How to Handle a Plaintiff Attorney Who Wants to Discuss a Patient

Dawn M. Hagaman, JD

Plaintiff attorneys and pro se plaintiffs (persons who represent themselves) are finding more creative ways to obtain information prior to filing lawsuits. It is important for practice managers to know how to protect their medical providers from tactics that could lead to lawsuits or licensing investigations. Many times, the plaintiff attorney will call the medical provider directly and want to set up a time to meet and discuss the provider’s care and treatment of a patient, claiming it is urgent in nature due to an upcoming hearing involving another practitioner. The attorney may even send a letter and provide a HIPAA-compliant authorization requesting medical records. While the authorization covers the release of records, practice managers will want to advise their medical providers about what the authorization does not require, such as meetings with the plaintiff attorney, “informal discussions” over the telephone, and email communications about the patient.

In general, a medical provider has the duty to protect confidentiality under the Health Insurance Portability and Accountability Act (HIPAA). However, some states have even stricter laws. The practice manager should require the plaintiff attorney to provide a HIPAA-compliant authorization signed by the patient or his/her legal representative prior to having the medical professional speak with a plaintiff attorney. Typically, the plaintiff attorney will obtain and provide such an authorization. With the patient’s authorization, the medical provider may release records to the plaintiff attorney and also discuss his or her care of the patient with the plaintiff attorney, but the provider is not required to enter into any such discussion. The provider has no duty to discuss his or her care and treatment without a valid subpoena or court order, which should always be reviewed by the provider’s counsel before responding. A medical provider who receives a subpoena should have a lawyer review the subpoena as soon as possible to evaluate the extent of the provider’s obligation to respond, if any, and any need for further action to quash or limit the scope of the subpoena. Unfortunately, some medical providers who have opted to discuss a patient’s care and treatment with a plaintiff attorney have ended up as a defendant in a lawsuit or were brought in under a non-party fault statute.

If a medical provider agrees to meet or communicate with a plaintiff attorney, it is important that the provider be cautioned about assigning blame to other providers. A savvy plaintiff attorney will use any blame-assigning statements to his or her advantage, and may use these statements as leverage to bring another provider in as either a party (named defendant) or as an expert against other providers. Attempting to pit providers against each other is a tactic used by some plaintiff attorneys.

A plaintiff attorney may even subpoena a provider or seek to take his or her deposition based on the information the attorney gleaned at an initial meeting with the provider. If this were to happen, the provider and/or the practice manager should immediately contact the Coverys Risk Management Helpline, who will correlate with claims and an attorney to assist.

Investigators from state licensing boards may also try to obtain information from medical providers. The investigator may send a letter with a subpoena for records and then follow up with a call stating it is...
imperative that he or she meet with the medical provider. Believing that there is an urgency or that they may be called before a judge or licensing board, medical providers have sometimes rushed to call and/or schedule meetings with the investigator. In doing so, these medical providers sometimes fail to first secure assistance from an attorney and thereby potentially fail to take advantage of all of the legal protections to which they are entitled. As when received from a plaintiff attorney, a proper subpoena from an investigating agency typically only requires the provider to release the records, not to attend a meeting or enter into discussions regarding the patient’s care. If a medical provider at your facility should receive such a request from an investigator, immediately contact your practice manager who, in turn, should contact the Coverys Risk Management Helpline, which will again correlate with Claims and an attorney, to protect the medical provider’s interests at any such meeting.

It is important that practice managers educate providers about what to do if a plaintiff attorney or someone from the state licensing board contacts them to discuss the care and treatment of a patient. Providers should also be informed to always contact the facility’s practice manager for advice and guidance. Ideally, education regarding how to handle plaintiff attorney or state licensing board requests for information should be provided at the time of hire (if an employed physician) and on a regular basis thereafter.

Knowing what is and what is not required of medical providers when they are contacted by a plaintiff attorney or investigator is very important. Early education about what providers should do allows practice managers to help providers avoid the pitfalls that could lead to costly litigation.

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

References

2. Ibid.

These links are being provided as a convenience and for informational purposes only; they are not intended and should not be construed as legal or medical advice. Coverys Risk Management bears no responsibility for the accuracy, legality or content of the external site or for that of subsequent links. Contact the external site for answers to questions regarding its content.