

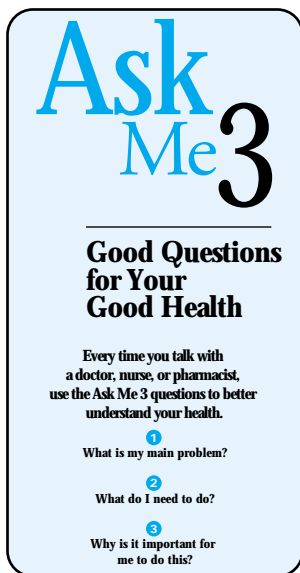
Preventive Action

The Quarterly Risk Management Newsletter for Policyholders of FPIC

Fourth Quarter 2003

Vol. 16, No. 4

Answer To Low Health Literacy: *ASK ME 3*



Ask Me 3

Good Questions for Your Good Health

Every time you talk with a doctor, nurse, or pharmacist, use the Ask Me 3 questions to better understand your health.

- 1 What is my main problem?
- 2 What do I need to do?
- 3 Why is it important for me to do this?

*ASK ME 3 is an innovative program provided by the **Partnership for Clear Health Communication**, a coalition of national organizations that are working together to promote awareness and solutions to low health literacy and its effect on health outcomes – a significant factor in malpractice claims. The **ASK ME 3** program is available at no cost and is remarkable in its simplicity and loss prevention potential.*

TABLE OF CONTENTS

Page 1	<i>Answer to Low Health Literacy</i>
Page 2	<i>HIPAA Update - Privacy Rule HIPAA Update - Enforcement</i>
Page 3	<i>Clinical Practice Parameters</i>
Page 4	<i>Frequently Asked Legal Questions</i>

Limited literacy skills are a stronger predictor of an individual's health status than age, income, employment status, or education level. Health literacy - the ability to *read, understand, and effectively use* basic medical instructions and information – is vital to good patient care and positive health outcomes. When patients lack the ability to understand and act upon medical information, it can put their health at risk. Although the effects of the misunderstandings are not always immediately apparent, the adverse outcomes due to non-compliance, improper diagnosis, or delayed treatment frequently result in medical malpractice litigation. Ironically, such claims often include allegations of improperly negotiated informed consent or failure to inform and educate.

People with low health literacy:

- Are often less likely to comply with prescribed treatment and self-care regimes.
- Fail to seek preventive care and are at higher (more than double) risk for hospitalization.
- Remain in the hospital nearly two days longer than adults with higher health literacy.
- Often require additional care that results in annual health care costs that are four times higher than for those with higher literacy skills.

Patients with low literacy skills may be difficult to identify. Often, they are embarrassed or ashamed to admit they have difficulty understanding

health information and instructions and may use well-practiced coping mechanisms that effectively mask their problem. Intimidation, fear, and vulnerability are additional factors that may hinder understanding as are shock upon hearing a diagnosis and extenuating stress within the patient's family.

The **ASK ME 3** program is designed to enhance communication. Patients are encouraged to understand the answers to 3 questions:

1. *What is my main problem?*
2. *What do I need to do?*
3. *Why is it important for me to do this?*

The program provides access to tools and resources to help your practice communicate with patients in a way that can better help them understand and act upon your diagnoses and instructions, ultimately improving their health outcomes. Simple techniques are offered that can increase your patients' comfort level with asking questions, as well as in complying with your instructions after they leave appointments.

FPIC now offers a one-hour educational program to explore these concepts and to promote this effective approach to low health literacy. For additional information about the **ASK ME 3** program and resources contact the FPIC Risk Management Department at 1-800-741-3742 ext. 3016 or rm@fpic.com or go to www.AskMe3.org.



