



Recommended Curriculum Guidelines for Family Medicine Residents

# Risk Management and Medical Liability

*This document was endorsed by the American Academy of Family Physicians (AAFP), the Society of Teachers of Family Medicine (STFM), and was developed in cooperation with the Melvin Dyster Family Medicine Residency Program.*

## Introduction

This Curriculum Guideline defines a recommended training strategy for family medicine residents. Attitudes, knowledge and skills that are critical to family medicine should be attained through longitudinal experience that promotes educational competencies defined by the Accreditation Council for Graduate Medical Education (ACGME) <http://www.acgme.org>. The curriculum must include structured experience in several specified areas. Most of the resident's knowledge will be gained by caring for ambulatory patients who visit the family medicine center. Structured didactic lectures, conferences, journal clubs and workshops must be included in the curriculum with an emphasis on outcomes-oriented, evidence-based studies that delineate common and chronic diseases affecting patients of all ages. Targeted techniques of health promotion and disease prevention are hallmarks of family medicine. Appropriate referral patterns and provision of cost-effective care should also be part of the curriculum.

Program requirements specific to family medicine residencies may be found on the ACGME Web site. Current AAFP Curriculum Guidelines may be found online at <http://www.aafp.org/cg>. These guidelines are periodically updated and endorsed by the AAFP and, in many instances, other specialty societies as indicated on each guideline.

Each residency program is responsible for its own curriculum. ***This guideline provides a useful strategy to help residency programs form their curricula for educating family physicians.***

## Preamble

Risk management refers to strategies that reduce and minimize the possibility of a loss. The systematic gathering and utilization of data are essential to loss prevention. Good risk management techniques improve the quality of patient care and reduce the probability of a medical malpractice claim or adverse outcome. This core curriculum outlines the attitudes, knowledge and skills currently recommended for residents in the area of risk management.

The primary goal of a successful risk management is to reduce untoward events to patients. Risk management programs are designed to reduce the risk to patients and resulting liability to the health care provider. Standard of care is the foundation for risk management. The main factors in risk management include the following:

Quality assurance involves monitoring and oversight. Quality improvement requires: 1) the continuous defining of clinical standards, (2) outcome studies, (3) providing data, (4) analyzing systems, (5) monitoring clinical practice and (6) affirmatively correcting problems, which have potential or actual risk.

Non-medical and medical risk management is a three-step process which involves: 1) identifying risk, (2) avoiding or minimizing the risk of loss and (3) reducing the impact of losses when they occur. Medical risk management focuses on risk reduction through improvement of patient care.

Liability (responsibility) for medical malpractice is a source of financial risk in patient care. Another risk is the psychological trauma of a malpractice suit. The family physician's actions are considered negligent, when (1) the physician has a duty to treat the patient, (2) the physician's interaction with the patient falls outside the accepted standard of care, (3) the patient is harmed as a result of this interaction and (4) actual damages are suffered by the patient.

Risks that represent potential for severe injury or frequent losses must be given priority over risks that represent potential for minor injury or minor loss.

Good communication with the patient is fundamental in achieving a strong physician-patient relationship. This relationship requires the physician to provide the patient with the acceptable standard of care.

When injuries or other losses are incurred, the physician needs to apologize to the patient. The physician should also develop a system to minimize the recurrence of this injury or loss utilizing the resources at his or her disposal. Compassion and sympathy for the patient's pain and suffering is not an admission of wrongdoing. Compassion and sympathy are part of the physician's care for the patient and the physician should readily express these feeling without fear of repercussion. When physician negligence causes the patient injury, transparency and openness should be implemented instead of distancing and avoidance. The physician should assume responsibility and make amends for the patient's loss. Negligent actions injuring patients are primarily due to misinformation and lapse of good judgment and rarely are due to malicious

recklessness. Patients understand and readily accept apologies and clear explanations. Deceit and feelings of abandonment raise suspicion of malpractice.

This Curriculum Guideline provides an outline of the attitudes, knowledge and skills which should be among the objectives of training programs in family medicine and which will lead to an understanding of risk management and medical liability in the current health care environment.

