Medical charting errors can drive patient liability suits

■ Mistakes and a casual approach to details in patient records can offer a wealth of materials for plaintiff attorneys.

By ALICIA GALLEGOS — Posted March 25, 2013.

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Dallas medical liability defense attorney Linda M. Stimmel recently represented a group of physicians who were sued after a patient experienced a poor outcome following coronary artery bypass grafting. During discovery, the plaintiff attorney called into question whether the doctors had reviewed patient films and lab reports during a consultation.

"I'm sure the physicians reviewed them, but they didn't note that in their charting," said Stimmel, who was featured in a January report on charting errors by AHC Media, a publisher and provider of continuing medical education. "It was alleged in the lawsuit that the physician didn't take the time to look at the computer and go over the labs. By the time [the doctors] are deposed, it's three years later and they say, 'I'm sure I looked at that,' but there's no charting to back it up."

The case eventually settled.

Legal experts say they are noticing more liability cases that involve faulty medical charting, whether or not the documentation relates to the claim itself. Plaintiff attorneys use such discrepancies to show carelessness, sloppiness or dishonesty.

"Poor charting increases [doctors'] risk of being involved in a medical malpractice action," said Joshua Cohen, a founding partner at DeCorato Cohen Sheehan & Federico LLP in New York and president of the New York State Medical Defense Bar Assn. "One of the realities that I explain to doctors all the time is they control the facts and evidence that's going to be used to prosecute or defend themselves in a medical malpractice action. By the time there's a lawsuit, all of the facts and evidence have already been created by a health provider. If the charting is poor, whether on paper or electronic, that is going to be used against the medical provider."

Lawyers look for what's missing

Incomplete information is one of the most common errors made by physician defendants in paper charts, Stimmel said. Doctors are rushed and fail to detail the full extent of their treatment or forget to include what was discussed with patients, she said.

For example, Stimmel had a case where a neurosurgeon was called by a hospital in the early morning hours to review a patient's films. The physician made a diagnosis based on his review, but he neglected to document how he reached his findings. A plaintiff attorney later claimed that the doctor was too sleepy to see the patient and hastily made a diagnosis.

"If the jury believes this man was too tired to come in and too tired to see the patient, they could hit us for punitive damages," she said. Plaintiff attorneys "don't really argue the medicine, they argue the emotion. Physicians who are viewing labs from home and not going in to see the patient … need to chart what they looked at and what the determination was."

Another growing problem is doctors' failure to chart text conversations with medical staff about patients. Frequently, physicians are communicating with nurses and others by text, asking for condition updates and providing medical opinions, Stimmel said. If a lawsuit arises and the text messages were never transcribed onto a chart, it's as if the communication never happened.

"In this technology age, you've got to immediately write [texts down] and chart them as well," she said.

Helpful EHRs can harm a case

While e-charting tools are meant to make life easier for doctors, they can make physicians appear robotic and neglectful, legal experts say. Many electronic charts have templates that by default populate information into a record, sometimes inaccurately, said attorney John Davenport, MD, a physician risk manager and chief of family medicine for the Southern California Permanente Medical Group in California.

Dr. Davenport recalled a recent case where a woman who underwent a mastectomy visited her physician for an exam of the remaining breast. The doctor found nothing wrong. After the visit, the electronic template mistakenly entered that both of the woman's breasts were "normal" in the chart, Dr. Davenport said. Months later, a lesion was discovered in the patient's remaining breast, and she sued the doctor.

"Obviously it's something that a physician can try to explain, but it makes a physician look sloppy and, at worst, untruthful," he said. The case settled "because the defense did not want to take the case to trial because of the carelessness of the charting. It was an otherwise defensible case."

Copying and pasting information from one chart to another also can prove to be detrimental in medical liability cases, Cohen said. This is especially true if a chart looks exactly the same after visits to several doctors because each has re-pasted the same note.

In one such case, Cohen said a common word was misspelled five times throughout the record of a neurologically impaired infant.

"There were other medical issues involved, but those coupled with the poor documentation during a critical time period did not help with the defense," he said.

Details are a doctor's ally

Consistency and communication with other staff members is key to preventing charting mistakes, Stimmel said.

Physicians should speak with nurses and other health professionals about using consistent terms and words in charts. For example, consider whether sizes should be defined in inches or centimeters, or if broader terms like "coin" or "quarter-sized" are acceptable. This helps if attorneys later try to poke holes in staff members' opinions of the same injury.

If doctors disagree on a diagnosis or treatment plan, they may want to discuss the issue before charting their thoughts, Dr. Davenport said.

"If you have a significantly different opinion, you might want to address that with the [other] physician," he said. Otherwise, "those two physicians will be expected to testify against each other" if a lawsuit arises.

Doctors should remember to chart conversations with patients and caregivers, and document when consent is provided for a treatment, Stimmel said. Lack of informed consent is frequently a claim made by patients.

"Make sure it's somewhere in the chart that they have discussed the benefits and risks with the patient, and the patient has understood and given approval to go forward," she said.

Above all, Dr. Davenport added: Detail, detail, detail.

"When you're in high-risk situations, that can lead to patient harm or lawsuits," he said. "In those cases, you have to be especially diligent in charting. Put your thought process into the assessment plan and be very wary of highly" sensitive situations.

Alicia Gallegos covered legal, antitrust, fraud and liability issues during 2010-13.