Collegial discussions taking place as an informal consult or "curbside consult" are performed by physicians in both inpatient and outpatient settings. The access to informal consults may be more challenging for primary care physicians who no longer practice in a hospital setting. Telephone, email or text messaging may now be the preferred means to engage in an informal discussion.

There is value in providing an informal consult as a courtesy to another physician. Coverys claim data demonstrate that a physician having a narrow diagnostic focus is a significant contributing factor in the diagnosis-related claims which have been brought. The information obtained during a curbside consult may help a physician expand his/her diagnostic focus, confirm what he/she has already concluded, and/or recognize that a formal consultation should be requested.

While there may be value in seeking consultation in an informal arena, caution needs to be exercised when using this approach. A study published in *Journal of Hospital Medicine* looked at curbside consults involving 47 patients. Informal curbside consults were followed by formal consults by a different hospitalist. The review of recommendations obtained by both approaches revealed that the information obtained during curbside consults was incomplete or inaccurate 51 percent of the time. Management advice following a formal consultation differed from that obtained via a curbside consult in 60 percent of the patients. Patient care advice differed between the two consultative processes in 92 percent of the patients when incomplete or inaccurate information was collected. The authors concluded that inaccurate and/or incomplete information from a curbside consult often results in inaccurate clinical management advice.

**Physician-Patient Relationship**
Essential to understanding the liability that may follow a curbside consult are questions about forming a physician-patient relationship. According to an article in *American Medical Association Journal of Ethics*, "a physician-patient relationship is generally formed when a physician affirmatively acts in a patient's case by examining, diagnosing, treating, or agreeing to do so." It is very important to also understand that each state may vary in defining the relationship.

It can be reasonably argued that a curbside discussion between two physicians is just that, and no physician-patient relationship is created. A 2001 Kansas State Supreme Court decision concisely distinguished the role of consultant and consulting physician by stating, "A physician cannot be liable for medical malpractice where he or she merely consulted with a treating physician and nothing more."

Before believing no professional liability can be attached to a curbside consult, the physician must understand the difference between an informal and a formal consult. For example, responding to a call from an emergency physician when on call would be considered rendering a professional opinion and involves legal obligations under the Emergency Medical Treatment and Active Labor Act (EMTALA).

**Risk Management Considerations**
Curbside consults have typically developed from personal relationships between physicians. With the decline of primary care physicians in the hospital setting, the opportunity to develop a more personal
Physicians and their colleagues will nevertheless continue to engage in curbside consults. To reduce associated risks, it is important to recognize when an informal consultation may move into the realm of a formal consultation, as well as when a physician-patient relationship may be established. A curbside consult should not be patient-specific, but rather focus on generally offering some education and/or information. If asked to review a specific patient’s studies or medical record, step back and look again at what is being asked in terms of sharing expertise. Ask your colleague if he/she is seeking a formal review. If information is limited and/or the questions become more complex and/or require exploration of the patient’s history and clinical presentation, it would be wise to recommend that the consultation become a formal one. Providing an opinion without having all the facts potentially jeopardizes the safety of the patient and places the involved physicians at risk for a medical professional liability claim.

Given the prevalence of email and text messaging, curbside consults are no longer limited to a chat in the hallway or a quick telephone call. Be mindful of your written response; keep it simple and consider calling your colleague instead of providing a written response. Clarify your colleague’s intentions about documenting in the medical record. Physicians do not want to be surprised several years down the road finding out that they are involved in a claim of negligence simply because their name was mentioned in the medical record.

The following risk management guidelines are offered to minimize your liability exposure when engaging in curbside consults:

- Keep the information general and simple.
- Decline requests to review medical records or patient-specific studies.
- Do not discuss matters outside your field of expertise.
- Decline curbside consultations involving complex medical situations, controversial care and/or treatment, or when examination of the patient is warranted.
- Do not bill for curbside consults.
- Do not order studies or otherwise direct the care of a specific patient.
- Ensure the physician requesting the curbside consult understands the feedback you are providing is not a treatment decision.
- Confirm that your colleague will not document your name in the medical record without your permission.
- Consider offering to conduct a formal consult.

We hope you found this instant email helpful. If you have questions or would like further resources on this topic, please contact your Coverys Risk Management Consultant.

References

2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
8. Ibid, without secondary source.
10. Ibid.
11. Ibid.
13. Ibid.
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