.⁽¹⁾
- Retain a copy of any evaluation record entailing a subject diagnosed with potentially compromising factors
- Communicate potential concerns or medical conditions to the subject of the exam, the subject's parent or legal guardian, and the subject's primary care physician, when known
- Utilize a student medical history form, executed by both the student and the student's parent or legal guardian
- Document any limitations with specificity
- Document any medical recommendations on the pre-participation form
- Advise the requesting party and the subject of the evaluation that such screening should be repeated every two years

⁽¹⁾ American Heart Association. Recommendations and Considerations related to Preparticipation Screening for Cardiovascular Abnormalities in Competitive Athletes: 2007 Update. AHA Journals

FTC Temporarily Exempts Physicians from “Red Flags” Rule

The Federal Trade Commission has agreed to temporarily exempt physicians from the “Red Flags” rule, pending the outcome of an ongoing court case. The rule requires creditors and financial institutions with “covered accounts” to implement written programs to help detect and respond to practices and activities that could indicate identity theft by Dec. 31. The FTC identified Dec. 31 as the starting date for enforcement after several previously announced delays. The American Medical Association, American Osteopathic Association and Medical Society of the District of Columbia in May filed a federal lawsuit seeking to prevent the FTC from extending the rule to physicians. Last November, the U.S. District Court for the District of Columbia ruled that the FTC may not apply the rule to attorneys, but the FTC has appealed that decision. Until the court reaches a decision in the case, the FTC has agreed not to enforce the rule for physicians. The agreement is pending the approval of the D.C. Circuit Court of Appeals.

(Source: AHA News Now, June 28, 2010) —

News Alerts

MDU: Be Aware of Research Risks

The Medical Defence Union (MDU) is reminding doctors involved in conducting clinical research to be aware of their legal and ethical responsibilities and to ensure patients fully understand the risks and benefits of taking part. The MDU opens around two files per month from members with questions about research, and answers many more questions on its advice line. Common questions include how much information to give to patients taking part in research, with whom information from trials should be shared, whether data should be included in the patient’s records, and about indemnity arrangements. Udvitha Nandasoma, MD, a MDU medico-legal adviser, said doctors involved in research need to be aware of the wide ranging new General Medical Counsel (GMC) guidelines, which have just been published. The MDU has advised members who become involved in carrying out research that involves patients or healthy volunteers, to follow the GMC’s new guidelines which stress that the safety, dignity, and wellbeing of participants should take precedence over the development of treatments or furthering of knowledge. It is vital that patients are given enough information about what is involved, including any potential risks, in a way they can understand. The GMC says this will usually be backed up with information about the trial and, if appropriate, a copy of the protocol approved by the ethics committee. (MDU, 4/15/10) —

HHS Issues New Rule on Temporary Certification of Electronic Health Records

On June 18, 2010, the Department of Health and Human Services (HHS) released a Final Rule on temporary certification of electronic health record (EHR) technology. The Final Rule on the temporary certification of EHR will be published and take effect on June 24, 2010. The temporary certification program establishes processes that organizations must follow in order to test and certify EHR technology. According to HHS, the certification is used to

assure that a product or service will work as expected and provide the capabilities necessary for managing EHR.

Use of certified EHR technology is a core requirement for providers who seek to qualify to receive incentive payments under the Medicare and Medicaid Electronic Health Record Incentive Programs provisions provided for in the Health Information Technology for Economic and Clinical Health (HITECH) Act. The Centers for Medicare & Medicaid Services (CMS) will soon issue final regulations to implement the EHR incentive programs. (HEALTHCARE eNEWS – Fowler, White, Boggs. Linda Zhou. 7/1/10) —

Doctors: Lawsuit Fears Lead to Overtesting


Many emergency room doctors say the number one reason for overtesting is fear of medical liability lawsuits. “It has everything to do with it,” said Dr. Angela Gardner, president of the American College of Emergency Physicians. The pace of the ER plays a role too. It is faster to order a test than to ask a patient a series of questions to ensure a test is actually needed. Patients’ demands are also driving over testing. Refusing those demands creates unhappy patients, and concern that unhappy patients will sue weighs heavily on ER doctors. ER physicians are among the top 10 specialists most likely to be sued for malpractice, according to the PIAA. The PIAA Data Sharing Project identifies more than 600 lawsuits against ER doctors nationwide between 2006 and 2008. There are more than 116 million ER visits each year nationwide, national data suggest, and research suggests the number of visits is rising. According to the PIAA 2009 Risk Management Review: Emergency Physicians, the most common patient conditions for which claims were filed against emergency physicians were acute myocardial infarctions (AMI) and appendicitis. Claims involving AMIs resulted in an indemnity payment 53% of the time. (AP, 6/21/10) (PIAA, 6/24/10) —

Caveats for Risk Reduction – Documenting Phone Calls

MESSAGE PAD	
For: _____	
Date: _____	Time: _____ AM PM
Caller: _____	
Patient: _____	
Phone Number: _____	
Nature of Call: _____	

Instructions/Orders: _____	

Physician Signature: _____	
Date: _____	Time: _____ AM PM



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It is not uncommon for those who meticulously document their charts to discount the importance of phone calls and messages. Patients have been lost to follow-up, diagnoses gone unmade or delayed and indefensible care rendered because of the absence of a phone message.

What's the most important phone call you'll receive? From a risk management standpoint it's the phone call you or your staff forgets to document. All phone conversations need to be documented in the patient's chart. Such documentation is not only in the patient's best interests, but will support what you were told (or not told) by the patient (or others) and could prove to be the pivotal piece of evidence in a defense. Countless claims have been attributed to inadequate documentation and non-meritorious cases forced to settlement because of a lack of evidence as simple as a phone message.

