



## CASE OF THE MONTH



# Don't Neglect Patient Education and Follow Up When Managing High-Risk Conditions

by Deborah Kichler, RN, MSHCA

Communication about treatment and care is a critical component of a solid patient-physician relationship, and important for achieving positive patient outcomes. Lapses in dialogue from healthcare professionals can be harmful to the patient and may be a liability for the provider.

In a case from the U.S. Court of Appeals for the Seventh Circuit,<sup>1</sup> a nurse practitioner, Nurse NP, was found liable for failure to educate a patient, Mr. CL, on the risks of his condition. For four years, Nurse NP treated the plaintiff for hypertension. However, Nurse NP did not educate Mr. CL about his disease or monitor its progression. As a result, Mr. CL developed Stage V kidney disease, requiring dialysis and a kidney transplant.

### BACKGROUND

Mr. CL had failed a pre-employment physical due to high blood pressure. He went to a health clinic where he was seen by Nurse NP and was diagnosed with hypertension and obesity. After his routine lab work was completed, he returned one week later for his follow-up visit. Nurse NP prescribed medication for his hypertension and scheduled another visit for the following week. However, Mr. CL did not return to the clinic for two years when

he failed another pre-employment physical due to hypertension.

Mr. CL would go for long stretches without seeing his nurse practitioner and only took his prescribed medication when he was feeling ill. It was discovered that Nurse NP never explained to Mr. CL the importance of taking his medications as prescribed or attending regular medical appointments. Nurse NP did not provide any education about hypertension or its associated risks.

Approximately three years after Mr. CL's first visit, new lab tests identified early signs of kidney damage, but Nurse NP failed to review or act on the results. It was not until a year and a half later that Mr. CL was diagnosed with end-stage renal disease, requiring hemodialysis and a kidney transplant.

Mr. CL filed a case against Nurse NP, alleging that he deviated from the standard of care by 1) failing to adequately educate his patient about the severity of his condition, 2) failing to refer him to a specialist, and 3) failing to review his lab reports. The court found no comparative negligence on Mr. CL's part and awarded him nearly \$30 million in damages.

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The government appealed the case, arguing that the district court failed to apply the correct legal standard for comparative negligence. Specifically, the government argued that the court should have found comparative negligence because Mr. CL did not adhere to his medications and follow-up appointments.<sup>2</sup> However, the Court reasoned that Mr. CL could only be considered negligent if he was properly informed and educated about his disease, its risks, treatment regimen, and the consequences of noncompliance. In other words, a patient must be adequately educated so he may understand and appreciate the importance of compliance and the dangers of noncompliance. In this case, Nurse NP failed to provide any education at all.<sup>3</sup>

## TAKEAWAYS

### Patient Education

Before decisions can be made, information must be shared and reviewed with the patient. In this case, there was a lack of education by Nurse NP regarding Mr. CL's disease and its management. Nurse NP should have discussed the implications of Mr. CL's hypertension diagnosis, the plan for blood pressure management, and the risks and benefits of medication. Emphasizing the need for regular visits to monitor blood pressure and the importance of medication adherence are crucial. Patients need to understand the potential health problems that can arise from untreated hypertension or other conditions.

How can a physician best determine if the patient understands their condition and health needs? Physicians can use techniques like “teach back” methods to ensure a patient's comprehension. It is important to communicate with patients by providing information in multiple formats (verbal, written, visual) and using layperson-friendly language. Documenting discussions and providing educational resources are equally important. Check in with the patient at each visit about medication adherence, symptoms, and any concerns.

### Informed Consent

Mr. CL was not adequately informed about the importance of medication adherence. Nurse NP failed to provide sufficient information for Mr. CL to make an informed decision about his treatment. Nurse NP did not take the opportunity to further discuss the diagnosis of hypertension and its associated risks with Mr. CL at his one week follow-up visit.

Informed consent involves detailed communication between the healthcare provider and patient about the diagnosis, treatment purpose, risks, benefits, and alternatives. This allows patients to make informed decisions to consent to or decline recommended treatments and/or procedures. Proper documentation of the consent process is crucial to avoid legal issues.

