



Office Manager Forum: Best Practice

April 26, 2023

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Senior Patient Safety Risk Manager

Kathleen Stillwell earned Master's Degrees in Public Administration and Health Services Administration. She is a registered nurse and Certified Professional Health Care Risk Manager (CPHRM). Ms. Stillwell is a nationally recognized expert in healthcare risk management with over 38 years of experience in clinical risk management, professional liability claims management, compliance, and high-risk underwriting. Her expertise includes hospitals, medical practices, and integrated healthcare organizations.

Ms. Stillwell serves on Chapman University, Leadership Council for Crean College of Health and Behavioral Sciences in Irvine, CA. She also serves on the University of California Riverside Advisory Board for Women in Leadership Program. Kathleen is a member of Brandman University Nurse Advisory Board, and a volunteer coach for physicians and nurses for the California Medical Association Care 4 Caregivers program. She has served as faculty for the American Society for Healthcare Risk Management and is published in the American Hospital Society Risk Management Handbook for Healthcare Organizations.

Kathleen has held numerous leadership positions with national and state risk management and quality organizations, including past Board Member for the American Society for Quality (ASQ), Healthcare Division, President of the CA State Patient Care Assessment Council, Board member for the California League of Nursing, adjunct faculty for Woodbury University and the University of San Francisco. She served on the Advisory Board of King International, Inc., and is a Charter Member of the Business Renaissance Institute.

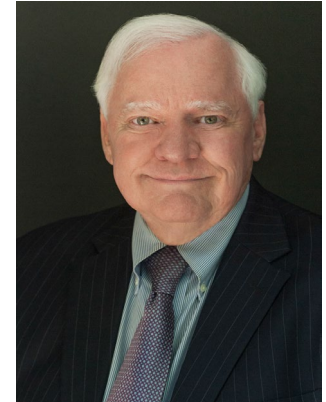


Richard Cahill, Esq.

Vice President and Associate General Counsel

Richard Cahill received his undergraduate degree (summa cum laude) from UCLA in 1975 and his Juris Doctorate from Notre Dame Law School in 1978. He served as a deputy district attorney in California at the outset of his career and was subsequently appointed as counsel on the Central Legal Staff of the Nevada Supreme Court before entering private practice in southern California.

Mr. Cahill has specialized in various facets of health care litigation for more than 35 years, including the defense of hospital and physician professional liability claims, managed care contract disputes, network privileges issues and related business torts. His principal clients included Cigna Health Plans, Kaiser-Permanente and Tenet Health Systems. He has completed in excess of 185 trials and binding arbitrations during his career with a combined win-rate of 92% and has been appointed as an arbitrator in more than 350 cases involving complex healthcare issues. Mr. Cahill is Vice President and Associate General Counsel with The Doctors Company and provides legal support to the Claims and Patient Safety Departments, oversees company appellate litigation, researches and submits original content for publication and lectures frequently around the country on topics related to the health care community. He has a preeminent rating with Martindale-Hubbell, the premiere peer-reviewed attorney rating service in the United States.



Office Manager Panelists

- ▶ **Alicia Duane**
Office Manager
Advanced Orthopedic Pain Management & Wellness Center
Newport Beach, CA

- ▶ **Candace Ramirez**
Office Manager
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Los Alamitos, CA



Objectives

After completing this activity, learners will be able to:

- ▶ Understand risky documentation issues and compliance with Open Notes rule effective October 6, 2022
- ▶ Develop awareness of new CA laws in effect in 2023
- ▶ Develop strategies to deal successfully with challenging patients



A jug fills drop by drop.

Buddha
563 - 483 BC



Risky Documentation Issues

Is There a Problem in Your Practice?