Documenting phone calls is a basic – but important – risk management practice. As such, First Professionals has phone message pads available which are designed to enhance your documentation practices. Keep one in your lab coat pocket, near the phone in your office, at home, in your car, and even your bedside table.

To obtain a complimentary supply of phone message pads, contact First Professionals' Risk Management department at (800) 741-3742, ext. 3016, or fax your request to (904) 354-6132. —

Risk Management Products & Services Available at no charge to policyholders

First Professionals has a number of highly effective, risk management products and services. These comprehensive products are designed to avoid claims and disciplinary actions and encourage physician participation. Such products and services are available at no cost to our policyholders.

To obtain any of the risk management reference materials offered by First Professionals, or for additional details, contact the Risk Management Department at 800-741-3742, ext. 3016 or rm@fpic.com. Several risk management materials are also available on the our website at www.firstprofessionals.com.

Case Study: Failure to Diagnose Hypoglycemia

Editor's Note: This case analysis reflects an actual First Professionals' case.

Case Analysis

A 14-year-old male diagnosed with juvenile diabetes underwent routine labs and blood work by his pediatrician, including A1C glucose testing. The patient's mother was told that the physician's office would contact her with the lab results and confirm the current treatment plan. Approximately three weeks later, the patient's mother phoned the pediatrician's office for the lab results and to determine the need for follow-up. She was informed by the pediatrician's ARNP that because the doctor had not already phoned her, the lab reports were unremarkable and thus no need for an immediate re-evaluation. A follow-up appointment was scheduled for three months thereafter. However, several weeks later the patient was admitted through the ER severely hypoglycemic. It was discovered that the patient's labs had, in fact, been out of acceptable ranges, including a significantly abnormal creatinine level. Investigation revealed that the lab results had been filed in the patient's chart without review by the physician, and thus never acted upon.

Risk Management Discussion

Delay in diagnosis continues to remain one of the most prevalent allegations in malpractice claims. Among the most frequent causes are lost or misdirected diagnostic test results. A common root cause in these cases is a failure to address abnormal test results in a timely manner. The unfortunate end result is often absence or delay in treatment to the point of irreversible damage to, or poor overall prognosis for the patient. Loss prevention measures shown to reduce errors deter lawsuits before they are pursued, and preserve defenses necessary to defeat the unavoidable claim include:

- Implement a tracking system to monitor the completion of diagnostic studies, that the results are received, and that the physician reviews them before they are filed in the patient's medical record. Follow-up communication to the patient is also a necessary component of the tracking system
- Determine if an electronic tracking system can be integrated with present systems
- Utilize a tickler system, computer printout, or log book for all testing ordered
- Create a suspense file for pending studies and diagnostic testing
- Track test orders to completion, whether an electronic or paper-based system
- Develop protocols for ordering, reviewing and following-up on test results
- Implement a filing and chart-flagging system to track patients needing follow-up, repeat diagnostic testing, or monitoring for chronic conditions
- Educate office staff to ensure heightened awareness of the risk of delayed diagnosis and incomplete follow-up, and the importance of adequate tracking, communication, and documentation
- Educate the patient's parent or guardian of the necessity of compliance with diagnostic tests, with the risks and benefits explained – and document your discussion
- Document non-compliance
- Document follow-up efforts and communication of test result
- Assure that all newly-hired staff are properly trained and adhere to protocols
- Subject tracking system failures and errors to root cause analysis
- Provide directions for the daytime office and after-hours communication pathway of stat diagnostic test results
- Use a template stamp to capture complete follow-up documentation on all diagnostic reports when received
- Ensure that software is properly integrated with existing, information delivery systems

This information does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained herein are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.

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Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



What action should be taken when a patient discharges a physician?

Document the medical record and send written confirmation to the patient specifically indicating the date that your physician-patient relationship was terminated by the patient. If the patient is in the midst of diagnostic work-up, advise the patient and furnish a copy of all lab or diagnostic reports.

Do HIPAA privacy rules impede criminal investigations and proceedings?

No. Healthcare practitioners can share information with law enforcement to identify and find criminals while still protecting the privacy of victims.

Does HIPAA interfere with patient treatment?

No. Providers can freely share protected health information for treatment purposes without obtaining an authorization.

Must a physician sign all progress notes made?

Although some state laws do not specifically require a signature, Medicare, Medicaid and most HMO's require such documentation.

Is a Physician Assistant required to maintain a listing of the medications prescribed?

Yes. Per current Florida statutes and specifically Florida Administrative Codes 64B-300.007 and 64B15-6.0037, the supervising physician and prescribing PA shall enter into and keep on file a written agreement outlining which of the medicinal drugs in the formulary that the supervising physician has specifically authorized the prescribing PA to prescribe. It must be signed and dated by all parties and maintained on file for at least five years.

Do Physician Assistant charting entries need to be co-signed by a physician who is covering for the primary supervising physician?

Yes. All charting entries made by a PA must be countersigned by the supervising physician. An alternate supervising physician must co-sign all charting entries and notes that were made during the supervision timeframe.

How many Physician Extenders may be supervised by a physician?

The ratio of PE's to supervising physician will vary. While the American Medical Association does not state a specific ratio, it recommends that the appropriate ratio of physicians to physician extenders should be determined by physicians at the practice level, consistent with good medical practice, and state law where relevant. It is important to maintain a ratio consistent with the term, if any, of your professional liability policy language. ●