

# Preventive Action

Quarterly Risk Management Newsletter for Policyholders of FPIC

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## Disaster and Recovery Planning

By The Risk Management Experts at  
First Professionals Insurance Company, Inc.



Just as you train to handle emergency medical situations that might arise in your practice, anticipating and preparing contingency plans for coping with natural and man-made disasters can make a significant difference in how well your practice survives the impact of such an event. Effective loss prevention measures include:

### COMMUNICATION

- Distribute staff contact information for home, cell and other phone contacts.
- Implement a staff calling tree.
- Determine realistic return-to-work timeframe for staff.
- Notify external vendors/business associates of practice interruption with targeted resumption of operation.
- Record temporary or newly established staff contact information.
- Implement staff briefings at the beginning and end of each day until recovery is complete.

- Establish a communication channel for patients.
- Establish patient telephone triage.
- Utilize temporary phone and fax services.
- Identify an alternate answering service, e-mail and pager service.
- Implement temporary controls to ensure HIPAA compliance.

### INFORMATION TECHNOLOGY

- Contact computer service vendors to assure integrity and recovery.
- Inventory hardware and software and document it.
- Ensure data back-up system and periodically test compliance.
- Develop a phased IT recovery plan.
- Document the type and extent of lost data.
- Apply same measures to electronic medical records (EMR) as paper in terms of integrity and recovery data.
- Establish uniform measures for temporary variances in all input functions and subsequent conversion.
- Evaluate applicable warranties.
- Consider IT restoration service contract.
- Verify insurance coverage for repair/replacement costs and losses.
- Re-establish filing systems and internal programs.

- Notify state medical board for specific guidance pertaining to lost or damaged records.
- Document all efforts at restoration and protecting existing records.
- Reconstruct all lost charts at next patient encounter.
- Notify insurance carrier for restorative services and/or claim loss procedures.
- Re-establish filing system.
- Re-establish chart/folder system.
- Initiate temporary storage measures, if necessary.
- Obtain legal guidance for patient notification during and subsequent to recovery operation efforts.
- Apply same measures to EMR as paper in terms of integrity and recovery data.
- Contemporaneously date and initial all late entries and duplicate information in context of recovery efforts.
- Create a list of all damaged/lost patient charts.

**Hurricane season  
begins June 1.  
Is your practice  
ready?**

First Professionals Insurance Company has developed an easy-to-use guide, *Disaster and Recovery Plan: Physician Office Practice*, to help you identify key areas of your practice that could be impacted by a hurricane or other

natural or man-made disaster. To obtain your complimentary copy, contact the Risk Management department at (800) 741-3742, extension 3016 or [rm@fpic.com](mailto:rm@fpic.com). The guide is also available on the Web at [www.firstprofessionals.com](http://www.firstprofessionals.com) under Risk Management, Reference Materials.

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### MEDICAL RECORDS

- Determine loss or damage to patient records and filing systems.
- Attempt to restore all damaged charts.



First Professionals Insurance Company



First Professionals Insurance Company publishes Preventive Action on a quarterly basis as a service to policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations.

First Professionals Insurance Company recommends you obtain legal advice from a qualified attorney for a specific application to your practice. The information should be used as a reference guide only.

For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management Department at 800-741-3742, ext. 3016.

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### D&R PLAN CHECKLIST: EMERGENCY PREPARATION

- Secure practice facilities to prevent further damage or loss.
- Secure items in water-tight containers.
- Notify landlord, management company, and facility staff.
- Secure patient records before evacuation.
- Identify temporary utility services such as generators, phone service.
- Take records of patients in midst of diagnostic work-up.
- Prepare a listing of all outstanding diagnostic studies.
- Remove valuables.
- Unplug electronic equipment.
- Prepare a list of hospitalized patients.
- Notify answering service or record message of closure. -

## News Alerts

### Florida Laws Regarding Disclosure of Licensure Status

Due to the increasing number of supervised practitioners, such as Advanced Registered Nurse Practitioners (ARNP) and Physician Assistants (PA) involved in patient care, patients may become confused as to the license status of practitioners involved in their care. To decrease consumer confusion and refine patient expectations, Florida regulations encourage clarification of roles among practitioners involved in the delivery of healthcare.

Pursuant to Florida Statute 456.072(1)(t) the following may be grounds for discipline:

- failure to identify the type of license the practitioner holds in any advertisement naming a practitioner; and
- failure to identify the type of license the practitioner holds through written notice, such as the wearing of a name tag, or orally to a patient.

