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DOCTORS



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A Letter from The Chair of the Board

Dear Colleague:

This edition of the newsletter deals with two very different but important issues. First, "dueling" with a colleague still exists among physicians. Read how throwing down the gauntlet and returning the attack can have disastrous results for both the challenger and the one affronted. Second, learn how a seemingly innocuous chart entry and inaccurate billing record can have a disastrous outcome.

Donald T. Lewers, M.D.
Chair of the Board & Chief Executive Officer

Dueling Doctors

The Journal of the American Medical Association has a continuing feature which provides articles going back one hundred years to provide its readers with a look at topics important to physicians of a different age and time.

The **March 19, 1898** article focused on the death of a physician following a controversy with a colleague (see inset). In short, a pistol duel was fought between these two practitioners over "a professional matter" – one colleague accusing the other of malpractice in the conduct of an operation. The article, while deploring the crime, went on to state that the vast majority of medical men were possessed of well-balanced minds and that most settled their differences of clinical opinion in more civilized forms. Quite obviously, fighting a duel over clinical issues is no longer the norm today – or is it? Is there really that much difference in what physicians do to each other in an off-hand comment or inadvertent chart entry?

Although these do not inflict the damage of a well-aimed bullet, damage is still done – and usually takes the form of a malpractice suit.

Why does this "dueling" between physicians still occur? Look at medicine today and it is not difficult to find the answers: competition has increased, managed care entities trim their panels

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Dueling Doctors

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and you don't want to be the one left out, physician groups are forming all around you with other physicians encroaching on your "turf." Feelings run high – "dueling" ensues. Dueling here refers to criticism by one physician against another contained in a chart entry, or through conversations with the patient or patient's family. This leads to patient doubt and dissatisfaction, which would not be justified were all the facts known or fairly judged.

To the physician who may want to start the dueling process: Stop and think before you act. Give the treating physician the benefit of the doubt. Careless comments about your colleagues can only make a situation worse – not only in terms of patient care – but in a wrongly damaged reputation. Be especially careful not to voice offhand or seemingly casual opinions in front of patients or their family members. If you are truly concerned about care that was rendered by another physician, pick up the phone and discuss it. You could be missing some vital information that could make all the difference in your assessment. Speak of other physicians as you would want them to speak about you.

To the physician who has been struck: It is particularly disheartening to learn, whether from a patient, or your colleagues, that another physician has criticized your care without discussing the situation with you. The feelings that result are similar to those experienced when a physician has been sued.

Disbelief and denial are probably the most immediate reactions. These initial reactions rapidly turn to anger – "how dare they say such a thing" – and the desire to "pay back" the instigating physician. Before you join in throwing down the gauntlet, consider these possible explanations:

- The patient may have misunderstood the comment
- The physician making the comments or chart entry may have inadequate or inaccurate information about your treatment

Avoid the very natural desire to strike back. Escalation never helps anyone.

Both dueling partners should focus on one issue – patient care. When physicians communicate with each other and talk about each other with respect, the opportunity for dueling diminishes. When they work together toward the shared goal of patient care, everyone wins, and dueling can truly be relegated to the past.

JAMA 100 Years Ago
March 19, 1898

FATALITY FOLLOWING A CONTROVERSY BETWEEN TWO MEDICAL MEN.

