

## Coping with Understaffing in a Public Crisis

Healthcare professionals are aware of the realities of understaffing; pharmacists, respiratory therapists, and radiology techs have been especially hard hit. Shortfalls due to retirements, increased demand, and burnout have already been well documented.<sup>1,2</sup>

But, existing shortages are only part of the challenge of maintaining adequate staffing. There are many others. For example, a pandemic flu outbreak is a real possibility; such an outbreak could sicken as much as one-third of the workforce. Natural disasters are another potential threat. So are terrorist attacks, civil unrest, or explosions. "It doesn't take much to tip the balance at our acute care facilities," noted Joe Cappiello, vice president of accreditation field operations for the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

### Preparation is key

Planning is a critical part of identifying and addressing potential staffing problems. JCAHO, which accredits about 17,000 healthcare institutions in the United States, requires hospitals to develop emergency plans and perform both internal and external risk assessments. This will help them avoid being blindsided by power outages, chemical spills, a flu pandemic, and other disasters. Hospitals are expected to test plans with drills.

Healthcare workers throughout the organization should be involved in planning for emergencies. What's more, the necessary groundwork for executing the plan should be laid long before a crisis hits.

Staffers might require cross-training or orientation in other departments. Hospital personnel might need to compile a database of retired healthcare workers with active licenses who could be called upon to work. Perhaps non-healthcare workers

might be trained to apply direct pressure to wounds or to recognize the signs of shock.

Organizations not subject to JCAHO requirements should also devise a plan. Cappiello encourages healthcare professionals to learn from the experience of others by visiting the JCAHO Web site ([www.jointcommission.org](http://www.jointcommission.org)) for information about emergency preparedness. Networking with healthcare human resources organizations can also be helpful, said Teresa Jacobson, president-



elect of the Healthcare Human Resources Association of Minnesota.

Thorough preparation can minimize effects of staffing problems in a crisis, said Cappiello. "With realistic planning and realistic drilling, the staff gets a sense of what could occur, and leadership can think through the issues before a real crisis."

### Limits of planning

Planning can't address every eventuality. If, despite the best of efforts, the plan fails during a crisis and caregivers are over-

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whelmed, you need to make management aware of staffing problems as they develop, according to Philadelphia attorney Michael D. Alfano, RPh, JD. Should these shortages force you into a position where you must perform tasks in which you are inexperienced, speak up. Suggest an alternative that better matches your skill set while still trying to meet the organization's needs.

Another option: Request training and orientation. If these solutions don't work, notify your supervisor and your colleagues of your limited experience and your need for assistance.

If the problem becomes chronic and the organization is not effectively dealing with it, you may consider notifying your state licensing board, said Alfano. "It is a very serious concern when staffing shortages jeopardize the health and welfare of your patients as well as your own license to practice."

If you have already faced the complications of understaffing count yourself lucky. Nonetheless, make sure you're prepared, just in case a crisis puts you to the test.

### REFERENCES

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2. Bureau of Health Professions. The pharmacist workforce: a study of the supply and demand for pharmacists. <http://bhpr.hrsa.gov/healthworkforce/reports/pharmacist.htm> (Sept. 7, 2006).

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Physical therapists, counselors, pharmacists, and 70 other healthcare professions have long turned to HPSO to meet their professional liability insurance needs. Now HPSO has expanded these services to even more healthcare providers.

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\*Please refer to your Certificate of Insurance for coverage and limits.

\*\*Does not apply to students.

## LESSONS

### FROM COURT

#### Failure to diagnose heart attack

A 31-year-old male with a history of asthma and diabetes had difficulty breathing. Transported to a hospital, he was diagnosed with an asthma attack. About three hours later, doctors determined the patient might be suffering from a heart attack. He was rushed to the operating room for a balloon pump insertion but died on the table from complications of a heart attack. The plaintiff alleged negligence in the failure to diagnose the heart attack in a timely manner. Defendants included emergency medical service (EMS) workers, the fire department, the hospital, and the hospital staff. The defendants argued it was reasonable to assume the deceased was suffering an asthma attack because of his medical history. A \$350,000 settlement was reached.

Staff. (2006). *Medical Malpractice Verdicts, Settlements & Experts*, 22(5), 13.