The statute does not apply while practitioners are providing services in some facilities, such as hospitals, mental health facilities, community mental health centers or clinics, nursing homes, assisted living facilities, adult day care centers, or adult family care homes and intermediate care facilities.

In situations where a physician supervises other practitioners, Florida Statute 458.348(5) also requires that upon initial patient referral the patient is informed of the type of license the physician receiving the referral holds, as well as that of any other supervised practitioner who will be providing services to the patient. The patient shall be given an opportunity to see the physician or the supervised practitioner and shall sign a form indicating the patient's choice of practitioner prior to the initial examination.

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*First Professionals Insurance Company is Florida's Physicians Insurance Company and the endorsed carrier for professional liability insurance by 22 county medical societies, 15 specialty societies and three statewide associations in Florida, including the FMA and FOMA. Premium discounts may be available to members in good standing.*

# News Alerts

For Medical Doctors, Physician Assistants, and Anesthesiologist Assistants:

Additionally, Florida Administrative Code 74B8-11.003 – Disclosure of Licensure Status requires that practitioners (unless exempt as noted above) disclose their practice license status - Medical Doctor (MD), Physician Assistant (PA) or Anesthesiologist Assistant (AA) - by one of the following methods:

- name tag appropriately identifying the licensee as either MD, PA, or an AA, or
- wearing an upper body garment which identifies the licensee, or
- oral disclosure to the patient upon initial contact, or
- providing a business card which identifies the licensee upon initial in-person contact, or
- placing a notice in the practice site lobby or reception area which contains a photo of the licensee and the licensee's practice status.

For Osteopathic Physicians:

Pursuant to Florida Administrative Code 64B15-14.001 advertising for osteopathic physicians should conspicuously identify the osteopathic physician by name and conspicuously identify the physician referred to in the advertising as an osteopathic physician. —

## Study Finds Depressed Residents Commit More Medication Errors

According to researchers, medical residents who are depressed are almost six times more likely to make medication errors than those who aren't depressed. The study, published in the British Medical Journal, looked at 123 pediatric residents at three children's hospitals in the United States. Twenty percent of the residents were depressed, and 74 percent said they were burned out. During the study, residents made a total of 45 medication errors, and those who were depressed made 6.2 times more errors than those who weren't. The findings suggest that a doctor's mental health may play a larger role in patient safety than previously thought. The researchers did note that their data was collected before work hour limits for medical residents were implemented in the United States. The authors concluded that more needs to be done to study and improve the mental health and work conditions of doctors. (*Washington Post*, 2/8) —

## Arbitration is a Growing Trend in Healthcare

The practice of healthcare providers seeking binding arbitration agreements before agreeing to treat patients is becoming more widespread. Proponents say arbitration is faster, cheaper, and fairer than trials. They hope arbitration agreements will ultimately reduce the cost of insurance and defensive medicine practices. Critics say arbitration can be weighted against consumers and makes it harder to track complaints or build legal precedents. According to experts, arbitration agreements are common on the West Coast and

say the trend is spreading nationally. Doctors have reported mixed reactions from patients asked to sign such an agreement. One gynecologist said patients have largely embraced the new approach. A neurosurgeon said out of thousands of new patients, just ten have refused to sign an arbitration agreement. (*Philadelphia Inquirer*, 2/10)

*Editors note: Contact David Eismont at (800) 741-3742, extension 3070 to learn more about FPIC's arbitration program. —*

## FDA Warning Regarding Broken Device Fragments In Patients

In January 2008 the U.S. Food and Drug Administration (FDA) issued a warning regarding broken device fragments left in patients. The warning advises physicians that retained medical fragments have caused infection, internal tissue damage, blocked or perforated blood vessels and death. Retained metal fragments have caused injuries in patients who underwent MRI due to magnetic movement of the fragment. Damage to tissue surrounding metal fragments may also occur due to heat generated by radiofrequency waves. While the liability for a broken instrument remains with the manufacturer, in light of the FDA warning, a physician may also be held responsible. Physicians should inspect instruments prior to use and after the procedure to check for evidence of breakage. Patients should be informed of the retained foreign body or fragment type, its composition, size and exact location as well as the potential risks and complications posed by the retention. In the case of retained metal fragments, patients should be warned of the risk in undergoing MRI. The risks and complications of removing the foreign body should also be fully disclosed. These discussions should be well documented. Although hospitals are required to file a report with the FDA when a device fragment causes serious injury or death, the majority of cases do not meet that threshold and thus go unreported. Radiologists should query patients about the possibility of retained foreign bodies or metal devices, or fragments. (*FDA*, 4/2) —