A letter from the University of Bonn recites a tragedy following a difference between surgeons. An armed encounter between members of the medical profession at this close of the nineteenth century was certainly not to be anticipated, but the old saying that it is always the unexpected which arrives has once more been verified. It is only too true that a duel was recently fought at Bonn, the combatants being both medical practitioners, and most unfortunately one of them met with his death from a penetrating wound of the thorax. It seems that two of the assistants of a surgical clinic named Reusing and Fischer, had a violent altercation over a professional matter, the former accusing his colleague of malpractice in the conduct of an operation, and as apparently there was no older and wiser person at hand to pour oil on the troubled waters a hostile meeting enabled, with the above mentioned deplorable result. That duels should still survive on the Continent, especially in military circles is perhaps not to be wondered at under the existing regime, but happily the vast majority of medical men of all nationalities are the possessors of well balanced minds, and recourse among them to the *argumentum baculinum* for the adjustment of technical disputes must be an altogether exceptional occurrence. Complaints are often heard of the overcrowding of the medical profession on the other side of the channel, but of all the depletory methods the slaying of one's confrère is surely the least philosophic. A duel at the present day is an anachronism. As a mode of settling scientific controversy it is not only out of date, but also about the most illogical procedure conceivable. Killing an opponent does not prove the survivor's case; while the gratification of an ignoble feeling of personal resentment is dearly purchased at the expense of life-long remorse. The principles in a duel are blameworthy, but for them there are excuses, or less passionate by nature. For the secularly nothing to be said. They are simply the abettors of a crime in which they run no bodily risk, and it is against them that retributive justice should be mainly directed. If seconds would only consider the heinousness of their position, there would soon be an end of dueling.

Edited by Brian P. Pace, MA, Assistant Editor.

JAMA, March 18, 1998–Vol 279, No.11

JAMA. 1898;30:690

JAMA 100 Years Ago 832 e



'Oh, What a Tangled Web We Weave...'

Picture this: federal agents in your office going through your patient charts, and carting away dozens of records in a government investigation of your billing practices. What are they looking for? Evidence of inflated or unjustified bills to Medicare or Medicaid, the public insurance program for the elderly, poor and disabled. To make a determination of fraud, federal investigators look to medical and billing records to see whether or not services were provided as stated in the record, were necessary, and were billed correctly. Criminal prosecutions for health care fraud have more than tripled in recent years. Are there that many deceitful doctors out there? No, but there are a number of doctors who are using billing codes for procedures other than the treatment specifically provided. They do this for reasons that they feel are necessary to obtain fair reimbursement. Why is this happening? Doctors today are being pressured regarding reimbursement protocols. Some are attempting to deal with this by indicating similar procedures or diagnoses in the medical or billing record because they know that this is a reimbursable diagnosis or procedure. What's the harm in this? Plenty.

Besides the possibility of a federal investigation resulting in significant fines and/or jail time, we have also seen instances where misstating procedures has severely jeopardized the defense of a malpractice case. The jury will look to medical or billing records to help them understand what transpired in a given case. Anything that even remotely resembles deception will damage your credibility in the eyes of the jury and guarantee you a loss. It will no longer matter that you gave the appropriate medical treatment. If the billing record reflects a procedure which the plaintiff alleges violated the standard of care and you testify that you performed a different procedure, the jury is likely simply not to believe your testimony and find for

the plaintiff. Even if they believe you performed the correct procedure, there is a strong likelihood they will still find for the plaintiff because they believe you should be punished for the deception.

Inaccurate charting and billing procedures could also be a violation of your HMO contract and could get you removed from the panel. As one doctor put it – "we lost a tremendous amount of business. Referrals dropped drastically. It was like having leprosy." This from a doctor who was investigated but not prosecuted!

Bottom line? Stating anything on a patient's chart or billing record that is not accurate is not worth the

The American Medical Association's Code of Medical Ethics states the following: "No physician should bill or be paid for a service which is not performed..."

damage that will be done to your career and your reputation. The Justice Department has stated that fraud charges will not be brought against health care providers who make honest billing mistakes. Using a different procedure for the purpose of receiving reimbursement will **not** be interpreted as an honest mistake. Keep up with compliance issues and make sure your staff is aware of the consequences of incorrect or inaccurate billing.

The American Medical Association's Code of Medical Ethics states the following: "No physician should bill or be paid for a service which is not performed..." Doing otherwise opens you up to the very real possibility of a fraud investigation by the federal government with serious penalties attached and which severely compromises the defensibility of any related lawsuit.



