

Medical Staff NEWS

CONSTITUTIONAL ARTICLE 10, SECTION 25 (AMENDMENT 7) UPDATE

Kristina Corlette, System Counsel, Lee Memorial Health System

As you are all no doubt aware on November 3, 2004, an Amendment to the Florida Constitution known as "Amendment 7," was approved by Florida voters – now properly titled Article 10, Section 25. Since then, there has been ongoing questions and concerns raised about what this means to the practice of health professionals and hospitals in this state.

Initially, there was a legal challenge mounted by the Florida Hospital Association (FHA) to the amendment, which was dismissed by the lower court in December, essentially because there was no specific request for information being challenged in the lawsuit. This case has been appealed by the FHA and is ongoing.

Lee Memorial Health System has received requests for information under §25, but no information has been released pursuant to these requests. LMHS will continue to refuse to release this information until directed by the courts to do so. It is likely that this will require an upper court - possibly even a Florida Supreme Court decision – before we will release such information.

As written, §25 appears to:

- Require the release of information regarding medical incidents to a patient or a patient's representative;
- Include peer review, quality assurance, incident reports, and related documents within the information to be disclosed.

What it does NOT address or change:

- Peer reviewers cannot be sued because they participate in quality review activities;
- Monetary damages cannot be awarded against peer review participants;

- The information cannot be used as evidence in any civil or administrative action;
- The peer reviewers are not permitted or required to testify in any civil or administrative action.

These protections under both Florida state and Federal law remain in place for anyone involved in the peer review process. Further, it has been and continues to be LMHS' policy to provide for the legal representation and indemnification of anyone involved in the peer review process who is involved in a lawsuit stemming from those activities.

Questions have been raised in regard to the risk of being sued for not acting in good faith while functioning in the peer review process. Again, this is not a change in the law as there has not been protection for anyone who attempts to use the peer review process for personal gain or maliciously even prior to the passage of §25.

The intersection of Article 10, § 25 and federal law:

It appears that the most important federal statute that will play a role in the implementation of §25 is the Health Insurance Portability and Accessibility Act – or HIPAA. Congress enacted HIPAA in an effort to provide the first comprehensive Federal protection for the privacy of health information. While permitting an individual access to his or her own protected health information, HIPAA also denies access to certain types of information, even to the individual. Most importantly in this situation, it denies individuals access to "Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; . . ."

In the situation at hand, Article 10, § 25, requires an entity to release various types of records relating to

I N • T H I S • I S S U E

- Constitutional Article 10, Section 25 (Amendment 7) Update • Patient Safety Strategies
 - Records and Charting/Suspension • Safety Tips for Improving Patient Care
 - Net Access Update • News From the Medical Library • License Renewal
 - Medical Staff Hotline • Continuing Medical Education

any adverse medical incident to an individual upon request. § 25 uses language to identify the targeted information with words such as “negligence”, “intentional misconduct”, “death”, “injury”, “peer review”, “risk management”, “quality assurance” and “credentials”. This language references activities closely associated with healthcare litigation and administrative activities or information. In contrast, as noted above, HIPAA states that no individual has the right of access to precisely this type of information. Therefore, if under Amendment 7 the healthcare entity was to permit the disclosure of information regarding injuries, risk management, etc., it would violate the HIPAA regulations that clearly restrict access of that type of information.

In passing HIPAA, the U.S. Congress provided for the possibility of the type of conflict arising between a state and a federal law. In the HIPAA legislation, Congress specifically stated that any provision, requirement, standard or implementation adopted or established under HIPAA supersedes any State law that conflicts with the HIPAA requirement. The Health and Human

Services (HHS) regulations implementing the HIPAA legislation further emphasize the federal preemption, again stating that any standard, requirement or implementation specification adopted to enforce HIPAA preempts the state law provision unless the Secretary of HHS makes a determination that the state law meets the criteria for an exception. The regulations then go on to specifically identify that “State law” includes a State constitution.