#### Advice from the expert:

*Liability for the EMS workers hinges on the extent of their responsibility for the alleged failure to make the right diagnosis in a timely fashion. Apparently, the EMS staff fixated on the presenting complaint of shortness of breath, the patient's history of asthma, and very likely that the patient was young for a heart attack.*

*To protect themselves against liability for negligence, the EMS defendants would have to document that they took a detailed medical and family history, recorded vital signs and additional symptoms, and questioned the patient and bystanders about the circumstances preceding the call for an ambulance and communicated all this information to the hospital staff.*

Gayle Sullivan, RN, JD  
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#### SPECIAL THANKS TO:

Michael D. Alfano, RPh, JD • Joe Cappiello  
• Jonathan M. Cooperman, PT, JD • Al Green,  
EMT • Teresa Jacobson • Michael Liebowitz  
• Paul L. Nelson, CPCU • James Saxton, Esq.  
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## Reducing your risk begins with hello

It should come as no surprise to know that patients and clients who perceive a provider as courteous, attentive, and having their best interests at heart are less likely to sue than patients and clients without these perceptions, especially if the outcome isn't exactly what they had hoped. Though the correlation between patient/client satisfaction and lawsuits is particularly well-documented for physicians, it can apply to all other healthcare professionals as well. With that in mind, you should consider the different ways you can improve your interactions with patients, noted James W. Saxton, a Lancaster, PA-based attorney and author of *The Satisfied Patient: A Guide to Preventing Malpractice Claims by Providing Excellent Customer Service*.

In healthcare, as in other fields, satisfaction begins with a first impression. "You need to invest in that first 10 seconds," Saxton said. Greet patients/clients by surname, unless they request otherwise. Look them in the eye, smile, "and treat them the way you

would want to be treated or the way you would want your parents to be treated." Before you begin working with a patient or client, take a few moments to explain what you are about to do and ask if he or she has any questions so you can assess the individual's comfort level and allay any concerns. Communicate clearly, using layman's terms, rather than clinical terminology. In addition, describe the treatment, any associated consequences, and how the patient can enhance its efficacy.

Throughout the visit, listen to concerns and expectations. Failed communication with patients or clients and their families is one of the most common causes of malpractice suits. "The importance of listening can't be overstated," Saxton said. He recommends that practitioners end the visit by asking, "Is there anything else I can do for you?" or "Can I answer any other questions?" Too often, he said, patients and clients feel that they were rushed. "Asking some type of open-ended question generally doesn't take more time and it sends patient satisfaction sky-high."

## Wearing two hats: Are you covered?

The typical working American changes careers between five and seven times during his or her lifetime, according to the National Career Development Association. Healthcare workers are no exception. In fact, a large number of healthcare professionals not only change jobs, but often they practice in more than one area simultaneously, carrying two active licenses. For example, a physical therapist may also work as a personal trainer at a gym, while an exercise physiologist might also be a licensed dietitian. If you're dually-licensed, adequate insurance is essential.

HPSO cautions that, as a rule, if you have a license in one field but are working in another that requires less training, your professional liability insurance coverage must match your license, not your current



job. Michael Liebowitz, president of the Risk and Insurance Management Society, agrees: "You always insure at the highest level. It's really that simple." Fortunately, HPSO will cover you for both professions with a single policy; your premium is based on the license with the higher level of risk.

If you have more than one credential and have questions about your coverage, call HPSO at 800-982-9491.

## Employed, self-employed, or LLC—Are you underinsured?

Theoretically, the difference between working for yourself and working for someone else is huge. In reality, many circumstances blur those lines. And being classified as employed, self-employed, or limited liability company (LLC) affects the kind of professional liability insurance you need.

If you draw a salary from an employer, your status is clear: You're an employee. If you practice on your own, your status also might seem obvious: You're self-employed. However, it's not as obvious if you perform professional services for one or several facilities as an independent contractor. What if you're employed during the day and provide services at another facility in the evening? Or, to add further confusion, if you incorporate yourself but are a single-person practice, are you still self-employed?

HPSO has a product to fit each of these classifications. If you work exclusively for a facility, a basic individual professional liability insurance policy for employed healthcare professionals suffices. If you perform professional services in a setting for 120 hours or more a year as a consultant, or you are an independent contractor, you need the comprehensive coverage of a self-employed policy. It protects all your professional services in the workplace, as well as services you offer to consulting clients.

But, let's say you establish a business, complete with a Federal Employer Identification Number. This can afford many privileges but may also open the door to risks for which you need to be protected. Even if you don't plan on hiring employees, you have created a new entity, and it's important to keep your assets and those of your business separate. If you are ever sued, you and your business can be named separately, so you need to make sure you are fully covered with a professional liability insurance policy for a small business.

