

PRF NEWS

Volume 8, Number 3

Covering Practice and Risk Management Issues for Physicians

Risks and Rewards of Communicating with Patients via E-mail

BY KATHERINE L. GREGORY, MD, MPH

Traditionally, physician-patient communication has been by telephone, mail, or face-to-face encounters. The rapid shift to an increasingly paperless and “wired” culture has led many patients to request that physicians offer the option of communicating via e-mail. Some physicians are reluctant to use e-mail, fearing that it would add to an already excessive workload, reduce income, erode quality of life, or create legal liability. Yet the AMA’s Board of Trustees has found that e-mail is a viable avenue “to adequately communicate diagnosis and treatment programs, as well as furnish appropriate health education information.” As a physician who has been using e-mail communication with patients for 10 years, I can attest that e-mail messages are a practical and useful way to complement follow-up care.

ADVANTAGES OF E-MAIL COMMUNICATION

There are many frustrations in communicating with patients by phone. Typically, there is the “phone tag” dilemma: it is difficult to get the physician and patient on the phone at the same time. By the time direct communication is achieved, the patient spends more time on venting frustration on the communication problem than on the initial medical question!

Communicating with patients via e-mail has many advantages:

- It is efficient and cost-effective – messages are less likely to be lost, misplaced, or overlooked, and less physician and staff time is spent playing phone tag.

- It is ideal for communicating about matters that do not require an office visit or urgent attention, e.g., prescription refills, relaying non-sensitive lab results, sending appointment reminders, addressing insurance issues, and responding to questions following a visit.
- There is a written record documenting the physician-patient interchange.
- Compliance can be encouraged and patients can be given additional information by attaching supporting documentation or linking to web sites.
- Some patients may actually prefer to communicate sensitive information through the “anonymity” of an e-mail message, rather than face-to-face.

PROTECTING PATIENT’S PRIVACY

E-mail is, in most cases, a relatively insecure form of communication. The primary risks when communicating with patients via e-mail are security and privacy. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) dictates that healthcare organizations must develop policies, procedures, and systems to assure that protected health information (PHI) remains confidential. HIPAA does not expressly prohibit the use of e-mail for sending PHI as long as the standards for access control, integrity, and transmission security are met. To meet this requirement, the Department of Health and Human Services encourages the use of encryption technology for transmitting electronic PHI over the Internet.

PHYSICIAN PREPARATION FOR E-MAIL COMMUNICATION

Before offering patients the opportunity to communicate with the physician’s office via e-mail, the following safeguards must be put in place:

- The office must be equipped to securely encrypt all patient-directed outgoing email. The e-mail security

continued on page 4

Inside PRF News

Risks and Rewards of Communicating with Patients via E-mail

E-mail messages are a practical and useful way to complement follow-up care, provided that safeguards are enacted.

1

Responding to Legal Correspondence and Documents

PRF’s executive director explains what is required of the following: 90-Day Notice, Summons and Complaint, Demand for Arbitration, Subpoena duces tecum, Subpoena to appear, Deposition.

2

PRF-RRG Peer Review Process

An examination of the functions of the Peer Review Committee and how it contributes to minimizing PRF’s level of risk.

3

Responding to Legal Correspondence and Documents

BY JUNE RILEY, MBA

As a practicing physician, from time to time you may receive legal documents or correspondence from attorneys regarding a patient's care and treatment. The following explanations address these three basic questions:

- ▶ What is this document?
- ▶ What does it mean?
- ▶ What do I need to do?

90-Day Notice

No medical malpractice action can be initiated unless the physician has been given at least 90 days prior notice of the intention to sue. The notice must state the legal basis of the claim and the type of loss sustained. In our experience, less than half of 90-Day Notices result in a claim being filed. However, if you receive a 90-Day Notice, it is absolutely necessary that you inform PRF for further instructions.

Summons and Complaint

A **Summons** is a legal document used to notify the physician that a lawsuit has been filed. The Summons will name the plaintiff(s) and defendant(s), the court and date of filing, and identify the case number. The **Complaint**, which is served with the Summons, identifies the alleged negligence, the damages allegedly resulting from the negligence, and outlines the relief being sought for the damages incurred. Once a physician has been personally served with a Summons and Complaint, he or she has 30 days to answer the complaint. Because a failure to respond to the Complaint within the deadline can result in a *default* and loss of the case, it is extremely important to

notify the PRF office *immediately*. Furthermore, the physician must forward the original of the summons, complaint, and any envelope, along with a note as to how the documents were received, to the PRF office.