To date, two court cases have addressed this situation where state law and HIPAA appeared to collide. These cases, while not determinative of our situation, provide an indication of the direction the courts are likely to move. Both courts, one in Texas and one here in Florida agreed that when there were state guidelines that are more strict than HIPAA, it is possible to comply with both statutes and in that situation HIPAA did not preempt the state law. We are now facing the opposite situation, where state law provides less protection than HIPAA, making it impossible to meet both statutes and therefore it is likely the courts are going to find that §25 cannot be enforced.

PATIENT SAFETY STRATEGIES

LMHS has adopted the following policies/procedures in support of its ongoing commitment to a system-wide, non-punitive culture of patient safety.

P07 02 043 – Patient Safety Plan

- Provides a framework for the systematic, coordinated and continuous approach to maintaining and improving patient safety throughout LMHS.
- Establishes mechanisms to assure the safety and well being of patients, employees and visitors.

P07 02 055 – Reporting Incidents & Adverse Events

- Whenever injury or harm occurs to a patient, it must be reported to Risk Management.
- New Incident Reports are now completed on-line.
- Medication errors & adverse drug reactions require notification of the physician & pharmacist on duty.
- Sexual misconduct must be reported immediately to Risk Management.

- Sentinel & Signal events must be reported immediately to Risk Management.
- Incident reports must reach the Risk Manager/ Safety Officer within 3 days (as per Florida Statutes)

LMHS currently has three processes in place for our patient safety strategies.

Failure Mode Effects Analysis (FMEA)

- Proactive Approach to patient safety (to prevent errors)
- Involves an interdisciplinary team
- Detailed flow chart of high risk process steps
- Analyze each step for potential errors
- Remove or fix potential error steps of process

JCAHO Standard PI. 3.20 states:

- One high risk FMEA team project must be completed annually

FMEA Team Projects Completed at LMHS:

- 2002: Medications Delivered to a Sterile Field
- 2003: Correct Site Surgery
- 2004: Sedation for Procedure
- 2005: Patient Controlled Analgesia (PCA) Pumps (in progress)

LMHS FMEA Policy Outcomes:

- S03 03 021 – Medication Delivery to a Sterile Field
- P03 05 005 – Identification & Verification of Correct Patient, Procedure & Site
- P03 05 021 – Sedation for Procedure

Performance Improvement

- Ongoing process to measure performance outcomes
- Spider Diagrams are used throughout the system to provide an easy method for detecting improvement opportunities.
 - Identify specific measurements that may be off target at the unit level that could go undetected at the campus or system level.
 - Provide relationships between staffing, quality, safety and satisfaction.
 - Develop action plans based on the “red” indicators.

Root Cause Analysis / Intense Analysis

- Retrospective method for identifying causes and changing processes to prevent re-occurrence.
- Involves an interdisciplinary team

- Focuses primarily on systems/processes, not on individuals
- Sentinel Event
 - Occurrence involving an unanticipated death or major permanent loss of function not related to the natural course of the patient’s illness or underlying condition.
 - Must conduct a Root Cause Analysis (RCA) and define an action plan.
 - Must be reported to JCAHO
- Signal Event
 - Unexpected occurrence not involving death or major permanent loss of function, but of significant risk for a serious adverse outcome.
 - Must conduct an Intense Analysis; modified version of RCA
 - Required by LMHS; not reportable to JCAHO
- P07 02 030 – Identification, reporting and management of sentinel and signal events
 - Duty of all staff to report sentinel & signal events
 - Focus attention on understanding underlying causes, and on changing processes to prevent re-occurrence.
- P07 04 006 – Critical incident stress response and activation plan.
 - Confidential & caring procedure for response to staff that have encountered a distressing event that may be influencing effective coping mechanisms.

RECORDS AND CHARTING/SUSPENSION MEDICAL STAFF RULES AND REGULATIONS

G. P. Fitzgerald III, MD & Catherine Hassen CPMSM

Recently, the CCH and LMHS Medical Staff approved a revision to the Medical Staff Rules and Regulations on Records and Charting/ Suspension.