- ▶ Does your EHR include task notes that a patient would find inappropriate?
- ▶ Does your EHR include subjective comments between staff and providers?
- ▶ Some Task notes were never intended for patients to see.
- ▶ **Effective immediately, train staff to compose EHR notes as if the patient is standing over their shoulder reading the note.**

Medical Record Audit Findings: Task Notes

- ▶ Are you kidding me? This patient is off his rocker! He insists you call him back.
- ▶ Please do not schedule this patient for me in the future. I cannot stand her whiny voice.
- ▶ Patient called for appointment. You said you would NEVER see this patient again because he is a Big Bully. What should we tell him?
- ▶ Patient called staff names, told me I was an idiot, when she is the idiot.
- ▶ Why do you let this patient come back when we know he is a drug seeker and a liar?

Notes from Patient Visit Notes

- ▶ Patient is rude and a pain with staff
- ▶ Pt lives with a “rotten boyfriend and his idiot dysfunctional family”
- ▶ Pt complained, “MD doesn’t listen and doesn’t know what he is doing”
- ▶ Patient c/o “MD is rough during physician examination and when she complained, MD told her to be quiet and she got very mad”
- ▶ Pt asked, “how can you stand working for this doctor?”

21st Century Cures Act Final Rule

Effective Date: October 6, 2022

- ▶ The information blocking definition's limitation on the scope of electronic health information (EHI) was lifted by federal law, October 6, 2022
- ▶ The 21st Century Cures Act Final Rule information blocking provisions require healthcare stakeholders to share all electronic health information, including task notes and internal messages in the electronic medical record

www.healthit.gov/sites/default/files/page2/2021-12/Understanding_EHI.pdf

New Open Notes Rule

- ▶ Act extends unblocking of all staff authored and incidental notes in EHR
- ▶ No blocking access to patients
- ▶ Patients will be able to see task notes from staff members, as well as clinical notes and tasks notes from providers
- ▶ Task notes include reminders and notes between office staff and providers
- ▶ Some Task notes may not be intended for patients to see
- ▶ **Start now, staff members should begin composing task notes as if patient can see them—because soon, that will be the reality**

Texting is a Risky Issue

- Use of unencrypted text is a HIPAA violation
- All texts must be printed and scanned into EHR or placed in paper medical record
- If not using encrypted text, use special consent for texting
- Printing/scanning of texts is time consuming
- Texting is in the metadata of phone forever
- **Best practice: No Texting**

TDC Sample Consent Voicemail or Text Message

CONSENT TO LEAVE VOICE OR TEXT MESSAGES

Completion of this document authorizes the disclosure and/or use of health information about you. The purpose is to give permission to leave certain health information on your voice or text messaging service. Failure to provide all information requested may invalidate this authorization.

Name of patient: _____
(Please print)

USE AND DISCLOSURE OF HEALTH INFORMATION

I hereby authorize _____
(Name of practice)

to call or text the following telephone numbers:

Mobile: _____

Home: _____

Work: _____

and leave detailed voice or text messages with the following information:

- Details about my next appointment (provider name, date/time, and callback number).
- Test and other exam results.
- Account payments, balances, or cost estimates.
- Only the following types of health information (including any dates):

I **DECLINE**. Please do NOT leave any voice or text messages.

PURPOSE

Purpose of requested use or disclosure: Patient request OR Other

EXPIRATION

This authorization expires: _____
(Insert date)

MY RIGHTS

I may refuse to sign this authorization. My refusal will not affect my ability to obtain treatment or payment or eligibility for benefits.¹

If the health information is being disclosed or used, I may inspect or obtain a copy of this health information.

I may revoke this authorization at any time, but I must do so in writing and submit it to the following address: _____
(Name and address of practice)

Top Ten Findings in Medical Record Reviews

1. Allergy reaction not consistently documented
 - Hives, swelling, nausea, SOB
2. Medication reconciliation does not comment on the following:
 - OTC, recreational, cannabis, homeopathic, supplements, herbs
3. Social history limited
 - Family, smoking, vaping, alcohol use
4. No documentation of chaperone present
 - Family or guest is not appropriate to chaperone

More Medical Record Reviews

5. No documentation of language used during visit if not English

- No documentation of translator if used
- Family or guest not appropriate for translation.