If you are, or expect to be, practicing on your own, you may need to consider changing your HPSO policy. If you have any questions, e-mail us at [service@hpso.com](mailto:service@hpso.com) or call 800-982-9491.

# How to Avoid Profess

## Shield yourself from pitfalls

“Assessment and treatment errors are among the top causes of professional liability claims.”

**D**espite the best of intentions, every healthcare provider makes errors now and then. Fortunately, many prove harmless and go unnoticed by patients. Others, however, are not so innocuous and can trigger professional liability claims.

It's useful to know the errors that are most likely to prompt a professional liability claim so you can learn to avoid them. Here are some of the most common triggers, along with some advice on minimizing your risk.

### Top errors in healthcare

Assessment and treatment errors are among the top causes of professional liability claims. According to a recent report by CNA, the underwriter of your professional liability insurance policy, failure to properly assess patients are among the most severe (expensive) claims against physical therapists.<sup>1</sup> Failure to assess or treat patients' problems plague counselors, too, said Paul L. Nelson, executive director of the American Counseling Association (ACA) Insurance Trust. He also noted that 14% of the claims from 1997-2003 cited those allegations.

For PTs, treatment errors involving therapeutic exercises trigger lawsuits more than a third of the time.<sup>2</sup> “A patient may claim the therapist gave him an inappropriate exercise or too much exercise,” said Jonathan M. Cooperman, PT, DPT, MS, JD, president of the Ohio Physical Therapy Association. Failure to use safety equipment, like opting not to use a gait belt, also can lead to malpractice allegations if a fall occurs. So can burns. This type of injury may reflect failure to properly monitor patients—the second most common reason for professional liability claims against PTs.

Medication-related errors, another major cause of claims, can affect pharmacists in particular. A pharmacist, often faced with time constraints, may feel rushed to fill many prescriptions quickly and may provide the wrong dosage. He or she could give the right medication to the wrong patient or could even administer the wrong medication because of all the “look-alike, sound-alike” agents on the market today. Such errors generally account for around half of medication-based professional liability claims.<sup>3</sup>

Pharmacists can also face risk from a prescriber's mis-

takes. “Pharmacists have to make sure the medication ordered is appropriate for the patient,” said Michael D. Alfano, RPh, JD, a Philadelphia-based attorney. “A physician may prescribe a medication the patient is allergic to or request a dose that is outside the usual range. It's the pharmacist's duty to check with the prescriber if there's any doubt about a prescription.”



### Other causes of malpractice claims

Inappropriate relationships with patients can also land practitioners in court. And if there's proof that sexual misconduct was involved, chances are malpractice insurance won't come to the rescue. Most policies do not pay any damages connected to sexual misconduct and may not even provide for the client's defense. Counselors in particular should take heed, since sexual intimacy (real or perceived) is the top cause for claims against them, accounting for 17% of the claims reviewed by Paul Nelson of the ACA Insurance Trust. PTs, particularly those

# ional Liability Claims

specializing in women's health, also must make sure they keep relationships with patients strictly professional, said Cooperman, given that necessary contact could be interpreted as inappropriate touching.

Violating patient privacy is another liability hot button for all practitioners. (For an overview of the requirements imposed by the Health Insurance Portability and Accountability Act of 1996, read "Patient Privacy and HIPAA Hype," on page 4 of the 2003 *Risk Advisor* at [www.hpso.com/hipaa](http://www.hpso.com/hipaa).) Here, too, counselors should take extra care; breaching confidentiality, whether real or perceived, is the third most common reason for claims reported to the ACA Insurance Trust. For an example of such a case, see the November 2003 "Case of the Month" on the HPSO Web site at [www.hpso.com](http://www.hpso.com).

Many claims can also arise from inadequate communication with patients, in one form or another. For instance, failing to get informed consent is cited as a secondary claim in many professional liability actions. Dispensing medications to patients without offering to counsel them can put pharmacists at risk. And, as mentioned on page 3, if a patient is unhappy with your care, even seemingly small transgressions such as rushing the visit can increase the likelihood of a lawsuit.

## Know your duty and your limits

Since liability can arise when a healthcare practitioner violates the defined scope of practice, your first line of defense is to make sure you understand what you can and can't do according to the law as well as your practice act and other written guidelines.