A practitioner suspended of privileges for a total of twelve (12) weeks within one fiscal year, will have their Medical Staff membership terminated, pending ratification at the next Executive Committee meeting. Action of termination is reportable to the Agency for Healthcare Administration and will require reapplication before reinstatement.

Please remember that during any of the 12 weeks while privileges are suspended:

- The practitioner on suspension will lose his/her right to hospital admitting, consulting and surgical privileges until all records are completed.
- The affected practitioner may not admit, consult or do procedures under the name of another practitioner in his group practice.
- Upon completion of records, the practitioner will be reinstated.

Once again we are requesting your support to keep records up-to- date.

SAFETY TIPS FOR IMPROVING PATIENT CARE

Legibility

Lee Memorial Health System (LMHS) is committed to providing a safe environment for our patients and understands the importance of legible, clear, safe unambiguous medical record entries to support patient care, patient safety and enhance written communication between healthcare providers and staff members.

December 2004 medical record reviews have demonstrated that our overall legibility of our medical records is still not in compliance. The most prominent finding is over the use of illegible signature of practitioners. LMHS policy indicates that if a practitioner utilizes initials or marks as their official signature then **ONE** of the following conditions must be utilized to properly identify the author. 1. Signature stamp that clearly identifies the author. 2. Legible Printed full name. 3. Initials or signature mark must include the author's identification number (Employee or Physician ID number).

It is strongly recommended that practitioners begin using their dictation identification number after their signature to properly identify the author of the medical record entry.

Unsafe Abbreviations

An unsafe abbreviation is a potentially dangerous abbreviation or dose expression that does not clearly communicate the intended meaning and has been documented in the medical literature as contributing to medical errors. The unsafe, unacceptable abbreviations and dose expressions listed within the medical records are not allowed to be written anywhere within Lee Memorial Health System.

The December medical record review has demonstrated that 57% of our medical records contain an unsafe abbreviation in the physician orders. The most widely used unsafe abbreviation is q.d, qid or qod. The period after the q can be mistaken for the letter "i". The drug could be given four times daily. The "o" in qod can be mistaken for an "i".

Please document clearly in our orders "daily" or "Q AM" or "Q PM", "four times daily" or "4 x daily", "every other day"

NET ACCESS UPDATE

- 1) Net Access allows you to select your **Individual or Group In-patient Census List** as the default? Once you select the Lee/HealthPark or Cape Region, we automatically display the Census List the way you prefer to see it. Regardless of how you have the default set, you always have access to both. If you would like to have your Group Census List as the default, please contact Karen Mueller, IS Physician Liaison at 343-7841 or pager 930-6635.
- 2) Net Access displays **All Results** and **Dictated Reports** for patients, as far back as August 1999? You may choose what you want to see by selecting an option from the navigation bar.
 - 24 Hr Results** – Displays all patient results in last 24 hour period
 - 5 – Days Lab** – Displays all Lab results in the past 5 days
 - 5 – Days Abnormal** – Displays all Abnormal results in past 5 days

All Results – Displays all results/reports since August 1999

All Results Lab – Displays all Lab results since August 1999

All Reference Lab – Displays tests that were sent out since August 1999
(SEE SEPARATE REPORT – hard copy will be in Patient chart)

All Micro C & S – Displays all Micro results since August 1999

All Results Rad – Displays all Radiology results since August 1999

All Dictated Reports – Displays all Dictated reports since August 1999

- 3) Net Access displays **All Cases & Visits**? This function allows you to look at a listing of each time the patient has registered for Outpatient services, ER visits or been admitted for Inpatient services.

- 4) Net Access displays **Enterprise Access Directory, (EAD) Episodes?** This function allows you to isolate one episode (registration/admission) and view only the results/reports that are associated with that particular episode.
- 5) Net Access is accessible from your office or home? Log on to the Internet then go to: <https://netaccess.leememorial.org> Enter your 5 digit physician ID and personal password, click

Logon. If you cannot recall your personal password, we can assign a temporary password and then walk you through changing it to something that is known only to you.

