The title character in the film, Jerry McGuire, pleads with his client to “Help me...help you.” The desperation in Jerry’s voice mounts as he repeats this mantra over and over throughout the movie. Attorneys defending long-term care facilities have a similar plea to the health care professionals they defend whenever charting appears lax or neglected. While lawyers cannot presume to instruct health care professionals on how to chart, effective record keeping helps the attorney help you.

Documentation Principles

Content

The content of some health care records is easier to defend than others. Although it is clearly understood that “perfect” documentation is not possible or expected, there are fundamental principles for the defense of the quality of the entry in health records.

Voluntary Compliance Programs

The OIG is currently soliciting public comments on draft Compliance Program Guidelines. This new draft focuses on key areas that surveyors will be looking at:

- Inadequate staffing.
- Poor care plan development.
- Inappropriate use of psychotropic medications.
- Lack of proper medication management.
- Resident neglect and abuse.

The proposed draft should be studied for potential improvement in these areas.
State Surveys Miss Many Violations
By Jeanelle R. Lust

According to a May 15, 2008 Government Accountability Office (GAO) report, state nursing home survey inspectors frequently miss care problems in nursing homes. The findings stated that 15 percent of state surveys failed to cite at least one G through L deficiency. In nine states, the federal surveyors found missed serious deficiencies in 25 percent or more of the surveys.

At the D through F tag level, missed deficiencies were over 50% in all but five states. State surveys failed to identify 2.5 D through F level deficiencies per survey. The most frequently missed deficiencies were quality of care standards.

In response the GAO intends to:
1. Require regional [CMS] offices to determine why state surveyors cite a deficiency at a lower scope and level than federal surveyors do.
2. Establish quality controls to improve the accuracy and reliability of information and survey data.
3. Analyze federal comparative and observational survey results.

One Dollar for Religious Discrimination; Thousands Awarded for Attorney’s Fees and Costs
By Kevin R. McManaman

The Eighth Circuit Court of Appeals recently affirmed an award of only one dollar for suffering religious discrimination and retaliation, but granted attorney fees and costs. See Ollis v. HearthStone Homes, Inc. (No. 06-2852).

Plaintiff Ollis was a Christian whose employer used “mind body energy (MBE) sessions to cleanse the negative energy from its employees in order to enhance their work performance.” The company’s “core values” included spiritual elements involving reincarnation, and called for leaving behind “all experiences from past lives” and a belief that uncorrected problems from past lives must be corrected in the present life. Employees were required to schedule appointments for “sessions” with company employed “coaches” to remove negative energy, including one coach who openly claimed to speak with animals. A record of attendance was kept for these sessions.

Plaintiff felt that the MBE sessions were incompatible with his religious beliefs, and he expressed his disagreement with his supervisor, who unwisely kept the matter confidential and helped plaintiff fake agreement with the MBE practices. Later at a company sales meeting Plaintiff conveyed that it was against his religious beliefs to participate.

Subsequently, a female employee was hired under Plaintiff’s supervision, but shortly thereafter, she requested reassignment because of Plaintiff’s alleged sexual comments. Informed by the results of “muscle testing,” the company terminated Plaintiff for poor judgment, but without reference to his sexual harassment of the subordinate. (Eventually the subordinate was also terminated for “removing her clothing at a golf outing and doing cart-wheels naked on a golf course.”)

Plaintiff claimed religious discrimination and retaliation for having been terminated after complaining about the religious requirements of the job. A jury returned a verdict in his favor. The jury only awarded $1.00 in damages. However, Plaintiff’s request for attorney’s fees was granted.

In addition to the obvious anti-discrimination ruling, this case provides several important reminders to employers in any field. First, even without significant damages attorney’s fees can be awarded, and attorney’s fees after trial are usually a substantial sum. Second, supervisory mistakes (or lack of proper training) can compound the original issues. In this case, Plaintiff’s supervisor mistakenly kept Plaintiff’s religious discrimination complaint confidential, rather than taking action. Company policy should have required that complaints of discrimination be reported and investigated. The supervisor should have been trained to never bury discrimination complaints.
Help Me, Help You (continued from pg. 1)

Rule #1: Stick to the facts. Record only what you see, hear, smell, feel, measure, and count, not what you infer or assume. For example, if a patient pulled out his LV line, but you didn’t witness him doing so, write: “Found pt, arm board, and bed linens covered with blood. LV line and venipuncture device were untapped and hanging free.” If the patient says he pulled out his LV line, record that.

Don’t chart your opinions. If the chart is used as evidence in court, the plaintiff’s attorney might attack your credibility and the medical record’s reliability. Chart subjective information only when it’s supported by documented facts.

Rule #2: Avoid labeling. Objectively describe the patient’s behavior instead of subjectively labeling it. Expressions such as “exhibiting bizarre behavior” or “using obscenities” mean different things to different people. Could you define these terms in court?

Rule #3: Be specific. Your charting goal is to present the facts clearly and concisely. Use only approved abbreviations and express your observations in quantifiable terms. For example, writing “output adequate” isn’t as helpful as writing “output 1,200 ml.” Similarly, saying that “Pt. appears to be in pain” is vague compared with “Pt. requested pain medication after complaining of severe lower back pain radiating to his right leg.” Also avoid catchall phrases, such as “Pt. is comfortable.” Instead, describe how the patient appears, and importantly, how you know this. For instance, is the patient resting, reading, or sleeping?

Rule #4: Use neutral language. Remember that using inappropriate comments or language is unprofessional and could be misconstrued by a jury. In one case, an elderly patient developed pressure ulcers, and his family complained that he wasn’t getting adequate care. The patient later died of unrelated natural causes, but because his relatives were dissatisfied with the patient’s care, they sued. The insurance company questioned the abbreviations “PBBB,” which the physician had written in the chart under prognosis. After learning that this stood for “pine box by bedside,” the jury was inflamed and awarded the family a significant sum.

Rule #5: Eliminate bias. Don’t use language that suggests a negative attitude toward the patient, such as “obstinate,” “drunk,” “obnoxious,” “bizarre,” or “abusive.” The same rule applies to what is said aloud and then documented. Disparaging remarks, accusations, arguments, or name-calling could lead to a defamation of character or libel suit. Remember that the plaintiff’s lawyer will jump at any chance to make you appear uncaring or rude. In addition, the patient has a legal right to see his chart. Derogatory remarks will only fuel an unhappy patient’s desire to bring a claim. If a patient is difficult or uncooperative, document the behavior objectively and let your co-workers, and potentially the jurors, draw their conclusions from unbiased language.

Rule #6: Keep the record intact. Discarding pages, even for innocent reasons, raises doubt in a lawyer’s mind.

Remember that employees and management may change but the chart remains. Attorneys hate to hear plaintiff’s lawyers say, “If it isn’t charted, it didn’t happen.”

New Five Star Rating System to Roll Out in December
By Tammy Schroeder

In December 2008, the Centers for Medicare and Medicaid will launch a new five star rating system. This new system is designed to allow residents and their families an easy way to understand the assessment of nursing home quality. This new system is not meant to replace a consumer actually going to the nursing home and visiting with staff, residents and other families, rather, it is just another tool to aid in choosing a nursing home.

The new system will provide a compiled view of the quality and safety information already on the Nursing Home Compare website and will attempt to make it easier for people to compare nursing homes. The five star rating system will also serve as an incentive for nursing homes to earn the five star rating by providing an environment of better quality of care.

More information, including a screen shot of what the proposed rating system will look like can be found at www.cms.hhs.gov/PressContacts/10_PR_fivestar.asp.
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