Malpractice Risks in Communication Failures
Shari Moore

Objectives

• Recognize the impact of communication issues in professional liability claims
• Discuss specific examples of communication failures leading to patient harm
• Recognize difficulties created by communication problems between providers and between patients and physicians
• Identify strategies to address communication issues
Disclaimer

- This information is not intended to be legal advice and is not intended to establish guidelines and/or the standard of care
- PLICO is not a regulatory agency
- PLICO does not dictate, mandate or identify practice protocols to be used
- PLICO does not ensure practitioner compliance with guidelines
- There are no relevant financial relationships to disclose

“The single biggest problem with communication is the illusion that it has taken place.”

-George Bernard Shaw
In your experience, have you seen situations where...

- Expected test results or reports were **missing or unavailable** for the treating provider?
- A physician was **unclear** why a patient was referred for consultation?
- There was a patient angry due to **misunderstood expectations**?
- Patient information was intended to be conveyed through the EHR (or other medical record) but **was not received or reviewed**?
- A provider **failed to share information or escalate** a patient concern for fear of bothering or upsetting someone?

Defining the problem:

“What we’ve got here...is a failure to communicate.”

*Cool Hand Luke 1967*

Communication is the conveyance of a message between two or more people, exchanging information via speech, visuals, signals, writing or behavior.

Communication requires a sender, information, a mode of communication and one or more recipients.

Communication can be described as successful when the intended information reaches the recipient in its entirety AND the recipient fully understands the information and or message as intended.
I know that you believe you understand what you think I said, but I am not sure that you realize that what you heard is not what I meant.

Robert McCloskey, US State Dept

Definition

Health care communication is defined as

the successful exchange of information needed to diagnose and treat patients.
Definition

- Includes all forms of conveying/receiving information
- Includes exchanges among all providers AND between providers and patients and families
  1. **Verbal**: Phone, Face to Face, Face time...
  2. **Written**: Paper, Text, Email, EHR...

Definition

The (IOM) committee defines diagnostic error as “the failure to:

a. establish an accurate and timely explanation of the patient’s health problem(s)

or

b. communicate that explanation to the patient.”
Defining the problem

Failures in communication occur when:

- **No communication** takes place (or is unavailable when it should), or
- The **wrong information** is communicated, or
- Information is shared with the **wrong recipient**, or
- The recipient **mismunderstands** the intended message (sender's message is incomplete, unclear, illegible)

Scope of communication failure:

**CO₁**: Communication among providers
- Regarding patient's condition
- Failure to read medical record
- Poor professional relationship

**CO₂**: Communication between provider and patient
- Inadequate informed consent
- Patient/family education (discharge, follow-up, medication)
- Not informed of adverse event
- Poor rapport
- Language barrier
- Sensory deficits
- Patient literacy
Communication includes much more than interpersonal exchanges...

“No communication” includes systems factors:
• Clinician did not receive results (not sent)
• Results filed before clinician review
• Failure/delay in reporting findings/revised findings
• Patient did not receive results

“Wrong information” includes documentation factors:
• Inaccurate documentation
• Delay in documenting
• Illegible documentation
• Insufficient documentation of patient history
• Insufficient documentation of clinical findings

“Wrong recipient” includes systems factors:
• Failure to ID provider for coordination care
• Clinician did not receive results (went to wrong clinician)
30% of the claims had one or more communication factors contributing to the event.

CRICO Strategies' Comparative Benchmarking System (CBS) contains 350,000 medical malpractice cases representing more than $4 billion in reserves and losses. CBS reflects the medical professional liability experience of more than 400 hospitals and 325,000 physicians from commercial and captive insurers across the U.S.

Communication was a factor in 30% of 23,658 cases filed from 2009–2013.

Severity

SEVERITY OF PATIENT INJURIES

- 12% low
- 44% medium
- 44% high
- 6% including death

37% of all high-severity injury cases involve a communication failure

N=3445 cases involving a high-severity injury

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Who?

WHAT GOES WRONG
Communication errors may involve face-to-face conversations, electronic exchanges, or clinical notation and interpretation via the patient’s medical record. For this report, breakdowns in documentation, timing, accuracy, and legibility were also included, as were system failures in sharing information (e.g., test results and referral findings) and instructions among providers, patients, and family members.

provider-provider  provider-patient

57% communication cases
55% communication cases

73% total incurred losses
43% total incurred losses

overlap
12% cases
16% losses

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What?

common breakdowns
miscommunication re: the patient’s condition 28%
poor documentation 12%
failure to read the medical record 7%

13% inadequate informed consent
11% unsympathetic response to patient complaint
5% inadequate education re: medications
4% incomplete follow-up instructions
4% no or wrong results given to patient
4% miscommunication due to language barrier

N=7,140; a case may have multiple factors identified

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Where?

WHERE COMMUNICATION FAILS

8% emergency department
44% inpatient setting
48% ambulatory setting

4 Clinical services account for more than 50% of all claims.

Four clinical services account for more than 50% of all claims.