### A Serious Diagnosis Lost to Lack of Follow Up

Mr. CL slipped through the cracks after his second visit and proceeded to go for long periods without seeing Nurse NP. Because he also failed to take his medication and because Nurse NP failed to educate Mr. CL on the importance of medication adherence and keeping all scheduled appointments, his case went to court. The takeaway is that regular follow up is necessary for patients with high-risk conditions to prevent complications and ensure proper management.

A no-show policy and a standardized workflow for notification of test results can prevent missed visits and diagnostic delays resulting in devastating injuries and subsequent lawsuits.

Patient education and discussion of treatment recommendations greatly improve outcomes. Patients-turned-plaintiffs commonly allege that they were never properly educated about their treatment plan or the consequences of deviating from it. “I didn't know,” “I wasn't told,” or “Had I known, I would have followed the physician's treatment recommendation,” are comments that resonate with jurors, who are patients themselves.

Managing noncompliant patients can be challenging. Practitioners should consider their role in these situations and assess factors such as patient education, cost, side effects, and barriers to treatment. Thorough documentation of interventions and efforts to address noncompliance are crucial. Termination of care should be a last resort after exhausting all attempts to collaborate with the patient.

### Advanced Practice Provider Supervision

The nurse practitioners' scope of practice is defined by standardized procedures. Consultation with a supervising physician may be necessary when managing non-adherent patients with certain conditions.

### Documentation

Documentation is of utmost importance. Patient education and communication efforts should be documented to strengthen the defense against allegations. Engaging patients in their healthcare and ensuring their understanding leads to better compliance and outcomes, even if it requires more time.

Overall, patient education, informed consent, and regular follow up are vital components of providing quality healthcare. Physicians should communicate effectively, provide comprehensive information, and ensure patient understanding to promote better outcomes. ↩

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### Sources

<sup>1</sup>Clanton v. United States, No.18-3060 (7th Cir. 2019) <https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D11-07/C:18-3060-J:Barrett:aut:T:fnOp:N:2426733:S:0>

<sup>2</sup>Ibid, at 4.

<sup>3</sup>Mem. and Order from Chief J. Rosenstengel, *Clayton v. U.S.*, S.D. Ill. at 10 (Apr. 22, 2020) [https://www.ilsd.uscourts.gov/opinions/ilsd\\_live.3.15.cv.124.4513560.0.pdf](https://www.ilsd.uscourts.gov/opinions/ilsd_live.3.15.cv.124.4513560.0.pdf)

### Correction: What Physicians Need to Know About the Corporate Transparency Act (CTA)

The Corporate Transparency Act is a new federal law that took effect on January 1, 2024. The CTA requires certain types of U.S. and foreign entities to report beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. It applies to millions of businesses across the US, including many medical practices. While there are exceptions for larger companies or those otherwise regulated, the CTA will apply to most small medical practices that are incorporated. If you filed paperwork with the State to form your business (whether corporation, professional corporation, or LLC), the law probably applies to you.

In the April/May edition of *CAPSules*, CAP published an article that stated January 1, 2024, was the deadline to file for entities that existed before January 1, 2024. The deadline to file is January 1, 2025.

To view the updated article, please visit [www.CAPphysicians.com/CTA](http://www.CAPphysicians.com/CTA).

# RISK MANAGEMENT AND PATIENT SAFETY NEWS



## Tooth or Dare: Keeping Smiles Intact in Anesthesia

by Monica Ludwick, Pharm.D.

Anesthesiologists must consider a variety of factors when administering anesthesia to ensure the highest level of patient safety. One often overlooked area is the prevention of dental injuries during procedures. Although relatively rare, dental injuries can have serious clinical consequences, such as pain and infection, and significant financial and legal implications. Adopting preventive measures is paramount to mitigate the risk of such occurrences and to uphold the highest standards of care.<sup>1</sup>

Nearly a third of the CAP claims filed against our anesthesiologists during a 10-year period from January 1, 2006, through December 31, 2017, involved tooth trauma. Although many of the cases concerned patients with pre-existing dental conditions, the physician documentation failed to include this information, and omitted any discussions regarding the risks of dental injury. While these types of claims typically result in lower dollar amounts paid as compared to other anesthesia-related claims, ultimately all claims impact the increased costs of medical malpractice.<sup>2</sup>

### Understanding the Risk Factors

Dental injuries can occur during various medical procedures, including endotracheal intubation, insertion of laryngeal mask airways, and facial surgeries. Several factors contribute to the risk of dental trauma, including:<sup>3,4</sup>

1. Anatomical Variations: Individual differences in

dental structure and jaw alignment can increase vulnerability to injury.

