

## Managing Risks Associated With Curbside Consultations

### Question

What are the liability risks associated with conducting curbside consultations, and what strategies can help mitigate these risks?

### Answer

Curbside consultations are very common in the practice of medicine.<sup>1</sup> They involve healthcare providers seeking advice or opinions from each other when making diagnostic or treatment decisions for patients. These consultations — also called “hallway,” “elevator,” or “sidewalk” consults — are beneficial as healthcare providers seek to provide quality care for their patients. Some of the advantages include fostering relationships with other healthcare providers, gaining current knowledge on the latest medical research, and saving time.

These informal consultations are not without risks, however, and certain situations may increase liability exposure. For example:

- The requesting practitioner may provide inaccurate or incomplete information.
- The consulting practitioner might offer inappropriate advice, which may result in harmful treatment to the patient.
- The requesting practitioner may document the consultant’s name as a source of advice without the consultant’s knowledge.<sup>2</sup>

Additionally, technology (e.g., email and texting) has opened up more opportunities for curbside consults, adding a new layer of risk. Electronic consultations create a record of each interaction, which may raise questions about the consultant’s level of involvement in the case, the information

provided, and the advice given. Electronic consultations also may create concerns about the privacy and security of patients' protected health information.<sup>3</sup>

Whether a curbside consult is done face-to-face or electronically through messaging, in most states the key element for liability is whether a provider–patient relationship exists. If it does, then the informal consultation should become a formal consultation.

In a formal consultation, a healthcare provider sees the patient; reviews their health record; participates directly in their care; documents an assessment, treatment recommendations/plan, and orders in the health record; and bills the patient. Informal consultations do not involve any of these elements.<sup>4</sup>

Curbside consults should be informal and occur between two healthcare providers, one of whom does not already have a pre-existing relationship with the patient, has not had contact with the patient, and is not covering for a provider who does have the relationship with the patient.<sup>5</sup>

Understanding when an informal curbside consult becomes a formal one is imperative because that is when liability exposure can occur. For example, seeking a formal consultation would be prudent in the following scenarios:

- Situations that require specialist intervention or the need to interact with the patient
- Requests that require the consultant to obtain significant clarification and/or more information that would require reviewing the patient's health record
- Situations in which the appropriateness of the consult or the preference of the consultant are unclear
- Requests that involve more than one consult about the same patient<sup>6</sup>

Navigating any possible risks in curbside consults is essential for providers. Below are some strategies to help providers avoid liability:

- When seeking advice from another provider or fielding a request to provide a curbside consult, make sure the information involved is brief, general, and not specific to the patient.

- Be careful to avoid patient-specific guidance, such as providing advice about ordering tests or adjusting medications. Doing so may indicate a provider–patient relationship and involvement in the care team.
- Ask providers requesting curbside consults whether they plan to document the conversations; if so, clarify what they plan to document. Ask to review all documented information.
- When accepting requests to provide curbside consults, specifically state that you are willing to provide an *informal* consultation. Speak up if you feel that the situation requires a more formal approach (e.g., you need to see the patient). Consider keeping notes regarding curbside consult requests, including a general summary of the discussion.<sup>7</sup>

## Endnotes

- 
- <sup>1</sup> Tallent, A. (2023, October 4). From horseback to AI: The evolution of curbside consults. *MedCentral*. Retrieved from [www.medcentral.com/biz-policy/physician-curbside-consult-evolution-and-risks](http://www.medcentral.com/biz-policy/physician-curbside-consult-evolution-and-risks)
- <sup>2</sup> Kreichelt, R., Hilbert, M. L., & Shinn, D. (2008). Minimizing the legal risk with 'curbside' consultation. *Journal of Healthcare Risk Management*, 28(1), 27–29. doi: <https://doi.org/10.1002/jhrm.5600280105>
- <sup>3</sup> Tallent, From horseback to AI: The evolution of curbside consults.
- <sup>4</sup> Pope, T. M. (2019, June 25). Curbside consults: New liability risks to avoid when you are not a patient's physician. *The ASCO Post*. Retrieved from <https://ascopost.com/issues/june-25-2019/new-liability-risks-to-avoid-when-you-are-not-a-patient-s-physician/>
- <sup>5</sup> Lin, M., Pappas, S. C., Sellin, J., & El-Serag, H. B. (2016, January). Curbside consultations: The good, the bad, and the ugly. *Clinical Gastroenterology and Hepatology*, 14(1), 1-170, e1-e12.
- <sup>6</sup> Ibid.
- <sup>7</sup> Boyle, M. (n.d.). Navigating the risks of curbside consults. *MED Midwest Medical Edition*. Retrieved from [www.midwestmedicaledition.com/articles/navigating-the-risks-of-curbside-consults](http://www.midwestmedicaledition.com/articles/navigating-the-risks-of-curbside-consults)

---

This document does not constitute legal or medical advice and should not be construed as rules or establishing a standard of care. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

MedPro Group is the marketing name used to refer to the insurance operations of The Medical Protective Company, Princeton Insurance Company, PLICO, Inc. and MedPro RRG Risk Retention Group. All insurance products are underwritten and administered by these and other Berkshire Hathaway affiliates, including National Fire & Marine Insurance Company. Product availability is based upon business and/or regulatory approval and may differ among companies.

© 2024 MedPro Group Inc. All rights reserved.