- 6) Net Access training and support is available? Contact the LMHS Help Desk at 334-5226 or Karen Mueller, IS Physician Liaison at 343-7841 or Pager 930-6635.

NEWS FROM THE MEDICAL LIBRARY

Narges Ahmadi, Medical Librarian

Accessing databases and retrieving full-text articles has become easier. If you access the Medical Library WEB page on **Intralee**, you **no longer need to use your passwords** to search databases like OVID, ProQuest or Stat!Ref. Only MD Consult and Advisory Board still require that you type your IDs (to obtain them, please contact the Medical Library at: 334-5410). Under **DEPARTMENT**, scroll to **Medical Library**. From the menu, click on **DATABASES**, then on desired database's name, which will bring you directly to this database.

To access a **full-text article in a journal**, from the menu on the Medical Library WEB site, click on **ELECTRONIC JOURNALS**. A new interface,

Serials Solutions, will allow you to find a journal you need regardless of where this journal is located (OVID, ProQuest, MDConsult, Highwire, PubMedCentral). **No passwords are necessary** when accessing it via **Intralee** (except MDConsult), but are required when accessing it via Medical Library WEB page on INTERNET.

A free trial of **DynaMed**, the evidence-based medicine database, which is updated daily, has been extended to February 15th. **No passwords are necessary**. To access it, please click on the hyperlink published on the home page of the Medical Library WEB sites on both Intralee and on the Internet.

LICENSE RENEWAL

To ensure a timely renewal for a medical doctor with a license expiration date of January 31, 2005, you may use MQA online services by visiting www.DOH-MQAServices.com. The system will be available until midnight, January 31, 2005.

MEDICAL STAFF HOTLINE

For Medical staff issues or concerns, call the Medical Staff Hotline @ 334-5700.

CONTINUING MEDICAL EDUCATION

“THE CHILDREN’S HOSPITAL OF SW FLORIDA ANNUAL PEDIATRIC CONFERENCE”

April 16 & 17 2005

Sanibel Harbour Resort & Spa
Topics include: Hypertension & Hyperlipidemia
in the Pediatric Patient, Dermatology, Top
Infectious Disease Articles, Infant Nutrition,
Anemia and EMR.

Earn up to 11 CME Credits.

Call 574-0397 for registration info and a
brochure.

“HEADACHES AND THE EYE”

Rachid Aouchiche, MD

Monday, February 7, 2005

HealthPark Medical Center HP1A
6:30 – 7:30 PM

**RSVP for Dinner by February 4th
573-5680**

“DVT PROPHYLAXIS: BEFORE, DURING & AFTER SURGERY”

Joseph Fetto, MD
Orthopedic Surgeon, Mt. Sinai Medical Center,
New York
Bogert’s Chop House

Tuesday, February 8, 2005

6:30 – 7:30 PM

**For LMHS & SW Florida Regional Medical
Center Physicians**

RSVP – 574-0397

“CURRENT INDICATIONS FOR GROWTH HORMONE THERAPY”

Santosh Gupta, MD
Pediatric Endocrinology, St. Louis, Missouri

Thursday, February 24, 2005

HealthPark Medical Center
7:15 – 8:15 PM

Following the Clinical Department of The
Children’s Hospital Meeting

**RSVP for Dinner by February 21st
573-5680**

“SPINAL STENOSIS: DO WE ALL HAVE IT?”

John Frymoyer, MD
Former Professor, University of Vermont College
of Medicine

Monday, February 28, 2005

Lee Memorial Hospital Auditorium
6:30 – 7:30 PM

**RSVP for Dinner by February 25th
573-5680**

If you have questions or would like to submit an article to Medical Staff News, please contact

Joanne Gorgone, RN, BSN, CME Coordinator, Lee Memorial Health System

636 Del Prado Boulevard, Cape Coral, Florida 33990

Phone: 239-574-0397 Fax: 239-772-6564

E-Mail: joanne.gorgone@leememorial.org