2. Procedure Complexity: The complexity and duration of the procedure influence the likelihood of inadvertent trauma.

3. Patient Characteristics: Factors such as age, dental health, and presence of comorbidities can affect the susceptibility to injury.

### Proactive Measures for Prevention

#### Preoperative Assessment:

Thorough preoperative assessment plays a pivotal role in identifying patients at higher risk of dental injuries. This assessment should include a comprehensive dental history, examination of the oral cavity, and consideration of radiographic imaging when necessary. Make sure to document any missing or loose teeth, dental work, condition of the gums, tongue, and the upper palate.<sup>2,3</sup>

#### Informed Consent:

During your informed consent discussion, be sure to cover dental health, anatomy, and risks with the patient. Ask the patient about known dental problems and dental history. Inform the patient of any relevant issues found during the preoperative exam (e.g., poor dentition, gum recession, or anatomical challenges). Advise on the risk of dental injury and trauma, especially if the patient is deemed high risk. Document the discussion with the patient and

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include your explanation of the risks, benefits, and alternatives of the anesthetic plan. Accurate and thorough documentation of the patient discussion and the preoperative assessment not only helps improve care during the procedure, but can also be useful should the provider need to defend the care provided to the patient.

### Communication With Dental Professionals:

Collaboration with dental professionals can provide valuable insights into the patient's oral health status and aid in developing tailored strategies for injury prevention. Consulting with a dentist or oral surgeon may be particularly beneficial for patients with pre-existing dental conditions or those undergoing extensive facial procedures.

### Utilization of Protective Devices:

The use of protective devices such as mouth guards or dental stents during intubation and other airway management procedures can effectively shield the teeth and reduce the risk of trauma. These devices should be carefully selected and appropriately sized to ensure optimal protection without compromising airway management.

### Optimal Technique and Equipment:

Adherence to established guidelines for airway management techniques and utilization of appropriate equipment are essential for minimizing the risk of

dental injuries. Techniques that minimize excessive force and movements, and use of specialized instruments designed to reduce trauma should be prioritized.<sup>3</sup>

### Continuous Monitoring and Vigilance:

Continuous monitoring of the patient's airway and vigilant observation for signs of dental trauma throughout the procedure are critical preventive measures. Prompt recognition of any potential injury allows for timely intervention and mitigates further complications.<sup>4</sup>

### Conclusion

Preventing dental injuries in anesthesiology requires a proactive and sometimes multidisciplinary approach that encompasses preoperative assessment, collaboration with dental professionals, utilization of protective devices, adherence to optimal techniques, and vigilant monitoring. By incorporating these preventive measures into clinical practice, anesthesiologists can significantly reduce the incidence of dental trauma and related claims, and uphold the highest standards of patient safety. ✦

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<sup>1</sup>Apfelbaum, J. L., Hagberg, C. A., Caplan, R. A., Blitt, C. D., Connis, R. T., Nickinovich, D. G., Hagberg, C. A., Caplan, R. A., Benumof, J. L., Berry, F. A., Blitt, C. D., Bode, R. H., Cheney, F. W., Connis, R. T., Guidry, O. F., Nickinovich, D. G., Ovassapian, A., & American Society of Anesthesiologists Task Force on Management of the Difficult Airway (2013). Practice guidelines for management of the difficult airway: an updated report by the American Society of Anesthesiologists Task Force on Management of the Difficult Airway. *Anesthesiology*, 118(2), 251-270. <https://doi.org/10.1097/ALN.0b013e31827773b2>. Accessed 3/8/24

<sup>2</sup>Kichler, D. Focused review: A look into Anesthesia. *Risk Management and Patient Safety News*, p.1. May 2020. Focused Review: A Look into Anesthesia | The Cooperative of American Physicians (capphysicians.com). Accessed 3/8/24.