FPIC publishes Preventive Action on a quarterly basis as a service to its 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. FPIC 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 FPIC Risk Management Department at 800-741-3742, ext. 3016. rm@fpic.com

Cliff Rapp
Vice President of Risk Management, Editor-in-Chief

Linda Blythe
Risk Management Consultant

Joseph Putz
Risk Management Consultant

Sandra C. Strickland
Risk Management Consultant

Amy P. Waller
Director of Communications

FPIC
1000 Riverside Avenue
Suite 800
Jacksonville, FL 32204

800-741-3742
Local 904-354-5910
Fax 904-358-6728
www.medmal.com

Copyright 2003 by First Professionals Insurance Company, Inc. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without written permission from the publisher.

HIPAA Update: Privacy Rule

There may be situations when it is necessary to disclose an incapacitated patient's protected health information (PHI) to someone who does not meet the HIPAA definition of family and friends involved with the payment or care of the patient. When making decisions involving incapacitated patients in emergency situations, professional judgment may be exercised as long as disclosure protects the best interests of the patient. Disclosures should be limited to that information appropriate under the circumstances.

May medical information be disclosed to a patient's family or friends when rendering treatment to a patient who is unable to speak, much less sign an authorization to disclose protected health information?

Yes. Under the HIPAA Privacy Rule, a covered entity is allowed to disclose to family members, relatives, or close personal friends protected health information that is directly related to their involvement in the incapacitated individual's care or payment related to that care. HIPAA does not prevent you from deciding the extent to which protected health information is disclosed – as long as your disclosures protect the patient's best interests.

Do HIPAA Privacy Rules prevent contacting a priest to provide last rites to an incapacitated patient known to be Catholic, when no family or friends are available to do so?

Under such circumstances, it is up to the individual physician attending the patient to decide if such a disclosure is in the best interests of the patient. Professional judgment can and should be exercised.

How do you determine what is the minimum necessary information that can be used, disclosed, or requested under a specific circumstance or a particular purpose?

The Privacy Rules require that reasonable efforts be made to limit use, disclosure of, and requests for PHI to the minimum necessary to accomplish the intended purpose. There is no strict standard, but rather a reasonableness standard and thus determination of what constitutes the minimum necessary will vary for each case. Determination should be governed by professional judgment and prevailing standards.

HIPAA UPDATE: Enforcement

The OCR (Office for Civil Rights) recently delivered the following statistics pertaining to HIPAA privacy rule enforcement:

- Total complaints have risen to 1,800 – up from 637 as of June 2003;
- OCR's ten regional offices receive approximately 75 complaints weekly;
- The majority of complaints have been filed by individual patients against provider group practices;
- No civil monetary penalties have yet been issued; and
- 30 percent of complaints have been dismissed due to jurisdictional reasons.

The OCR reports that it does not expect to impose civil monetary penalties unless a covered entity is recalcitrant or unwilling to cooperate with the OCR to resolve a complaint. Most providers have been very willing to cooperate. In terms of criminal penalties, the OCR has referred such matters to the Department of Justice.

CLINICAL PRACTICE PARAMETERS

Successful Management of Diagnostic Testing

By Linda M. Blythe, RN, CPHRM

Failure to diagnose continues to be one of the most prevalent allegations in malpractice claims. Among the most frequent causes are lost or misdirected diagnostic test results. A common factor 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.

The PIAA (Physician Insurers Association of America) recently reported that 30 percent of office practices fail to document their review of diagnostic test results. Twenty-five percent of practices fail to note a plan of action as a result of those test results. Faulty communication of clinical concerns and stat test results contribute to a significant number of adverse events, which result in severe patient injury and costly medical malpractice claims. Inadequate documentation of the entire process often undermines the defensibility of technically good care.

Consider implementing the following risk management techniques in order to enhance the ability to respond appropriately to diagnostic results in a timely manner:

- 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 record. Follow-up communication to the patient and subsequent management of the patient's care are also necessary components of the tracking system.
- Give directions for the communication pathway for stat diagnostic test results for both daytime office and after hours (See illustration –a.)
- Use a template stamp to capture complete follow-up documentation on all diagnostic reports when received. (See illustration –b.)
- A filing and chart-flagging system to track patients needing follow-up, repeat diagnostic testing, or monitoring for chronic conditions.
- Educate patients as to the necessity of compliance for diagnostic tests, with the risks and benefits explained – and documented.
- Educate office staff to ensure heightened awareness of the risk exposures related to delayed diagnosis and incomplete follow-up, and the importance of adequate tracking, communication, and documentation.