Review your employer's requirements, limits, and procedures, as well as any imposed by your state. Also, be familiar with the code of ethics outlined by the professional organization for your field of practice. It's important, too, to keep current with evolving patient care protocols. Take continuing education classes, attend lectures, and read professional journals to stay abreast of

changes in your field of practice.

In addition, look for ways to improve patient communication. Ask patients plenty of questions, listen carefully to the answers, and do your best to ensure that they understand what you've said to them. These actions can decrease the chances that a patient will file a professional liability claim or even a complaint with a professional board or state agency that oversees standards of care.

Gayle Sullivan, RN, JD, an attorney from North Haven, CT, noted that "You don't even have to harm a patient to face professional discipline. Say a pharmacist makes a few dosage errors that do not result in any patient injury. If the state board learns of them from patients, it may investigate and take disciplinary action." For minor transgressions you may only have to pay a fine or take a continuing education course, but serious violations can result in suspension or revocation of your license.

As always, thorough documentation of each patient encounter is critical. Record your observations about the patient's status before, during, and after care; your treatments and the reasoning behind them; any comments or concerns the patient expressed; how you responded to those comments or concerns; and how the patient received any overall guidance or specific care instructions you gave. Detailed notes can go a long way toward protecting you if you're named in a lawsuit. They're proof of your efforts to meet the appropriate standard of care.

## What to expect if you're sued

You hope you will never find yourself at the center of a lawsuit, but if you do, you need to know how these suits typically unfold. First, the plaintiff's attorney files the complaint, and you're notified of the charges against you. Once this happens, you'll need to promptly notify your supervisor, your employer's risk manager, and HPSO. Never respond directly to the complaint or any other inquiries from the plaintiff's attorney; all communications should go

through the claims consultant and/or attorney assigned by CNA.

During the next stage, the discovery process, both sides collect information. You may have to answer questions in writing (interrogatories) or orally in an attorney's office (depositions) under oath and provide records or documents. The attorneys for both sides may subpoena witnesses to offer testimony or supply additional documents. They may also hire expert witnesses.

A pretrial hearing, which allows both sides to bring issues before the court, is next. The judge may set limits on the case or request clarification of certain points. Attempts to settle without a trial may follow, through court-ordered mediation or direct negotiations between the attorneys. If a settlement isn't reached, the case goes to trial, but it can sometimes take years for the case to be heard.

As you can imagine, a lawsuit is a grueling process, and the resulting damage to your reputation and personal assets can be devastating. Your best protection is to make sure you're adequately insured and to take steps to avoid the kinds of errors that invite claims in the first place.

## REFERENCES

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2. Claims at a glance. *HPSO Risk Advisor*, Physical Therapy Edition, Winter 2001.
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To learn more about obtaining informed consent, a common secondary issue in professional liability complaints, see the Web Flash in the newsletter section of [www.hpso.com/webflash2007](http://www.hpso.com/webflash2007)

# Thinking about Retiring or Taking a Leave of Absence?

The current workforce is aging and more healthcare professionals are considering retirement, while others may decide to take a leave from their careers to care for young children or aging parents. Still others decide to pursue a different career path that does not require their license. Nonetheless, many healthcare professionals want to keep their license active, especially after all the hard work they did to acquire it.

If you are thinking about retirement or decide to take a temporary leave of absence from your profession while maintaining an active license, you should also consider retaining your professional liability insurance policy. That's because you can still be sued as a licensed professional if you do any side work, volunteer, or even give advice to a friend, neighbor, or acquaintance.

The good news is that you will be entitled to a premium discount of 50%. In addition, your coverage is reduced to professional liability, license protection, and assault protection.\*

If you elect to take this option when renewing your policy, simply indicate "Retired/Leave of Absence Policy" on your premium invoice and return it with a check in the amount of your current premium minus a 50% discount to HPSO, 159 East County Line Road, Hatboro, PA 19040-1218. Or you can simply call HPSO at 800-982-9491; e-mail us at [service@hpso.com](mailto:service@hpso.com); or fax your requested change to 800-739-8818.

After we process the changes, we'll promptly send you a revised Certificate of Insurance.

\* Assault coverage is not available in Texas.

## MOVING?

Have you moved or are you planning to move? Did you change your e-mail address? Report your change of address or new e-mail address by calling HPSO at 800-982-9491, or writing to us at HPSO Risk Advisor, 159 E. County Line Road, Hatboro, PA 19040-1218, or e-mailing us at [service@hpso.com](mailto:service@hpso.com).

