

# Follow Golden Rule to Avoid Employee Lawsuits

BY BETSY BATES

Los Angeles Bureau

PORTLAND, ORE. — As if it weren't aggravating enough to worry about frivolous lawsuits filed by patients, physicians, like all employers, also need to consider their legal liability with regard to their employees.

Fortunately, most employment lawsuits are eminently avoidable, said employment attorney Kathy A. Peck at the annual meeting of the Pacific Northwest Dermatological Society.

Supervisors should follow the "golden rules" of discipline, said Ms. Peck, a partner in the law firm of Williams, Zografos, and Peck in Lake Oswego, Ore.

These include immediacy, consistency, impersonality (targeting the behavior, not the person), and positivism, always remembering that the goal is to rehabilitate employees whenever possible, rather than to punish or ostracize them.

Physicians and office managers also need to watch their language. Ms. Peck said many cases may turn on remarks, perhaps unintentional, that might be interpreted as being derogatory or stereotypical with re-

gard to a protected class of workers, such as older employees, women, or members of a racial or ethnic group.

Work environment harassment claims are on the rise, so practices should respond promptly and definitively to complaints of sexual, racial, ethnic, religious, age, and disability-related harassment. Just as physicians should monitor their own remarks and behavior, they are responsible for their office environment and should take immediate corrective action if that atmosphere is tainted by "unwelcome conduct," she said.

All employees (established and newly hired) should sign an employee handbook documenting policies and procedures. Include within the handbook an "at will" clause stating that the employee is free to resign at any time and that the practice is free to terminate the employee "at will." The manual also should state that this policy remains in effect unless it is changed in writing.

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Another issue that needs to be addressed is when an employee has a bad attitude. It's a huge mistake to put up with "posturing princesses" or passive-aggressive manipulators who stir up trouble. These employees can sour morale very quickly, leading to turnover problems, excessive time off, stress claims, and grievances, she said. Offenders should be reminded of policies that require polite and cooperative behavior, and their behaviors should be documented.

When it comes to employee performance, it is important to not allow "soft" evaluations. It will be very difficult to justify in court the dismissal of an employee who received above-average evaluations for the past 6 years.

Decisions regarding personnel must be documented. An employer who can present a record of fair, reasonable, and consistent evaluations and decisions will fare much better if an employment discrimination case makes it to court.

If something does happen that requires action, always listen to the employee's side of the story. Not only is this fair, it might change your perception of an event, and it also helps to establish an accurate line of documentation right away, said Ms. Peck.

When an employee needs to be discharged, do not call it a layoff. Softening the blow to an employee by falsely implying that their dismissal was a result of a reduction in the workforce is a good way to get "into trouble with employment law," she said.

An incompetent 55-year-old employee who is laid off and immediately replaced with a 36-year-old employee has the makings of a successful age-discrimination suit, she explained.

It is also important to provide a "clean" reason when an employee is discharged. If an employee was caught embezzling money, that's a firing offense and it's enough. Piling on other minor offenses is unnecessary and may clutter up any resulting employment claim against the practice, particularly if other employees had also committed minor infractions without losing their jobs, Ms. Peck said. ■

## E/M Coding Key to Making iPLEDGE Worth the Time

BY BETSY BATES

Los Angeles Bureau

SAN DIEGO — The extra time required for prescribing isotretinoin under the iPLEDGE program need not go unreimbursed, Dr. Allan Wirtzer said at the annual meeting of the California Society of Dermatology and Dermatologic Surgery.

Coordinating a patient's isotretinoin care with the patient, family, and pharmacist, and fulfilling requirements of the federally mandated system often entail more work than the other components of a patient's visit, such as the history and the physical.

"It's important to remember that time can be used for coding when counseling and/or coordination of care constitutes more than 50% of the total physician encounter with patient and/or family," said Dr. Wirtzer.

Therefore, clinicians should consider billing these visits according to the total time of the encounter, detailing in the patient's chart the type of counseling and coordination of care performed during those minutes, suggested Dr. Wirtzer, a dermatologist in private practice in Sherman Oaks, Calif., and chair of the American Academy of Dermatology's Task Force on Coding and Reimbursement.

He offered two chart notes that would justify a CPT billing code of 99214, using time as the criteria rather than details of the history,

physical examination, and decision-making process:

► Extended discussion with mother and patient regarding causes of acne and treatment options—counseling 10 of 15 minutes.

► Documentation of pregnancy status and recent blood tests via the iPLEDGE program to coordinate the prescription of Accutane with the pharmacy—15 of 25 minutes.

"We're talking about face-to-face care in the office," Dr. Wirtzer noted. "When the patient is in the office [and] you're putting information regarding Accutane into the computer [for iPLEDGE], that's time related to coordination of care, and it counts. But you have to document what you've done and how much time you spent."

Calling a pharmacist after the patient has left the office cannot be included in the time contributing to billing for a visit using the 99214 code, he explained.

Dr. Wirtzer encouraged colleagues to be aware of the level of coding that would be supported by documenting key components of a visit (history, physical examination, decision making, etc.) and to compare that to the level the visit would qualify for if "time" was used as the determining factor.

The times specified for CPT reimbursement levels for established patients include 15 minutes for a 99213, 25 minutes for a 99214, and 40 minutes for a 99215. ■

## Medication Errors Hover at 3.9% With E-Prescribing, Study Shows

BY TIMOTHY F. KIRN

Sacramento Bureau

SEATTLE — Electronic prescribing may be a way to significantly reduce medication errors, according to a study that reviewed records involving 749 private-practice patients and more than 1,000 prescriptions.

The study found an error rate of 3.9% when physicians used electronic prescribing, Martha Simpson, D.O., said at a conference on rural health sponsored by the WONCA, the World Organization of Family Doctors. That compares with medication error rates from hospital studies that range from 3% to 6%, and error rates from studies in the community that have reached as high as 10%.

"This is significantly lower than other reported rates have been," said Dr. Simpson of the department of family medicine at Ohio University College of Osteopathic Medicine, Athens.

The study involved four group practices in Ohio, which were given equipment (Rcopia, DrFirst Inc., Rockville, Md.) and training for electronic prescribing to five local pharmacies. The prescriptions were written over a 14-month period. Medical records were then reviewed by a pharmacist, and the patients were telephoned 3 months after their final prescription for an interview to find out if they had any adverse events or problems.

The study's results are not particularly surprising, because one of the most common reasons for prescription error is physician handwriting, Dr. Simpson said.

However, once electronic prescribing becomes more common, it will bring with it errors and challenges that are unique to the process, she said. For example, physicians can easily point their cursors to the wrong box and click, thereby inadvertently canceling a prescription or ordering the wrong one. And, of course, computers sometimes go down temporarily.

Some states do not allow electronic prescribing, and most do not allow prescribing of scheduled drugs. Moreover, electronic prescribing technologies are not automatically entered into electronic medical records.

Another advantage of electronic prescribing will be that pharmacists will know when patients fail to pick up their prescribed medications, and will be able to notify the doctor, she noted.

Dr. Simpson said her study also looked at how the physicians accepted and used the technology they were given. Contrary to her expectations, there were no strong, enlightening patterns, she said.

Of the nine physicians and one nurse practitioner in the practices, four adopted it immediately, three used it about half of the time, and three did not use it at all. Some of those who used the system were the older physicians, and some of those who did not use the system were the younger physicians.

What they did see, however, was that if doctors did not take to the technology right away, they never did, she added.

The study was sponsored by a grant from the Ohio Medical Quality Foundation. ■



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DR. SIMPSON