MED-RITE™

The Right Way to Improve Your Office Practice

Navigating the sea of change in the healthcare delivery system can be overwhelming, not only for physicians, but for office staff as well. In today's endless and evolving healthcare system, there's potential for increased risk and liability exposure. Therefore, there is an even greater necessity for the physician in an office-based practice to focus on the fundamentals of risk management.

Improved efficiency in managing an office-based practice can be achieved through the MEDICAL MUTUAL MED-RITE™ program. MED-RITE™ is for all physicians - from large, multi-specialty practices to the solo practitioner. It is a comprehensive risk improvement program designed to identify specific areas of risk; develop specialty-specific recommendations for your practice; and provide follow-up consultation.

MED-RITE™ is an interactive process between the physician, office staff and the MED-RITE™ consultant, who will: interview physicians and staff; review medical records; analyze claims history and practice trends as they compare nationally; identify and evaluate your managerial, clinical and supportive practice patterns; and provide guidelines to control or eliminate potential claims.

For more information, please call Kim Lyons, R.N., at MEDICAL MUTUAL at 410-785-0050, ext. 208.

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CME Test Questions

Instructions for CME Participation

CME Accreditation Statement--MEDICAL MUTUAL Liability Insurance Society, which is affiliated with Professionals Advocate, is accredited by the Medical and Chirurgical Faculty of Maryland to sponsor continuing medical education programs for physicians. MEDICAL MUTUAL designates this educational activity for a maximum of one hour in Category 1 credit towards the AMA Physician's Recognition Award. Each physician should claim only those hours of credit that he/she actually spent in the educational activity.

Instructions--to receive credit, please follow these instructions:

1. Read the articles contained in the newsletter and then answer the test questions.
2. Mail or fax your completed answers for grading to the address or fax number provided below:

Med•Lantic Management Services, Inc.
P.O. Box 64100
Baltimore, MD 21298-9134
FAX (410) 785-2631

Upon completion, a certificate for the credit will be mailed to you. Please allow three weeks to receive your certificate.

3. Answer the evaluation questions to help improve future CME activities.

1. It does not matter what you chart as long as you perform the appropriate procedure.
A. True B. False
2. Federal investigators may look at both billing and treatment records when determining whether fraud has occurred.
A. True B. False
3. As long as you are not getting any extra money for a procedure, you can write down anything you want.
A. True B. False
4. "Dueling" over clinical issues is no longer a part of today's medical scene.
A. True B. False
5. Modern "dueling" can trigger a malpractice action.
A. True B. False
6. The emotions a physician may feel when involved in a dueling situation are not unlike those felt when a lawsuit has been received.
A. True B. False
7. Inaccurate charting and billing procedures could get a physician removed from a managed care panel.
A. True B. False
8. There is no harm in inaccurate billing procedures as long as the treatment or procedure is close to what you actually did.
A. True B. False
9. Criticizing another physician to a patient enhances patient care.
A. True B. False
10. Both dueling partners should focus on one issue – getting even.
A. True B. False



CME Evaluation Form

Statement of Educational Purpose

"Doctors RX" is a newsletter sent bi-annually to the insured physicians of MEDICAL MUTUAL/Professionals Advocate. Its mission and educational purpose is to identify current health care related risk management issues and provide physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to obtain the following educational objectives:

- 1) gain information on topics of particular importance to them as physicians,
- 2) assess the newsletter's value to them as practicing physicians, and
- 3) assess how this information may influence their own practices.

	Strongly Agree					Strongly Disagree
Part I. Educational Value:		5	4	3	2	1
I learned something new that was important.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I verified some important information.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I plan to seek more information on this topic.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
This information is likely to have an impact on my practice.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 2. Commitment to Change: What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

Part 3. Statement of Completion: I attest to having completed the CME activity.

Signature: _____ Date: _____

Part 4. Identifying Information: Please PRINT legibly or type the following:

Name: _____ Telephone Number: _____

Address: _____
