

## Rural Emergency Department Performance Improvement

### Risk Management – Driving the Liability Nitro Truck

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Emergency Medicine is like driving a nitroglycerin truck – you never know when the whole thing is going to blow up. Illness acuity is high, patient-doctor relationships are undeveloped, and the patient is often frightened and/or in pain. An attorney could not invent a more perfect opportunity for disaster, and lawsuit.

Professional liability lawsuits are horrendous experiences. First and foremost, a lawsuit may mean that a patient was harmed in a health care environment that should diligently ensure patient safety. Secondly, lawsuits can destroy professional self-esteem, careers, and even marriages. Lastly, lawsuits are terribly expensive, for not only insurance companies and their insureds, but “defensive medicine” increases health care costs for all. It’s tragic but true; the fear of lawsuit permeates an ED physician’s day.



ED liability presents itself in at least three ways – legal or regulatory violations, hospital policy violations, and professional liability (malpractice).

The Law – The Emergency Medical Trauma and Active Labor Act (EMTALA) was originally enacted to prevent patient “dumping” – transferring a patient because of inadequate or absent ability to pay. However, EMTALA has expanded well beyond that despicable practice. EMTALA demands that we treat everyone equally until an emergency medical condition no longer exists.

Hospital Policies – The courts tend to uphold hospital policies if physicians and staff adhere to the policies. However, if you violate hospital policy, you are

unlikely to have a legal leg to stand on. For example, ED physicians often do not have hospital admitting privileges; yet regularly write admission orders to “help out” their inpatient care colleagues. Recall the axiom, “No good deed ever goes unpunished.”

Medical Liability – In U.S. health care, professional liability seems to be a persistent concern, especially for the high-wire act of Emergency Medicine. Remember that communication glitches are the number one root cause of medical errors – and thus play a huge, and often preventable, role in medical malpractice. Let’s explore a few strategies that may ameliorate legal violations and malpractice risk.

- Register, see, and treat all patients presenting to the ED for care. However, if you direct some patients to a nearby urgent care center or clinic, perform and document an emergency medical screening exam on every patient first.
- Prior to transfer, document that the receiving physician and a hospital representative have agreed to accept the patient.
- The policy must be “follow the policy.” If there’s no policy, the policy is to create a policy.
- Codify in policy that if an ED physician provides hospital care outside the ED, the care is not contractually guaranteed and is provided under a Good Samaritan provision.
- Implement admission order protocols in lieu of written admission orders.
- Hand off patients at ED shift change (and preferably from ED to floor) at the ED bedside.
- Implement policies for critical lab/imaging value reporting and patient notification of variance.

Please forward this brief to your staff and colleagues. Also, please contact me with comments or questions at [clintmack@cloudnet.com](mailto:clintmack@cloudnet.com).