

# **Top 10 Ways to Reduce Risk in the Orthopedist's Office**

**T-BONES**

**Texas Orthopedic Administrators Society  
Fall, 2009**

**Paula S. Shiroma-Bender, M.S.N., J.D.  
Associate General Counsel  
Scott & White, Temple, Texas**

**This presentation is not intended to render  
legal advice or counsel.**

# #10: Medical-Legal Involvement: Proceed with Caution

- **Orthopedists: Prime targets for medical - legal involvement**
  - Surgical care related to trauma, accident, injury
  - Long term care for chronic pain
  - “Free” expert opinions
  - Not represented by counsel
  - Initially, “benign” request for involvement
    - Meeting → Narrative / Report → Deposition / Trial testimony

# #10: Medical-Legal Involvement: Proceed with Caution

## ■ ? Potential liability

- Adverse outcome, statute of limitations, poor patient relations (→ notify insurance company)

## ■ Request for written narrative / Report

- Include purpose of report: “Per your request for...”

## ■ No obligation to cooperate

- Except for subpoena within 150 miles of performance or deposition notice
- Motion to Quash filed within 3 days of service stays deposition

## **#9: Monitor Narcotic Prescription Refills**

- **Pain: Silent epidemic**
  - **Chronic pain: 50 million Americans (disease, disorder, or accident)**
  - **Acute pain: 25 million Americans (surgery or accident)**
- **Number of physician office visits motivated by pain complaints: 70 million**
- **Most common types of pain**
- **↑ Texas Medical Board investigations**

# #9: Monitor Narcotic Prescription Refills

- **Prescription refill log**
  - Easily accessible in patient record
  - Consistent use of log
- **Recognize drug seeking behavior**
- **Texas Department of Public Safety inquiry**
  - Texas Prescription Program Information Request Form ([www.txdps.state.tx.us/forms/](http://www.txdps.state.tx.us/forms/))
- **TMB Pain Management Guidelines**
  - 22 Tex. Admin. Code § 170.3
  - Pain Management Contract

## **#8: Obtain Proper Informed Consent**

- **Oral and written informed consent**
- **Texas Medical Disclosure Panel**
  - **List A**
  - **List B**
- **No consent → Assault and Battery**
- **Inadequate Consent → Negligence**

## **#8: Obtain Proper Informed Consent**

- **List A (Requires full disclosure of specific risks – 22 Tex. Admin. Code § 601.2)**
  - Arthroplasty of all joints with mechanical device
  - Mechanical internal prosthetic device
  - Open reduction with internal fixation
  - Osteotomy
  - Ligamentous reconstruction of joints
  - Children's orthopedics (bone, joint, ligament or muscle)
  - Spine operation (i.e., laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; removal of tumor, abscess or hematoma)

## #8: Obtain Proper Informed Consent

- **List B (Requires NO disclosure of specific risks – 22 Tex. Admin. Code § 601.3)**
  - Arthrotomy
  - Closed reduction without internal fixation
  - Excision of lesion, muscle, tendon, fascia, bone
  - Excision of semilunar cartilage of knee joint
  - Needle biopsy or aspiration, bone marrow
  - Partial excision of bone
  - Removal of internal fixation device
  - Traction or fixation without manipulation for reduction
- **CAVEAT: Obtain written consent anyway.**

# #7: Ensure Patient Confidentiality

- **“Protected Health Information” (“PHI”)**

Individually identifiable health information held or transmitted by a “covered entity” in any form or media, whether electronic, paper, or oral.

- **Duty to maintain confidentiality of PHI**

- **Patient (or surrogate) authorization required prior to disclosure of PHI**

- **Exceptions (no authorization needed)**

- **Treatment**

- **Payment**

- **Health care operations**

# #7: Ensure Patient Confidentiality

- **Staff signs written confidentiality agreement**
  - **Termination for breach**
- **Institute release of information form / process**
- **Obtain Patient's authorization before disclosure to**
  - **Patient's attorney, employer, family members, friends**
  - **Other third parties**
- **Protect medical records from public access; secured area**
- **Password protected computer access; computer screen times out**
- **System for secured record disposal**

## **#6: Properly Maintain and Retain Medical Records**

- **Medical Records - Vital to delivery of patient care**
  - Continuity of care
  - Promotes patient confidence
  - Provides for medical billing reimbursement
- **Legal document**
- **Defense to claims related to medical record management**