Demand for Arbitration

Sometimes the intention to file a lawsuit is communicated by a **Demand for Arbitration** rather than a Summons and Complaint. The Demand has the same effect of initiating litigation and requires that the receiving party respond or risk defaulting the case. If you receive a Demand for Arbitration, contact the PRF office *immediately*, and forward the original to the PRF as you would after receiving a Summons and Complaint.

Subpoena

As a PRF physician, you should contact the PRF office staff whenever you receive a subpoena as an inappropriate response to a subpoena can result in a HIPAA violation or a violation of the right to privacy under California law. The two types of subpoenas most often received by PRF physician Insureds are a subpoena duces tecum and a subpoena to appear.

- ▶ A **subpoena duces tecum** is a subpoena to produce medical records. This subpoena does not necessarily relate only to a medical malpractice lawsuit. For example, it can also relate to a Workers' Compensation suit or a criminal suit. The subpoena may or may not be accompanied by an authorization to release records signed by the patient or a legal representative of the patient whose

records are sought. If no such authorization has been provided, then the subpoena must include proof that the patient has received adequate notice of the subpoena and has had adequate opportunity to object. Because it may not be clear whether notice is adequate, and a *premature* release of the records in itself can result in a lawsuit against you, please contact the PRF office staff for information on how to respond appropriately.

- ▶ A **Subpoena to appear** is a notice that you are to appear before the Court on a given day. You cannot ignore a subpoena to appear whether or not you are able to appear at the given time. If you receive a subpoena to appear, PRF will assign an attorney to contact the propounding party's attorney on your behalf, advise you, and if necessary accompany you to Court.

Deposition

A deposition is a court authorized procedure for the purpose of obtaining oral testimony. The deposition often takes place in an attorney's office or in the office of the individual being deposed. A court reporter is present and the sworn testimony is transcribed and can later be used as evidence in a trial or arbitration. If you are a named party to a medical malpractice suit, it is very likely that you will be deposed. You may also be called to testify as a treating physician in litigation in which you are not a named defendant. The plaintiff's attorney may contact you by

continued on page 4



CHANGE OF ADDRESS

PRF has moved from the Medical Society building on Sutter Street to a new office space on Van Ness Avenue, near Turk. Phone and fax numbers remain the same. The new address is:

Physicians Reimbursement Fund, Inc.

A Risk Retention Group
711 Van Ness Avenue
Suite 430
San Francisco, CA 94102 ■

PRF-RRG Peer Review Process

BY W. GORDON PEACOCK, MD

PRF-RRG is a physician owned and operated company whose Board of Directors and committees are comprised of current or retired PRF physicians. The expertise and sound judgment of the physician-members serving on the Peer Review Committee are essential to the PRF's peer review process and fundamental to the Company's effective risk management and continued success.

THE PEER REVIEW COMMITTEE

The Peer Review Committee meets every other year to re-credential all insured physicians and on an ad hoc basis to review new candidate applications. The Chairman of the Peer Review Committee is appointed by the PRF Board of Directors and serves on the Board. The other committee members are selected to represent the major medical specialties insured by the Company. The Peer Review Committee reviews the application and qualifications of each applicant or Insured and makes a recommendation for acceptance or renewal to the Board of Directors. The Board has the ultimate responsibility for acceptance. The Committee also makes recommendations as to an applicant's appropriate specialty classification.

NEW APPLICANT REVIEW PROCESS

The Committee reviews all new applicants to ensure that the applicant is engaged in a medical practice which utilizes conventionally accepted medical and risk management procedures, has a practice and claims history which places the physician within the same risk classification as existing policyholders, and understands

that all PRF physicians must utilize the Company's arbitration agreement, follow recommended risk management guidelines, and cooperate satisfactorily in the defense of any pending claims.

RENEWAL APPLICATION REVIEW PROCESS

Each policyholder must be re-credentialed every two years (no later than November 15 prior to the expiration date of the policy). The Peer Review Committee reviews each renewal application, updates the member's file with any new information, and makes its recommendation to the Board. In the review process, the Committee evaluates information pertaining

the amount and nature of any settlements or judgments. However, management reports of incidents having an undesirable outcome are not used as a basis for renewal of applicants. It is important to note that many of the management reports received by PRF never result in actual claims. In fact, insured physicians are encouraged to submit management reports when a patient experiences an adverse outcome, as management reports are essential for long-range planning and risk management by PRF.

The work done by the Peer Review Committee is an important contribution to minimizing the Company's level of risk and continued success. As Chair of the Peer Review Committee, I thank

"In fact, insured physicians are encouraged to submit management reports when a patient experiences an adverse outcome, as management reports are essential for long-range planning and risk management by PRF."

to the credentials and performance of the policyholder. For example, re-credentialing applicants are required to notify the Peer Review Committee of new or experimental procedures or any relevant changes in their practice.