STAT Diagnostic Results Communication

During office hours of _____ to _____

Phone results to Office: _____ FAX results to Office: _____

After hours contact Dr. _____ On-call phone: _____

On-call FAX: _____ On-call pager: _____

(Illustration - a.)

DIAGNOTIC TEST RECEIVED: Date: _____

Reviewed by DR: _____ Date: _____ Time _____

____ Follow-up Orders:

____ Pharmacy orders: _____

____ Phone/Schedule Pt. for office visit to discuss results.

____ Patient Contacted: _____ Date: _____ Time: _____

Staff signature: _____ Date: _____ Time: _____

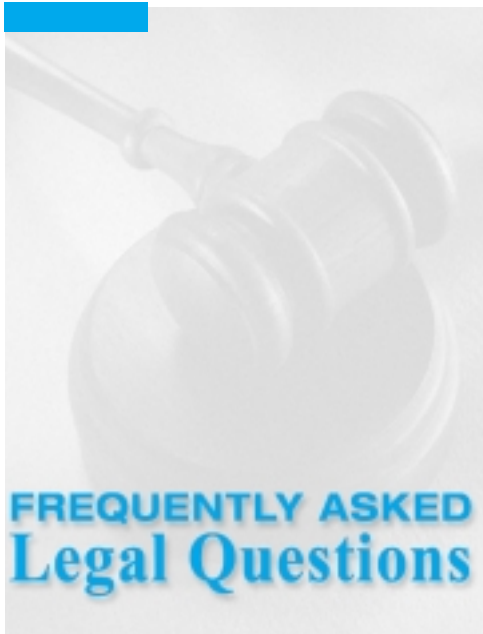
(Illustration - b.)



Insurance Solutions for Healthcare Providers

P.O. Box 44033
Jacksonville, Florida 32231-4033
800-741-3742
www.medmal.com

PRESRT STD
U.S. POSTAGE
PAID
Permit No. 1729
Jacksonville, FL



Q. Is a specific timeframe set forth when withdrawing professional services to a patient?

No. Although statutes do not specifically set forth the amount of time a patient must be given, managed care contracts and Provider agreements may contain language that does. Generally, a 30-day notice period is sufficient, however, depending on the circumstances, a lesser time period may be appropriate. If the patient terminates you, there is no further obligation to treat the patient. Always review the language of applicable managed care plans before terminating the dentist-patient relationship.

Q. What action should be taken when a patient is noncompliant or refuses to undergo diagnostic studies, care, or treatment?

Document your recommendations and the patient's noncompliance. Advise the patient of the potential consequences of their noncompliance or refusal and document your discussion. Confirm the patient's noncompliance and your subsequent discussion of the potential consequences, in a letter to the patient sent certified mail, return receipt requested. Send a copy of the letter by regular mail as well. Consider withdrawing from the patient's care, but first review the language of any managed care contracts that may apply to the situation and seek guidance from FPIC's Risk Management Department or personal counsel. If you practice in a group setting, it may be necessary to withdraw on behalf of others in the group and the practice itself.

Q. Does a dentist have the right to have legal counsel present when being deposed?

Yes. A deponent has the right to legal counsel at the time of deposition. Always contact FPIC's Claim Department or Risk Management Department before providing a deposition in order to determine if legal counsel is necessary and if an attorney will be assigned to represent you at the deposition.

Q. Does state law pertain to sample medications?

Yes. Most state laws view the distribution of sample medications as dispensing medications. The sample should dispense the drug in the manufacturer's labeled package with the practitioner's name, patient's name, and date dispensed.

Q. Do HIPAA privacy regulations set forth Privacy Notice requirements for electronic communications such as websites?

Yes. If you maintain a website that provides information about your professional services, a Privacy Notice must be prominently displayed on the website and made available electronically through the website. 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.