## **Competencies**

At the completion of residency training, a family medicine resident should:

- Clearly document quality of care provided to patients. (Interpersonal and Communication Skills, Professionalism, Patient Care)
- Communicate risks and benefits of therapy for medical conditions and ensure informed consent. (Interpersonal and Communication Skills, Professionalism, Medical Knowledge)
- Evaluate his or her practice for potential liability risks and develop risk management strategies to mitigate. (Practice-based Learning and Improvement, Professionalism)
- Demonstrate empathy for mistakes and tactfully disclose to patients and their families. (Professionalism, Interpersonal and Communication Skills)

## **Attitudes**

The resident should develop attitudes that encompass:

- An awareness of potential risk and professional liability.
- Practicing medicine with the standard of care for a reasonably competent family physician.
- An appreciativeness of the importance of good communication and rapport.
- An appreciativeness of the importance of documenting all medical actions.
- Consideration of the importance of obtaining and documenting informed consent.
- Sensitivity to the roles of federal, state, commercial and other agencies involved in risk management and medical liability issues.

## **Knowledge**

In the appropriate setting, the resident should demonstrate the ability to apply knowledge of:

1. Source of law
  - a. Constitution (federal and state)
  - b. Statutory law
  - c. Common law

- d. Regulations
  - e. Good Samaritan law
2. Medical malpractice
    - a. Elements of case
    - b. Duty
    - c. Breach
    - d. Causation
    - e. Damages
    - f. Common allegations and events
    - g. Malpractice judgment reporting and when it applies
    - h. Trial or arbitration
    - i. National Practitioner Data Bank
    - j. Malpractice insurance (e.g., claims made vs. occurrences and limits of liability)
  3. Risk management
    - a. Physician-patient communication
    - b. Charting
    - c. Management of diagnostic tests
    - d. Documentation of conversations and phone calls
    - e. Documenting patient failure to follow physician's advice
  4. Consent
    - a. Necessity for implied verbal, verbal and/or written consent
    - b. Health care proxy
    - c. Power of Attorney for health care, living wills and prior expressed health requests
    - d. Mental competency to provide consent
    - e. Advance Health Care Directives
    - f. Minors (e.g., when they can provide consent and when parental consent is required)
  5. Privacy
    - a. Patient confidentiality and the Health Insurance Portability and Accountability Act (HIPAA)
    - b. Privilege to disclose
    - c. Duty to disclose
    - d. Minors
    - e. Legal breach of confidentiality (e.g., abuse, reportable diseases)

6. Office issues
  - a. ADA (Americans with Disabilities Act)
  - b. Sexual harassment
  - c. Hiring and firing
  - d. OSHA (Occupational Safety and Health Administration)
  - e. Employment at will
  - f. Liability insurance

## **Skills**

In the appropriate setting, the resident should demonstrate the ability to independently perform or appropriately refer:

1. Communication with patients in a compassionate manner
2. Appropriate documentation reflecting an acceptable standard of care
3. Appropriate interaction with regulatory entities and the legal system
4. Competence through continuing medical education
5. Informed consent for patients to facilitate intelligent decision-making.
6. Development and implementation of a program of risk management focusing on the needs of the facility and services provided
7. When to notify a malpractice carrier

## **Implementation**

Implementation of this curriculum is dependent upon a didactic and clinical approach to learning. The didactic section addresses ethical and legal obligations, which provides the resident with knowledge about the law and standard of care. The clinical section is an ongoing process of the resident's awareness of documenting verbal communications, communicating compassionately when adverse events occur and the skill to analyze the amount of risk in the medical arena.

Faculty physicians sharing personal cases of medical liability and risk management is a necessary component of this teaching process. Cases which arise during residency training will have the deepest impact upon the learning process for the resident. Faculty members need to be role models in how to handle these cases and give guidance on how to prevent similar cases from arising through the implementation of a culture of safety rather than a culture of blame.

Residents need to learn how to properly document informed consent and medical discussions in the chart. Preceptors, by sharing their own charts and reviewing the resident's chart, can contribute to the resident's sophistication in medical charting and acquisition of skill in defensive medical charting.

## Resources

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## **Web Sites**

Medical Group Management Association  
<http://www.mgma.com/>

American Medical Association  
<http://www.ama-assn.org/>

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