# #6: Properly Maintain and Retain Medical Records

- **Organizing the record**
  - Demographic information
  - Accurate and up-to-date problem list
  - Medication list updated at each patient visit
  - Conspicuous posting of allergies
  - Progress notes (physician and nurse)
  - Laboratory and diagnostic tests
- **Timely dictation, transcription, review and signature**
- **Record retention / destruction (records and logs)**
  - Adult: 7 years from date of last treatment
  - Minor (<18 years old): Until patient reaches age 21 years or for 7 years from date of last treatment, whichever is *longer*
  - Exception: Notice of claim or litigation (safeguard records)
  - Written policy

# #5: Properly Handle Requests for Medical Records

- **Request for records**
  - Proper authorization for release of records (Exception: Harm to patient)
  - Deadline to produce records: 15 days from request
- **Production of records**
  - Produce copies, not originals
  - If originals released, patient should sign for records
  - Faxing? Implement safeguards

## #5: Properly Handle Requests for Medical Records

### ■ Allowable charge\$

- No more than \$25 for first 20 pages and \$.50/page thereafter
- Up to \$15 for executing Business Records Affidavit
- Entitled to receive payment before production of records
- Charges *not allowed* for records release related to disability
- Improper to withhold records for Past Due accounts

## **#4: Provide Safe Medical Equipment and Products**

- **Areas of liability exposure (lawsuit allegations)**
  - Purchasing wrong type of medical device or equipment for the procedure
  - Failing to properly educate users in proper operation or use of product
  - Using produce incorrectly
  - Failing to reasonably inspect product for obvious defect
  - Failing to maintain or service equipment in reasonable manner

## #4: Provide Safe Medical Equipment and Products

- **“SERUM” Formula (AMA 1995)**
  - Selection of equipment (rationale)
  - Education and training of equipment users
  - Recognition of product hazards and limitations of equipment
  - Use of equipment in reasonable manner
  - Maintenance and service of equipment
- **Written policy**
- **Documentation of compliance with policy**

## **#3: Observe Office Practices that Promote Patient Satisfaction**

### **■ Telephone calls**

- Telephone courtesy
- Answering phones within designated number of rings (4 rings?)
- Maximum hold time (including waiting on physician)
- Returning calls within designated period of time (corresponds to nature of call)
- Staff training on how to respond when physician not available

## #3: Observe Office Practices that Promote Patient Satisfaction

### ■ Office visit

- Number of patients scheduled per hour allows adequate time for patient care
- Monitor wait time for patients with an appointment (mean - 20.2 minutes across most specialties)
  - Solo practice - 19.0 minutes
  - 2-physician practice - 19.8 minutes
  - 3 physicians - 23.2 minutes
  - 4-8 physicians - 20.6 minutes
  - 9+ physicians - 18.8 minutes

Source: *AMA's 2003 Physician Socioeconomic Statistics*

## **#3: Observe Office Practices that Promote Patient Satisfaction**

### **■ Follow-up on test results**

- Procedure for physician review of test results
- Timely patient notification
  - Normal and abnormal results
  - Caution: Messages on answering machines
  - Documentation of patient notification

## #2: Avoid Jousting

- **Jousting**
  - Person
  - Department
  - System
- **Beginning of a lawsuit**



## #2: Avoid Jousting

- **Tips to avoid Jousting**
  - Be careful of the innocuous question
  - Refrain from angry, sarcastic comments
  - Don't speculate
  - Stick to the facts



# #1: JUST BE NICE!

- **Pleasant office staff**
  - **Common courtesy**
  - **Good telephone manners**
  - **Good bedside manner**

# Limiting Liability in the Orthopedist's Office

1. **JUST BE NICE!**
2. **Avoid Jousting**
3. **Observe Office Practices that Promote Patient Satisfaction**
4. **Provide Safe Medical Equipment and Products**
5. **Properly Handle Requests for Medical Records**
6. **Properly Maintain and Retain Medical Records**
7. **Ensure Patient Confidentiality**
8. **Obtain Proper Informed Consent**
9. **Monitor Narcotic Prescription Refills**
10. **Medical-Legal Involvement: Proceed with Caution**

# Questions?

**Thank you!**