## Drug Errors Harm 1 in 15 Hospitalized Children

Researchers found that medicine mix-ups, accidental overdoses, and bad drug reactions harm roughly one out of 15 hospitalized children -- a number much higher than earlier estimates. A scientific test of a new detection method created by a group of researchers at the National Initiative for Children's Healthcare Quality found a rate of 11 drug-related harmful events for every 100 hospitalized children. That compares with an earlier estimate based on traditional detection methods of two per 100 hospitalized children. The study revealed that relying on hospital staffers to report the errors resulted in less than 4 percent of the problems being detected. The new monitoring method consists of a list of 15 "triggers" on young patients' charts that suggest possible drug-related harm. It includes use of specific antidotes for drug overdose, suspicious side effects, and certain lab tests. (*The Detroit News*, 4/7) —

# New Network Improves Patient Safety

Medical liability protection requires that you are well-informed about patient safety issues quickly and reliably. First Professionals Insurance Company (FPIC) is working with other liability carriers, the FDA and medical societies to bring a new service to you that will improve patient safety and your liability protection.

The Health Care Notification Network (HCNN) is a new network to deliver drug safety alerts online to U.S. physicians and was recently launched to replace the decades-old system based upon paper and U.S. mail. The HCNN is free to all licensed U.S. physicians, and is solely used for patient safety alerts that are product-related and mandated by the FDA. It ensures the most rapid and effective delivery of important alerts to physicians, thereby improving patient safety and office efficiency while reducing liability and paperwork. It may also be used to notify physicians in the event of national public health emergencies or bio-terror events.

In an effort to implement the HCNN services, FPIC recently mailed a letter of explanation regarding the program and a fax form to all policyholders. If you haven't done so already, please take the time to verify the requested information and fax it to the appropriate contact number. It's that simple.

FPIC endorses the HCNN because we believe that more rapid and focused delivery of FDA-mandated product recalls and warnings have the potential to reduce malpractice claims and, ultimately, decrease malpractice insurance premiums.

For more information please visit [www.hcnn.net](http://www.hcnn.net), e-mail [info@hcnn.net](mailto:info@hcnn.net) or call (866) 925-5155. You may also contact a risk management consultant at FPIC if you have questions or to obtain additional details at (800) 741-3742, extension 3016, or [rm@fpic.com](mailto:rm@fpic.com).

## Why should I register for the HCNN?

The HCNN is good for providers and for patients because it improves the speed and efficacy of patient safety alert delivery. U.S. liability carriers, medical societies, health plans, government officials and other healthcare leaders are asking all physicians to register for HCNN because it improves patient safety, reduces physician liability, and ensures the fast and convenient delivery of patient safety alerts. The HCNN also stores and files alerts and can send them automatically to other members of the practice staff. HCNN benefits include:

- Improved patient safety
- Reduced professional liability
- Immediate receipt of important clinical information
- Increased convenience for practices
- The ability to have patient safety alerts also sent to other members of your office staff
- Reduction in office paperwork and mail
- The ability to get more information about a specific patient safety alert
- The ability to enter into a discussion area with other providers who have received an alert -



*Working Together to Protect Patients*

# Case Study: Lack of Informed Consent Complicated by Records Alteration

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

## Case Analysis

A 74-year-old male was seen in consultation by the insured dermatologist for revision of a long, contracted scar resulting from bypass surgery with complaint of pain immediately below the xiphoid process. The insured performed revision surgery on the scar in the lower abdomen, including a skin graft taken from the right arm. Consent for the procedure indicated "excision with local flap - in the chest area". Post-operatively the patient complained of continued pain and inadequate scar revision. The dermatologist later argued that a "staged" approach had been taken, starting with the lower abdomen. The patient then underwent revision to correct the contracted chest scar by a plastic surgeon. Suit was filed alleging lack of informed consent and negligent performance by the dermatologist. The treating plastic surgeon testified that there was a departure in the standard of care relative to informed consent. Investigation revealed that the dermatologist did not adequately document his pre-op discussion and later admitted to "editing" his office notes regarding same. Consequently, settlement of the case was necessitated.