<sup>3</sup>Yasny, Jeffrey S. DDS. Perioperative Dental Considerations for the Anesthesiologist. *Anesthesia & Analgesia* 108(5):p 1564-1573, May 2009. | DOI: 10.1213/ane.0b013e31819d1db5. Accessed 3/8/24

<sup>4</sup>Kotani T, Inoue S, Kawaguchi M. Perioperative Dental Injury Associated With Intubated General Anesthesia. *Anesth Prog*. 2022;69(1):3-9. doi:10.2344/anpr-68-03-02. Accessed 3/8/24



By Andie Tena

## No-Show Patients: Reducing the Toll on Healthcare Efficiency and Revenue

Reducing no-shows in healthcare is crucial to ensure efficient use of resources, minimize patient wait times, and improve overall healthcare delivery. Additionally, missed appointments may impact a physician's revenue and further strain the health system.

In a 2022 Medical Group Management Association (MGMA) Stat poll, almost half (49%) of medical groups reported an increase in no-show rates since 2021.<sup>1</sup>

Leveraging a combination of communication strategies and technology can be an effective approach to reduce patient no-shows while helping to streamline practice operations:

- Provide patients with an online portal to allow for seamless appointment scheduling that helps them control their schedule.
- Ensure clear and concise communication with patients regarding appointment details, including date, time, location, and any necessary preparation instructions to avoid confusion or misunderstandings that may contribute to no-shows.
- Educate patients about the importance of attending scheduled appointments and the potential consequences of no-shows. Highlight the impact on their own health and the healthcare system. Provide patients with a written no-show policy outlining the required notification and fees if appointments are not cancelled within the required time.
- Implement automated patient reminders through HIPAA compliant text messaging, email, automated phone calls, or via patient portal which facilitates easy appointment confirmations and allows the patient to cancel in a timely manner if needed. Healthcare providers can identify potential no-shows in advance and reschedule accordingly.
- Offer flexible scheduling options to patients, such as evening or weekend appointments to help accommodate their availability and reduce the likelihood of no-shows due to conflicting commitments.
- Reduce patient barriers to care by providing convenient access to telemedicine and virtual appointments for certain healthcare services.
- Provide transportation assistance or information on available public transportation options for patients who may have difficulty reaching the healthcare facility. Lack of transportation can be a significant barrier to attendance for some patients.
- Address potential financial obstacles that may prevent patients from attending appointments by offering flexible payment options, assistance programs, or insurance guidance. ↩

<sup>1</sup>Harrop C. "Patient no-shows pose concern amid medical practice staffing challenges, consumer price hikes." MGMA. Aug. 3, 2022. Available from: <https://www.mgma.com/stat-080222>.

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# A New Healthcare Ballot Proposition in 2024

by Gabriela Villanueva



As of May 31, 2024, there are 13 statewide initiatives qualified for the ballot in the upcoming general election this November—and that number is expected to increase prior to the June 27 qualification deadline.

One important healthcare initiative that will likely appear on the ballot in November is the Protect Access to Healthcare Initiative. In late April, proponents of the measure collected over 800,000 signatures in support of the initiative, almost 250,000 more signatures than the required 546,651 signatures needed for qualification.<sup>1</sup>

Filed by California Medical Association (CMA) and the Coalition to Protect Access to Care, this ballot initiative would permanently establish the tax on managed care organizations and would require the Department of Health Care Services (DHCS) to structure the permanently authorized tax according to the most recent version of the tax renewed in 2023. The department would be authorized to modify the tax to receive federal approval. The tax is a charge on the number of enrollees in organizations that deliver healthcare primarily to Medi-Cal participants.<sup>2</sup>

After last year's passage of AB 119, the Budget Committee's bill to reestablish a version of the Managed Care Organization (MCO) tax through December 2026, members of the healthcare community are aiming to make this state fund revenue permanent via the ballot measure process.

AB 119 generates new state funds that can be used to match federal funds and bring additional dollars to expand the state's Medicaid program, Medi-Cal.

Over the past few years, more Californians have qualified for Medi-Cal coverage due to the governor's changing requirements on eligibility. But coverage does not equal access.