6. Informed Consent documentation issues

- Consent signed and witnessed by medical assistant
- No physician signature, no comment in medical record about consent
- Operative report states “after obtaining informed consent” which is dictated after procedure

7. No documentation related to checking CURES when necessary

Additional Medical Record Reviews

8. Patient education

- No reference to patient education
- No mention of aftercare instructions
- No mention of any handout materials provided

9. Reference to texts and emails documented

- No text or emails noted in the medical record
- Text and emails not scanned into the EHR

10. No clinical summary provided to patient

- No documentation that clinical summary was provided to patient
- Documented “patient declined clinical summary”

What Not to Document

- ▶ Subjective comments about patient behavior and appearance
- ▶ Lengthy self-defensive entries to explain a mishap
- ▶ Pointing the finger at any third party
- ▶ Arguing with patient in portal exchanges
- ▶ Do not engage with anyone not HIPAA authorized by patient
- ▶ Do not text with patient unless texting is encrypted, or patient signed authorization acknowledging that texting is not confidential



Ignorance of the law is no excuse.

Thomas Jefferson 1743 - 1826
Third President of the United States



New Laws

Effective January 1, 2023

AB 852 Health Care Practitioners: Electronic Prescriptions

- ▶ Provides additional exemptions for healthcare providers to issue prescription electronically
- ▶ Updates requirements for pharmacies or other authorized dispensers to fill prescription issued electronically
- ▶ Prescribers qualifying for certain exemptions are required to register with CA Board of Pharmacy
- ▶ Prescriber who issues prescription for controlled substance not transmitted via e-scribe shall document reason in patient's medical record, as soon as practicable, and within 72 hours, the technological or electrical failure preventing electronic data transmission of prescription

leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB852

E-prescribing in California

- ▶ California's e-prescribing is a costly burden for low volume prescribers.
- ▶ E-prescribing software subscription cost for providers, who write limited prescriptions a year, can cost as much as \$20.00 per a prescription.
- ▶ **AB 852 provides e-prescribing exemptions for providers who:**
 - Issue 100 prescriptions or less in a year
 - Are practicing in areas affected by natural disasters, officially declared disaster or an emergency zone
 - Are granted a waiver based on other extraordinary circumstances
 - Must register with Californian Board of Pharmacy

AB 1278 Physicians and Surgeons: Payments Disclosure *Required January 1, 2023*

- ▶ 2010 Physician Payments Sunshine Act requires disclosure of financial relationships between medical device, pharmaceutical, biologic manufacturers and physicians
 - Law does not apply to Emergency Room physicians
- ▶ Act requires detailed information about payment of value over \$10.00 from manufacturers of drugs, medical devices, and biologics to physicians be made available to the public
- ▶ Physicians and advanced practice providers are required to post notice in office visible to patients January 1, 2023, and provide notice on practice website January 1, 2024
- ▶ Physicians who do not follow new law may be disciplined by licensing board for unprofessional conduct

AB 1278: (Nazarian) – Physicians and Surgeons: Payments: Disclosure: Notice
openpaymentsdata.cms.gov

AB 1278 Required Posting Language Effective January 1, 2023

For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here openpaymentsdata.cms.gov/.

- ▶ The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public

If physician is employed by a healthcare employer, employer is responsible for meeting this requirement.

[www.mbc.ca.gov/NEWS
openpaymentsdata.cms.gov](https://www.mbc.ca.gov/NEWS/openpaymentsdata.cms.gov)

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AB 1728 Posting Notice Required January 1, 2023

The notice must include the following text:

The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>.

For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public.

openpaymentsdata.cms.gov

www.mbc.ca.gov/NEWS

AB 1278: Nature of Payments to Be Reported

Payment categories used to describe payment or transfer of value:

- Acquisitions
- Charitable contributions
- Compensation for services other than consulting, including faculty, speaker at event other than a CME program
- Compensation for serving as faculty/speaker for accredited or certified CME (2013 - 2020)
- Compensation for serving as faculty/speaker for unaccredited and non-certified education program (2013 - 2020)
- Compensation for serving as faculty/speaker for medical education program (2021 and subsequent years)
- Consulting fees
- Current or prospective ownership or investment interest (to be removed starting in Program Year 2023)
- Debt Forgiveness (Applicable beginning with Program Year 2021 and subsequent years)
- Education
- Entertainment
- Food and beverage
- Gift
- Grant
- Honoraria
- Long-term medical supply or device loan (Applicable begins 2021 and all subsequent year)
- Royalty or license
- Space rental or facility fees (teaching hospitals only)
- Travel and lodging