You can also change your address online via the Virtual Customer Service Representative (VCSR) by logging on [www.hpso.com](http://www.hpso.com) and clicking the My Account button.

## Move Beyond That Mistake

Maybe you made a mistake that resulted in a patient's falling or receiving the wrong treatment. Even a lesser incident, such as giving a patient the wrong dosage of medication that caused no adverse effects, is still a mistake. Regardless of the severity, mistakes are stressful. They bring about concerns for patient well-being, as well as your own potential for liability.

If you make a mistake, your best option is to report it to your manager as soon as possible. Hiding the mistake will only increase your level of anxiety, as well as your chance of disciplinary action. It also can cause superiors and peers to think you are dishonest because you tried to hide something. Follow the procedures used by your facility and be prepared to answer questions about the incident clearly and concisely. It's also wise to inquire whether your institution has a confidential reporting system, or a no-blame policy, as recommended by the Institute of Medicine. Make

sure you comply with all state and federal requirements, as well as those of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). And notify HPSO at once, by filing an incident report online, by fax, or by mail, if you

think a claim may be brought against you. If the mistake resulted from a substandard setting within your facility, such as faulty equipment or short staffing, be proactive by taking steps to improve the situation. Start by notifying your supervisor, and continue moving up the chain of command, as necessary.

Making a mistake, even a minor one, can leave you doubting your abilities. Fortunately, you can take steps to regain your



confidence and help prevent future incidents. Stay up to date on your State Practice Act, take advantage of continuing education courses, read your professional journals, and make sure you're properly

trained on all new equipment and treatments, therapies, and medications. You can also reassure yourself by taking time to double-check your work.

If you find that you're still doubting yourself, consider jotting down a list of your positive qualities as a provider, and remember how often you help patients. Reporting mistakes can seem daunting but can ultimately improve patient care and reduce your risk of liability.

# Document Defensively: Here's How

Accurate documentation can be your best defense against liability if you're named in a lawsuit. Conversely, poor record-keeping can be detrimental, since the courts say that if you didn't document it, it didn't happen. So what are some steps you can take to help you stay safe?

- Provide a detailed, objective account of the patient's history and health status. Include treatment you provided, the patient's response, any non-compliance issues, and changes in medical condition. Also include information you shared with other providers, telephone orders, referrals, preventive measures such as the use of safety belts, and patient or family teaching you provided. And, if any problems arose, document them and the specific solutions you offered.
- Double-check that you have the correct chart and write clearly in ink. Note the date and time at the beginning of each entry, and end with your name or initials and credentials.

Watch your spelling and grammar, use only facility-approved abbreviations, and avoid words that will raise a red flag, such as "accidentally," and "miscalculated."

- Adhere to your facility's policies and procedures when it comes to revisions. If you add a late entry, write the words "late entry" in the next available space, and record the current date, time, and updated information. Also, document things as they happen, instead of waiting until the end of shift. And don't prechart, which can be considered fraud.
- Take extra precautions when documenting electronically. When using a computer to chart, change your password regularly and never share it with anyone. Position the computer screen so passersby cannot see it, and immediately retrieve printouts of confidential patient information, always logging off or locking the computer before walking away from the terminal.
- If you need to change an entry or add

to it, you'll probably have to add a separate entry under your login name because most programs don't allow you to go back and edit submissions.

Remember that to change an entry you have charted on paper, you must draw a single line through the entry being corrected, then initial and date the change. Next, put in the new entry, noting that it is a correction.

- Finally, stay current on computer program updates by attending inservices and classes. You may even consider refresher courses in documentation, legal ethics, or other risk management subjects.

Defensive documentation can ensure the best patient care and reduce your potential for liability. If a lawsuit is brought against you, the patient record will likely be called into evidence. Following these guidelines makes it more likely that the record will work for you, instead of against you.

## ARE YOU CONSULTING, TEACHING, OR TRAINING?

**Your professional liability insurance policy provides coverage for medical incidents that result in injury or damage. But, losses that arise from consulting, teaching or training activities, or through expert testimony, would not typically be covered by your professional liability insurance policy.**

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- Training
- Speaking at seminars or teaching
- Legal consultation
- Providing expert testimony

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- ▶ Are you properly insured?  
See page 3
- ▶ What are some of the best ways to avoid professional liability claims?  
See page 4
- ▶ What steps can you take to document defensively?  
See page 7

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