Historically, Medi-Cal has been greatly underfunded. Securing funding through statutory mandate and implementing previous Medi-Cal reimbursement increases for certain providers may create a path for a more robust program. In turn, this might ultimately lead to a long-term increase in patient access to care. ↩

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<sup>1</sup>Ballotpedia. California 2024 ballot propositions; California 2024 Elections. Accessed May 10, 2024. [https://ballotpedia.org/California\\_2024\\_ballot\\_propositions](https://ballotpedia.org/California_2024_ballot_propositions)

<sup>2</sup>Ballotpedia. California Managed Care Organization Tax Authorization Initiative (2024). Accessed May 13, 2024. [https://ballotpedia.org/California\\_Managed\\_Care\\_Organization\\_Tax\\_Authorization\\_Initiative\\_\(2024\)](https://ballotpedia.org/California_Managed_Care_Organization_Tax_Authorization_Initiative_(2024))

# What All CAP Members Should Know About Disability Insurance



SYMPHONY RISK

At CAP, our commitment to your personal and professional well-being goes beyond the exceptional protection you get from outstanding medical malpractice coverage.

You may not know that you automatically receive several insurance benefits that include:

- **Group Life Insurance Policy:** \$10,000 coverage in the event of death
- **Group Long-Term Disability Insurance:** Up to \$2,000/month for up to two years
- **Employment Practices Policy (EPP):**<sup>1</sup> Up to \$50,000 for legal expenses associated with employment-related lawsuits
- **MedGuard Policy:** Up to \$25,000 per year in legal expenses associated with certain disciplinary proceedings or government investigations of alleged fraud, abuse, or noncompliance
- **CyberRisk Insurance:**<sup>1</sup> Provides \$50,000 of protection against potential data breaches

## Extra Coverage Is Critical

As a physician, you are uniquely vulnerable to a variety of risks that could impact you, your family, and your hard-earned assets. That's where extra insurance coverage becomes essential, and that's why CAP works with Symphony Health, our preferred partner for your business and personal insurance needs. Their licensed professionals provide personalized assistance with a wide range of essential insurance coverages to supplement your medical malpractice coverage—all in one place at competitive rates.

Protecting your livelihood should be a top priority. Solid disability coverage is key to safeguarding your income

and other assets should you become unable to work due to illness or injury.

## Short-Term Disability

When life unexpectedly happens, short-term disability insurance can help preserve your assets if you're unable to work as you recover from injury, illness, or pregnancy-related medical issues.

Top benefits of Symphony Health's short-term disability coverage:

- \$1,000 weekly benefit<sup>2</sup>
- Highly competitive rates
- Easy claims filing
- Begins paying after 14th day of illness or injury
- Supplements wait-time gap for long-term disability insurance
- No medical exam required, no health questions asked!

## Long-Term Disability Insurance

Regardless of your age or stage in your medical career, long-term disability is essential. This must-have coverage provides a steady stream of income to help cover your living expenses during an extended illness or after a disabling accident.

Top benefits of Symphony Health's long-term disability coverage:

- Up to a \$10,000 monthly benefit<sup>3</sup>
- Highly competitive rates
- Easy claims filing
- No medical exam required or health-related questions to answer! ➡

To learn more, email [healthcareservices@symphonyrisk.com](mailto:healthcareservices@symphonyrisk.com) or call **800-819-0061**.

<sup>1</sup>Various deductibles and/or exclusions may apply.

<sup>2</sup>Must be currently working in healthcare at least 17.5 hours per week/per calendar quarter and not currently disabled or at time coverage becomes effective. Limited time pre-existing condition exclusion may apply.

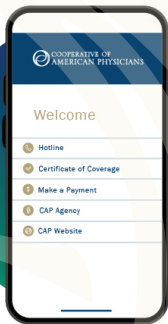
<sup>3</sup>Must be currently working in healthcare at least 17.5 hours per week/per calendar quarter and not currently disabled or at time coverage becomes effective. Limited time pre-existing condition exclusion may apply; \$200,000 annual income required to qualify for \$10,000 monthly benefit otherwise benefit will be based on 60% maximum.





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