California Assembly Bill 1278

SB 1184 Confidentiality of Medical Information Act: School-linked Services

- ▶ Authorizes healthcare provider or healthcare service plan to disclose medical information in certain circumstances, including authorizing disclosure to providers of healthcare, healthcare service plans, contractors, or other healthcare professionals or facilities for purposes of diagnosis or treatment of patient
- ▶ Bill authorizes provider of healthcare or a healthcare service plan to disclose medical information to a school-linked services coordinator
- ▶ School-linked services coordinator is defined as an individual located on a school campus or under contract by a county behavioral health provider agency for the treatment and healthcare operations and referrals of students and their families that holds certain credentials, including a services credential with a specialization in pupil personnel services

*SB 1184: (Cortese) – Confidentiality of
Medical Information Act: School-linked
Services Coordinators*

AB 2098 Physicians and Surgeons: Unprofessional Conduct

Aimed to Curb COVID misinformation and establishes it is unprofessional conduct for a physician and surgeon to share mis/disinformation to a patient under their care in the form of treatment or advice, as defined.

“Under AB 2098, doctors can be disciplined for spreading misinformation about COVID, defined as “false information that is contradicted by contemporary scientific consensus contrary to the standard of care.”

www.reuters.com/business/healthcare-pharmaceuticals/california-law-aiming-curb-covid-misinformation-blocked-by-judge-2023-01-26
AB 2098: (Low) – Physicians and Surgeons: Unprofessional Conduct

AB 2098 Blocked by U.S District Court Judge

January 26, 2023

Physicians' lawsuit based upon violation of right to free speech under First Amendment of the U.S. Constitution

- ▶ Senior U.S. District Judge William Shubb, Sacramento, ruled January 26, 2022: Assembly Bill 2098, too vague for doctors to know what kind of statements might put them at risk of being penalized
 - COVID-19 is a quickly evolving area of science that in many aspects eludes consensus
 - Physicians who give harmful advice to patients are already subject to malpractice lawsuits and discipline under existing state law
- ▶ Preliminary order means AB 2098 cannot be enforced while court hears two lawsuits brought against the law shortly after its passage October 2022
 - One lawsuit brought by group of five physicians
 - Second lawsuit brought by a physician and two advocacy groups

www.reuters.com/business/healthcare-pharmaceuticals/california-law-aiming-curb-covid-misinformation-blocked-by-judge-2023-01-26/

AB 35 Civil Damages: Medical Malpractice MICRA Modernization effective January 1, 2023

Important guardrails of MICRA will continue unchanged

- ▶ Injured patient and their family, allowing advance notice of a claim
- ▶ One-year statute of limitations to file a case
- ▶ Early offer of proof for making punitive damage allegations
- ▶ Allowing other sources of compensation to be considered in award determinations
- ▶ New provision added to law protects expression of sympathy by a healthcare provider, physicians to express empathy, benevolence and statements of fault after an unforeseen outcome without fear statements or gestures will be used against them

Amends Business and Professions Code §6146; Amends Civil Code §3333.2; Amends Code of Civil Procedure §667.7; Adds Health and Safety Code Chapter 3, Part 2, Division 103, commencing with §104340

SB 1126 Benefits

- ▶ Expands definition of “eligible employer” under CalSavers program to include those with one or more employees
- ▶ Requires employers with one or more employees that do not offer a retirement savings program to implement a payroll deposit retirement savings arrangement by December 31, 2025

leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1126

AB 1041 Protected Time Off: Scope of Coverage

- ▶ Expands definition of “family member” under the California Family Rights Act (CFRA) and California’s Healthy Workplaces Healthy Families Act (HWHFA) to include a “designated person”
- ▶ Employees can identify a designated person for whom they want to use leave when they request unpaid (CFRA) or paid (HWHFA) leave

[leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1041](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1041)

AB 1949 Protected Time Off: Bereavement Leave

Amends California Family Rights Act to require employers with five or more employees to provide up to five days of unpaid bereavement leave for an employee within three months of the death of a family member.

leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1949

AB 1751 COVID-19: Workers' Compensation

Extends to January 1, 2024, the current rebuttable presumption that an employee's illness, resulting from COVID-19, was sustained in the course of employment for purposes of workers' compensation benefits

February 28, 2023: Governor Newsom Marks End of California's COVID-19 State of Emergency

Healthcare providers licensed out-of-state who received Emergency Medical Services Authority's (EMSA) authorization to practice in CA without a license issued by the Medical Board of California (Board) will no longer be permitted to practice pursuant to that authorization after February 28, 2023.

- ▶ Please note, individuals wishing to continue to practice in California must submit an application and the required documentation for licensure immediately.
- ▶ EMSA out-of-state medical personnel authorization approval concludes on February 28, 2023, and no further practice pursuant to that authorization will be permitted.

www.mbc.ca.gov/

California health insurers must continue to pay for COVID-19 vaccines and treatments for six months after May 11, 2023, (November 11, 2023) when federal state of emergency ends.

- ▶ Californians without insurance will maintain access to COVID-19 medications and vaccines in the federal government's stockpile until summer and possibly beyond
- ▶ CA COVID Statistics as of February 28, 2023

12,075,596

reported cases

7-day average: 3,050

14-day change: -22.4%

100,187

deaths

7-day average: 32

14-day change: -22.5%

81.1%

of Californians are at
least partially
vaccinated

www.latimes.com/science/newsletter/2023-02-28/coronavirus-today-farewell-to-californias-state-of-emergency-coronavirus-today

California Department of Public Health Mask Guidance

Effective April 3, 2023

- ▶ **Wear mask around others if you have respiratory symptoms: cough, runny nose, and/or sore throat**
- ▶ Consider wearing mask in indoor areas of public transportation: airplanes, trains, buses, ferries, public airports, stations, and high-risk settings which include:
 - Healthcare settings
 - Long term care settings, adult and senior care facilities
 - Homeless shelters, emergency shelters, cooling and heating centers
 - State and local correctional facilities, detention centers
- ▶ If you have significant exposure to someone who tested positive for COVID-19, wear mask for 10 days

www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings


Two Federal COVID Public Health Emergency (PHE) *End May 11, 2023*

- ▶ **End of national emergencies have biggest effect upon nationwide funding for COVID-19 vaccines and testing**
 - Access to COVID-19 vaccinations, certain treatments, such as Paxlovid and Lagevrio, will generally not be affected
- ▶ **Major Medicare/Medicaid telehealth flexibilities will not be affected**
 - Current Medicare telehealth flexibilities remain in place through December 2024 due to the bipartisan Consolidated Appropriations Act, 2023, passed by Congress in December 2022

www.aha.org/news/headline/2023-02-01-house-passes-bills-end-covid-19-public-health-emergency-vaccine-mandate-health-care-workers
www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html

The ability of health care providers to safely dispense controlled substances, via telemedicine, without an in-person interaction is affected by termination of Federal PHE

Rulemaking has not been finalized: Proposed to extend telehealth flexibilities to December 31, 2024 for CMS

- 
- ▶ During PHE, Drug Enforcement Administration (DEA) and HHS adopted policies to allow DEA-registered practitioners to prescribe controlled substances to patients without an in-person interaction
 - ▶ Policies allowed for audio-only modalities to initiate buprenorphine prescribing.
 - ▶ DEA is planning rulemaking to extend these PHE flexibilities, under certain circumstances, and will provide additional guidance to practitioners soon

www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap



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Q & A



Life has two rules:
#1 Never Quit
#2 Always Remember Rule #1

Anonymous

Our Mission is to Advance, Protect, and
Reward the Practice of Good Medicine.

We're Taking the 'Mal' Out of Malpractice

Thank you!

For additional information, contact

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