7,149 cases

*7.7% total incurred losses*

We identified 7,149 cases in which communication failures contributed to patient harm. This report evaluates communication challenges in key primary responsible services.

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Where?

COMMUNICATION FAILURES WITHIN SELECTED SERVICES

- 38% of all general medicine cases involve a communication failure (N=5,488 cases)
- 34% of all obstetrics cases involve a communication failure (N=1,106 cases)
- 32% of all nursing cases involve a communication failure (N=750 cases)
- 26% of all surgery cases involve a communication failure (N=7,503 cases)

Claims Analysis: General Medicine

- 951 GENERAL MEDICINE CASES
- 60% reflect a diagnostic error (most commonly, missed cancers)
- 68% occurred in an ambulatory setting
- 60% resulted in a high-severity injury
- 37% resulted in death

TOP COMMUNICATION FACTORS
- 26% miscommunication among providers re: patient's condition
- 14% poor documentation of clinical findings
- 10% inadequate education re: risks of medications
Claims Analysis: General Medicine

General Medicine relies on the accurate exchange of information across extended time and distance.

- Poor documentation is miscommunication. 39% of provider-provider communication cases reflect insufficient, inaccurate, delayed, or illegible documentation of clinical findings.

- Medication without communication can lead to patient harm. 19% of provider-patient communication cases reflect inadequate education/instructions regarding medications. Analgesics and anticoagulants were the most common drugs involved.

According to a study in *Archives of Internal Medicine*

- 69.3% of PCPs reported “always” or “most of the time” sending notification of a patient’s history and reason for consultation to specialists.
- 34.8% of specialists said they “always” or “most of the time” received such notification.
- 80.6% of specialists said they “always” or ‘most of the time’ send consultation results to the referring PCP.
- 62.2% of PCPs said they received such information.
Claims Analysis: Obstetrical Care

The source of communication failures varies across each stage of obstetrical care.

**PREGNANCY**
- e.g., tubal ligation, VBAC, post-date management/testing, induction
- 63% provider-provider
- 57% provider-patient

**LABOR**
- e.g., EFM assessment, handoffs, patient's birth plan
- 79% provider-provider
- 32% provider-patient

**DELIVERY**
- e.g., prolonged 2nd stage, handoffs, resuscitation, episiotomy, skin-to-skin request
- 73% provider-provider
- 43% provider-patient
Claims Analysis: Nursing

- 24% reflect a patient monitoring error
- 75% occurred in an inpatient setting
- 45% resulted in a high-severity injury
- 33% resulted in death

**TOP COMMUNICATION FACTORS**

- 38% miscommunication among providers re: patient's condition
- 21% poor documentation of clinical findings
- 8% unsympathetic response to patient complaints

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Claims Analysis: Surgery

- 50% involved outpatients
- 34% resulted in a high-severity injury
- 14% resulted in death

**TOP COMMUNICATION FACTORS**

- 23% inadequate informed consent
- 19% miscommunication among providers re: patient's condition
- 13% unsympathetic response to patient complaints
Claims Analysis: Surgery

The source of communication failures varies among surgical specialties.

SURGICAL SPECIALTIES WITH THE HIGHEST PROPORTION OF...

...PROVIDER-PROVIDER
COMMUNICATION FAILURES
REFLECT SCENARIOS WITH
MORE URGENT/CRITICAL
EVENTS EVOLVING OVER A
SHORTER TIMELINE

- 64% Cardiac Surgery
- 61% General Surgery
- 53% Vascular Surgery

...PROVIDER-PATIENT
COMMUNICATION FAILURES
REFLECT SERVICES WITH PLANNED
SURGERIES AND THE NEED FOR
GREATER ATTENTION TO SETTING
EXPECTATIONS

- 74% Plastic Surgery
- 74% Urology
- 65% Orthopedics
- 65% Neurosurgery

Consequences

Cases triggered by provider-provider communication failures are significantly more likely to result in payment.

<table>
<thead>
<tr>
<th>Communication case types</th>
<th>Close with Payment</th>
<th>Average Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication - all</td>
<td>41%</td>
<td>$433k</td>
</tr>
<tr>
<td>Provider-provider</td>
<td>49%</td>
<td>$484k</td>
</tr>
<tr>
<td>Provider-patient</td>
<td>35%</td>
<td>$381k</td>
</tr>
</tbody>
</table>
Consequences

- Odds of closing with payment are **twice the odds** of being closed with payment when these issues are absent and ..... 
- The indemnity payments is likely to be **14% higher** than in cases where these issues are identified

