

## Topics in Risk Management 5<sup>th</sup> Edition Overview Information

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Expert Perspective

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### PROGRAM DESCRIPTION

Clinicians interested in risk management and legal alternatives to and implications of malpractice claims will appreciate the valuable information included in this audio program. Led by Course Director Richard P. Kidwell, JD, Senior Associate Counsel/VP Risk Management, University of Pittsburgh Medical Center, the program features other leading medical-legal experts who address key areas in risk management, as well as malpractice litigation from a judge's perspective, peer review, disclosures, and the affordable health care act.

### INTENDED AUDIENCE

Clinicians who are licensed in the state of Connecticut, as well as others interested in the education of risk management and ethics, as well as malpractice litigation from a judge's perspective, peer review, disclosures, and the affordable health care act.

### EDUCATIONAL OBJECTIVES

After taking part in this educational activity, participants should be better able to:

- Summarize the appropriate conditions that characterize the peer-review process
- Indicate whether disclosure is associated with a significant increase in the number of medical malpractice claims being filed for cases in which an adverse event was disclosed to the patient
- Compare and contrast how the following factors can impact the success of a medical malpractice lawsuit: blame stories, the medical record, and expert opinions
- Identify and summarize the 3 medicolegal criteria that a medical malpractice lawsuit needs to satisfy in a jury trial
- Describe, in general terms, what is meant by "the theater of a case" and how it may impact a jury in a medical malpractice case

- State 3 roles that a medical ethicist might play in a major university medical center, and state 3 tasks that clinical ethicists perform in the same setting
- Summarize 3 different approaches that may be used to help resolve disagreements between multiple surrogate decision makers
- Describe how a time-limited trial of therapy may be used to resolve an intractable dispute between a surrogate decision maker and the health care team

## TOPICS AND SPEAKERS

### **Module 1 – Judge’s perspective on Medical Malpractice Litigation** - *Hon Eugene F. Scanlon, Jr, JD*

**Hon Eugene F. Scanlon, Jr, JD**, was initially a lawyer defending doctors and hospitals and then became a judge in the trial court division. After retiring, he became a mediator/arbitrator for various legal cases, including malpractice claims. In this presentation, he provides a judge’s unique perspective on medical malpractice litigation. He discusses the cornerstones to a good defense in medical malpractice cases, the preparation and performance required to make a sound deposition, insights into today’s plaintiff lawyers, a description of the average jury and how best to relate to them, important factors that can sway a jury’s decision, and realistic expectations regarding the provider’s time requirements when dealing with a malpractice case.

### **Module 2 – Peer Review** – *Howard A. Chajson, BS, JD, Esq*

**Howard A. Chajson, BS, JD, Esq**, specializes in the defense of medical malpractice cases for physicians and hospitals. In this presentation, he tackles the issue of peer review, which is a confidential, legally protected process in which professional health care providers analyze and review the care provided by a peer. The purpose of the peer review process is to improve quality of care by providers and their institution. Peer reviews are considered privileged information. Legal protection of the peer review process is in place even when a provider is being sued by a patient. Even those who are critiquing the care of a peer are protected by peer review laws. These protections are in place to ensure that the medical profession is adequately policing itself with an eye toward developing safer processes and practices.

### **Module 3 – Disclosure does not lead to litigation** – *Lisa M. Painter, RN, DNP*

**Lisa M. Painter, RN, DNP**, was Director of Risk Management at the University of Pittsburgh Medical Center (UPMC) in 2013. In this presentation, she gives an overview of Pennsylvania’s Medical Care Availability and Reduction of Error (MCARE) Act which requires that verbal and written disclosure be provided to the patient within 7-days once a "serious event" has occurred while providing care to the patient. She describes how disclosure has helped her institution confront their adverse events, recognize defects in processes, promote safety, and encourage a true dialogue between providers and patients, which in turn increases the trust relationship. Unexpectedly, disclosure and mandated reporting of adverse events have not, to date, negatively affected the filing of malpractice claims or provider finances at UPMC.

### **Module 4 – Basics of the affordable health care act** – *Richard P. Kidwell, JD*

**Richard Kidwell, JD**, is Senior Associate Counsel and Director of Risk Management at the University of Pittsburgh Medical Center. In this presentation, he describes the basics of the Patient Protection and Affordable Care Act (ACA), such as health insurance exchanges, Medicaid expansion issues, and which consumers will have access to reduced-cost health insurance as well as premium and cost-sharing subsidies. Dr Kidwell also provides brief explanations of the ACA’s impact on employers, including the requirement for contraception coverage and employer-shared responsibility for employee health care coverage. In addition, he explains how the ACA provides incentives to medical providers for improving performance and controlling health care costs and how, through Medicare, the ACA introduces new value-based methodologies, ranging from Accountable Care Organizations to bundled payment arrangements.

### **Module 5 – Risk Management – Martin Fleishman, MD**

**Dr. Martin Fleishman** had a 20-year career as a physician screener for a medical malpractice law firm. As the law firm's first contact with people considering filing medical malpractice suits, he brings his unique perspective about screening prospective lawsuits and helping callers and the law firm gauge the potential success of a malpractice claim. Through his experience, we learn about the medically injured and the blame stories that lead people to consider filing a lawsuit. He shares the impact of the following factors on whether a lawsuit would actually be filed: disclosure, medical records, contributory negligence, long-term damages, the medicolegal criteria, and the "theater of a case."

### **Module 6 – Ethics - Jason Byron, MA**

**Jason Byron, MA**, is manager of the Medical Ethics and Supportive Care Services at the University of Pittsburgh Medical Center. He describes the role of clinical ethicists as it applies to helping surrogate decision makers understand the patient's medical status, communicate with the medical team, and navigate the emotions, finances, and conflicts that arise during the decision-making process. He explains how surrogate decision makers are identified and how conflicts can be managed when multiple individuals must make decisions for one patient. He emphasizes that respecting the patient's autonomy must be the central focus of all surrogate decisions. He addresses the concept of futile care and some of the approaches ethicists use to help surrogates make sound decisions for the patient. Finally, he describes his center's policy for managing intractable disputes related to life-sustaining measures.

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