The Committee also examines the applicant's claims activity during the prior year, including claims reported, actions filed, and

each member of this long-standing Committee for contributing their time and knowledge. PRF's overall favorable claims history is evidence that the Committee has consistently done an outstanding job. ■

Dr. Peacock is a board member and chair of the Peer Review Committee of PRF.



PRF NEWS

Covering Practice and Risk Management Issues for Physicians

Volume 8, Number 3
November 2005

Stephen Scheifele, MD,
Executive Editor
Robert D. Nachtigall, MD,
Editor

PRF News is produced by
Knox Communications

Physicians Reimbursement
Fund, Inc.

711 Van Ness Avenue, Suite 430
San Francisco, CA 94102
(415) 921-0498 - voice
(415) 921-7862 - fax
June@PRFrrg.com

June Riley, MBA
Executive Director

Soad Kader
Director of Membership

DIRECTORS

George F. Lee, MD
Stephen Scheifele, MD
Damian Augustyn, MD
W. Gordon Peacock, MD
Michael Abel, MD
Andrew Sargeant, ACA, CFA
(USA Risk Group of Vermont)

Reuben A. Clay, Jr., MD
Chair of Patient Care and
Management Committee

Stephen Scheifele, MD
Chair of Risk Management &
Education Committee

W. Gordon Peacock, MD
Chair of Peer Review Committee

© 2005 Physicians Reimbursement
Fund, Inc.

Communicating via E-mail

(continued from page 1)

system must be sufficient to ensure, to the highest degree possible, that delivery and receipt are verified and that the physician and patient will be able to recognize that messages coming from each other are authentic.

The American Medical Informatics Association (www.amia.com) has addressed the handling of messages in its e-mail guidelines (subject heading, turnaround time, acknowledgments, etc.).

- The patient must sign a consent form that describes the risks involved with e-mail communication. For example, the patient must consider if her computer is password protected so that others cannot gain access to her e-mail or, if she uses e-mail at work, are her messages available for her employer to read?
- The consent form should address patient expectations. For example, what is the maximum turnaround

time for providing a response? What about weekends and holidays? Should the patient expect an automated reply when her message is received at the physician's e-mail account? Will the physician have a nurse or other personnel read all incoming e-mail in order to "triage" the messages for action?

- Patients should be given written guidelines discussing the importance of focused content, limiting the number of requests per message, and avoiding urgent requests or highly sensitive content.
- To avoid losing valuable correspondence, the physician must have a secure back-up system in place and **save print-outs of e-mail messages in the medical record for later reference.**

Finally, a physician may be concerned that offering e-mail will open up the floodgates for a never-ending series of minor questions. Instead of 10 phone messages daily, there could be 100 e-mails awaiting a response!

Yet a triage-based system can have e-mail exchanges directed to the appropriate individual, like telephone messages. The Medem Network (www.medem.com) is a securely encrypted physician-patient communications network. Medem is designed to facilitate patients' online access to information and allows patients to make appointments and get prescriptions refilled online. Through such systems, the office staff will get the appointment and prescription e-mails, while the physician only addresses the patient's medical questions.

CONCLUSION

All electronic communications present challenges to privacy. Physician-patient e-mail communication is a timely and efficient way to improve health outcomes by involving patients in documenting their own medical care. If physicians institute the appropriate safeguards to protect confidential medical information, they will increase effectiveness and actually develop closer ties with patients through improved communication. ■

Dr. Gregory, an obstetrician gynecologist in San Francisco, is a member of the Risk Management & Education Committee of PRF.

Responding to Legal Documents

(continued from page 2)

phone or by mail to set a deposition date. Although the tone of the correspondence may seem casual and friendly, be aware that by speaking about your patient with plaintiff's counsel you may inadvertently violate the patient's right to privacy. Please contact the PRF office staff and an attorney will be assigned to communicate to plaintiff's attorney on your behalf.

Whether you need to testify, and how to protect your rights, including how to avoid the risk of being brought into the litigation as a defendant, are matters that should be discussed with an attorney. If the circumstances are such that you must testify at a deposition, your PRF-assigned attorney will meet with you to prepare prior to the deposition

and accompany you to the deposition.

The bottom line is that in the event that you are the recipient of any of the above correspondence or documents, you should **contact the PRF office at (415) 921-0498** and ask to speak with June Riley. ■

June Riley is executive director of PRF.