## Risk Management Discussion

Lack of informed consent is one of the most prevalent legal issues in medical malpractice claims, yet one of the most easily avoided types of allegations. Frequently, such allegations are directly tied to unrealistic patient expectation. Patient education is inherent to the informed consent process and essential for establishing realistic expectations. Through the informed consent process, physicians can proactively manage patient expectations, improve diagnostic accuracy, and increase the likelihood of adherence to therapeutic regimes. Loss prevention measures shown to deter lawsuits before they are pursued and preserve defenses necessary to defeat the unavoidable claim include:

- Provide detailed, yet simplistic discussion of proposed treatments or procedures
- Disclose:
  - » The nature of the patient's illness
  - » The nature of the proposed therapy
  - » Reasonable alternative therapies to the proposed therapy
  - » The chance of success of proposed therapy or the likely results
  - » Substantial risks inherent in therapy and the potential hazards
- Provide an opportunity for the patient to ask questions. Encourage interactive discussion
- Utilize the "Reasonable Person" standard
- The more elective the procedure, generally the greater the degree of disclosure
- Disclose those complications that are the most frequent or most severe
- Offer to disclose other, less frequent or severe complications if the patient desires
- Assess patient's ability to understand and process the information being provided
- Document all informed consent discussions inclusive of questions and answers
- Do not delegate responsibility for the informed consent discussion
- Obtain informed consent before every test, procedure, treatment or prescription if material risks are involved
- Materiality of risk may vary by patient and clinical situation
- Obtain informed consent on each occasion that there is a significant change in treatment or medication should a material risk be involved
- Disclose generally recognized material risks associated with the proposed treatment or procedure in terms of their degree of frequency and severity
- Implied consent in emergency situations remains unchanged
- Utilize specific consent forms
- Don't be a salesperson! Don't guarantee the result
- Seek legal or risk management advice when uncertainty arises -

*This information does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here 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 FPIC's Risk Management Department



### **Do HIPAA privacy regulations set forth Privacy Notice requirements for electronic communications such as Web sites?**

Yes. If you maintain a Web site that provides information about your professional services, a Privacy Notice must be prominently displayed on the Web site and made available electronically through the Web site. The Privacy Notice may be made by e-mail if the patient agrees to electronic notice. However, the patient retains the right to obtain a paper copy as well.

### **At what age is a patient considered an "adult"?**

Generally, a person is considered an adult at 18 years of age. However,

specific exceptions apply in terms of the age at which a patient may consent to treatment and/or entitled confidentiality. For this reason, the patient's age, medical condition, nature of treatment, and venue must be considered.

### **What is the statute of limitations for medical malpractice?**

**IN FLORIDA:** Two years from the date of the incident giving rise to the action or two years from the time that the incident caused by medical negligence is discovered or should have been discovered, but in no event later than four years from the date of the negligent incident or occurrence. However, the four-year period of repose will not bar an action brought on behalf of a minor on or before the child's eighth birthday. If it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of injury, the period of limitations is extended to seven years from the date the incident giving rise to the injury occurred. This seven-year period does not bar an action on behalf of a minor if made on or before the child's eighth birthday.

**IN GEORGIA:** Two years running from the date of injury or death, and a five-year statute of "ultimate repose and

abrogation". Foreign object cases may be brought any time within one year of discovering the object. However, the statute of limitations will not run prior to a claimant's seventh birthday and the period of repose will not run until the claimant's tenth birthday. A claimant's insanity tolls the running of the statute of limitations in Georgia.

### **What is the Web site and contact information for current regulatory information in Florida?**

<http://www.doh.state.fl.us/mqa/medical>  
Florida Board of Medicine  
4052 Bald Cypress Way, BIN #C03  
Tallahassee, FL 32399-3250  
(850) 245-4131

[www.doh.state.fl.us/mqa/osteopath](http://www.doh.state.fl.us/mqa/osteopath)  
Florida Board of Osteopathic Medicine  
4052 Bald Cypress Way, BIN #C06  
Tallahassee, FL 32399  
(850) 488-0595

### **What is the Web site and contact information for current regulatory information in Georgia?**

[www.medicalboard.georgia.gov](http://www.medicalboard.georgia.gov)  
Georgia Composite State Board of Medical Examiners  
2 Peachtree Street, NW, 36th Floor  
Atlanta, GA 30303-3465  
(404) 656-3913