<table>
<thead>
<tr>
<th>Communication Issue</th>
<th>Effect on Case Closure: Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pr-PV Communication among providers</td>
<td>90%</td>
</tr>
<tr>
<td>Pr-PV Documentation – content (missing / inadequate)</td>
<td>80%</td>
</tr>
<tr>
<td>Pr-PV Documentation - mechanics</td>
<td>62%</td>
</tr>
<tr>
<td>Pr-PV Failure/delay in reporting findings to PROVIDER</td>
<td>51%</td>
</tr>
<tr>
<td>Pr-PT Failure/delay in reporting findings to PATIENT</td>
<td>41%</td>
</tr>
<tr>
<td>Pr-PT Communication between patient/family &amp; providers</td>
<td>7%</td>
</tr>
</tbody>
</table>

increase indemnity

<table>
<thead>
<tr>
<th>Communication Issue</th>
<th>Effect on Indemnity Payment</th>
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<tr>
<td>Pr-PV Documentation - mechanics</td>
<td>28%</td>
</tr>
<tr>
<td>Pr-PV Documentation content (missing / inadequate)</td>
<td>16%</td>
</tr>
<tr>
<td>Pr-PV Communication among providers</td>
<td>8%</td>
</tr>
</tbody>
</table>

Consequences

- Physician dissatisfaction
- Patient dissatisfaction
- Non-compliance
- Poor outcomes
- Patient complaints
- Legal action
Communication

Strategies to Improve Communication

- Risk-prone processes
- Among care team members
- With patients during and between encounters
- Hearing patients’ concerns and ideas
- With dissatisfied patients/families, or after an adverse event or outcome

The PROMISES Project (Proactive Reduction of Outpatient Malpractice: Improving Safety, Efficiency, and Satisfaction) [www.brighamandwomens.org/pbrn/promises]
CO₁: Communication between providers

- Test results, referrals
- Structured handoffs
  - SBAR
  - IPASS
- Standard use of read-backs
- Well-defined roles
- Surgical/procedural checklists
- Culture of safety that encourages voicing concerns without fear of retribution
- Pick up the phone...

CO₂: Communication between patients and providers

- Effective, respectful listening
  - The biggest communication problem is we do not listen to understand. We listen to reply.
- Informed consent
- Test results, referrals
- Elicit feedback for improvement
  - Patient satisfaction surveys
  - HCAHPS, CGCAHPS
- Process for communicating with dissatisfied patients/families, or after an adverse event or outcome
  - Doing Right by Our Patients When Things Go Wrong in the Ambulatory Setting
    http://www.ihi.org/resources/Pages/Publications/WhenThingsGoWrongAmbulatory.aspx
CO₂: Communication between patients and providers

### #1. Establish and active partnership

**Patients**
- Set expectations
- Partner in your decision-making
  - Ask to share in the thought process

** Providers**
- Set expectations
  - *Be transparent
    - Involve patients in decision-making
- Explain your thought process

### #2. Focus on the diagnosis

**Patients**
- Know why it is important
  - Ask for:
    - *Most likely diagnosis
    - *Other possibilities
- Assure your doctor it's OK not to be 100% sure

**Providers**
- Explain why it is important
  - Provide every patient with:
    - *Working diagnosis
    - *Differential diagnosis
- It's OK not to be 100% sure

### #3. Listen

**Patients**
- Tell a good story
  - *Story, not symptoms
    - *Begin at the beginning
    - *Use your own voice
- Come prepared
  - *Write it down
  - *Practice
  - *Bring an advocate

**Providers**
- Really listen
  - *"No questions asked"
  - *"With our whole being"
  - *Beyond the chief complaint
  - *Will save time
- Encourage preparation

### #4. Understand every test ordered

**Patients**
- Ask about diagnosis before tests are done
  - Understand why a test is being ordered
    - *What is it looking for?
    - *What are the risks?
    - *What are the alternatives?
    - *What if negative?

**Providers**
- Explain diagnosis
  - Ask yourself, for every test
    - *How will it change management?
    - *Do I need it?
    - *How do I explain risks/benefits?
The treatment of a disease may be entirely impersonal; the care of a patient must be completely personal. The significance of the intimate personal relationship between physician and patient cannot be too strongly emphasized, for in an extraordinarily large number of cases both diagnosis and treatment are directly dependent on it, and the failure of the young physician to establish this relationship accounts for much of his ineffectiveness in the care of patients.

Francis W. Peabody, MD, Boston City Hospital, 1927

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**CO₂: Communication between patients and providers**

- Effective, respectful listening
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- Test results, referrals
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  - Patient satisfaction surveys
  - HCAHPS, CGCAHPS
- Process for communicating with dissatisfied patients/families, or after an adverse event or outcome
  - *Doing Right by Our Patients When Things Go Wrong in the Ambulatory Setting*
  
http://www.ihi.org/resources/Pages/Publications/WhenThingsGoWrongAmbulatory.aspx
“People sue people, not events”

“Litigation arises not simply from medical error but from an unanticipated outcome coupled with an inability or refusal by medical staff to communicate effectively with a patient or the patient’s family.”

Geri Amori, PhD

The failure to communicate is a catalyst for converting patients to plaintiffs.
The good physician knows his patients through and through, and his knowledge is bought dearly. Time, sympathy and understanding must be lavishly dispensed, but the reward is to be found in that personal bond which forms the greatest satisfaction of the practice of medicine. One of the essential qualities of the clinician is interest in humanity, for the secret of the care of the patient is in caring for the patient.

Francis W. Peabody, MD, Boston City Hospital, 1927
Thank you!
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PLICO/a MedPro Group Berkshire Hathaway Company