



# THE TOP TEN MEDICO-LEGAL TOPICS OF THE PAST TEN YEARS

Christopher M. O'Connor, Esq.

Associate General Counsel  
Lancaster General Health

*Editor's note: The medico-legal section in the first issue of the Journal dealt with the issue of brain death and advance directives.<sup>1</sup> As noted below under #10, we have revisited those subjects in the Journal several times since then.<sup>2,4</sup> This update deals with other medico-legal issues as well.*

## INTRODUCTION

What better way to celebrate the 10th anniversary of the Journal's medico-legal columns than to summarize the Top Ten issues in healthcare of the past ten years? While lacking the comedic value of David Letterman's Top Ten list, ours captures the significant legal, political, and medical changes faced by healthcare institutions and providers. Though this format is different from our usual columns on medico-legal matters, all of the topics we discuss pose some type of legal challenge that remains unsettled.

Of course, we could have instead drafted a Top One list, entitled "Healthcare Reform," but that would not have been as entertaining nor would it have fit as nicely with the 10th anniversary theme. So, enjoy the Top Ten!

### 1. NEW MODELS OF HEALTH CARE DELIVERY: THERE'S AN ACRONYM FOR THAT!

Rivaled only by the Federal government, the healthcare industry is notorious for using acronyms. New models of health care delivery have added acronyms such as ACO, PCMH, and BPCI\* to our discussions, as well as the term "innovation."

The quest for better population health, for improvements in quality of care and patient experiences, and for reductions in the cost of healthcare, has provided the impetus for dramatic and swift changes in the systems for delivering it. LGH is at the forefront in offering new and improved methods that control costs while enhancing the quality of care. For example, LG Health's ACO, known as the Lancaster General Health Community Care Collaborative, participates in the Medicare Shared Savings Program for the more than 18,000 Medicare beneficiaries it covers. In a related initiative, LG Health

participates in the BPCI with the Center for Medicare and Medicaid Innovation, which means that both LG Health and participating physicians have agreed to a bundled payment for specific procedures. If the institution and physicians provide care at a cost lower than the bundled payment while achieving certain quality measures, the institution and physicians share in the savings.

PCMHs better coordinate patient care, resulting in improved health outcomes. All of Lancaster General Medical Group's primary care offices are PCMHs; prior to achieving certification, they undergo a rigorous assessment and make required changes within their offices, including personnel, responsibilities, and practices.

Because a small proportion of the population is responsible for a disproportionate share of the cost of care, Lancaster General Hospital Care Connections is a new practice dedicated to providing a full range of medical and social services to high-risk, complex patients who characteristically lack community support and have limited access to medical services. To improve their health and community support, Care Connections focuses on coordinating medical care and partnering with community agencies. It has already demonstrated improved health and a significant reduction in hospitalizations, and it serves as a model for other health systems that face similar challenges.

### 2. QUALITY: FROM CARROT TO STICK

As a value-based model moves center stage in healthcare and gradually displaces the traditional fee-for-service model, all healthcare providers seek to provide quality healthcare; inevitably, some do a better job than others.

In past years the government and private payers attempted to incentivize providers to improve quality.

## NOTE

Accountable Care Organization, Patient-Centered Medical Home, Bundled Payments for Care Improvement.

Now, with new expectations, the government and private payers demand high quality care and reduce payments for services if certain quality measures aren't achieved. In fact, for certain preventable conditions, institutions and providers may receive no payment. With the availability of data about quality, and the ability to measure outcomes, healthcare institutions must create a culture of quality to be successful.

### 3. THE WAVE OF HEALTH SYSTEM MERGERS, CONSOLIDATIONS, AFFILIATIONS

Over the past few years, health system mergers, consolidations, affiliations, and integration have become much more common. Again pushed by payment reform and the move toward population health, health systems believe consolidations and affiliations are necessary to manage larger populations over which to spread risk. Though these transactions may take many forms—from complete mergers and consolidations to more loosely defined affiliations—all raise concerns about the possibility of anti-competitive effects that violate federal anti-trust law. It will be intriguing to see how health system leaders balance the need to collaborate in pursuit of population health goals with the risk of anti-trust transgressions.

### 4. WHERE DO I SIGN? PHYSICIAN EMPLOYMENT BY HEALTHCARE INSTITUTIONS

Reiterating themes from above, increased coordination of care and modified payment structures have led to a rapid advance in physician employment by healthcare institutions during the past decade.

The federal government and private payers have revised their payment methodologies, resulting in reduced payment for many physician and ancillary services. As a result, many physicians have sought stability and elimination of the burdensome administrative responsibilities and risks associated with operating a practice. Further, generational shifts in desires and expectations have led many newly trained physicians with oppressive medical debt to seek stable income and flexible work hours.

For their part, healthcare institutions believe that employment of physicians is the key to integration that leads to better coordination of care, higher quality, and reduced costs.

### 5. THE PATIENT KNOWS BEST; THE ADVENT OF PATIENT CONSUMERISM

Everyone is familiar with the mantra “The Doctor Knows Best,” but in today's consumer age, patients are much more informed about medical treatment and the

costs of those treatments. Many patients have already spent considerable time researching their ailments online prior to visiting a physician, and they question the physician's judgment. Certainly patients should be encouraged to become more engaged and to interact with the healthcare industry as a consumer of services, because they are then more likely to live healthy lifestyles, to seek preventive care, and to monitor changes in their medical conditions. Online patient portals such as MyLGHealth encourage patients to be more responsible for their health.

Further, attempts to address the escalating cost of health care have made many patients subject to high deductible health plans that transfer a greater burden of health care costs to patients. It is hoped that these plans will incentivize patients to seek quality care and avoid unnecessary procedures or tests in order to reduce their out of pocket expenses. What effect these measures will have on outcomes is yet to be revealed.

As patients are encouraged to be more judicious consumers of health care services, healthcare providers must seek to engage their patients beyond the walls of the hospital and physician office.

### 6. HEALTH CARE ENTERS THE DIGITAL AGE

Health care, despite its technological and other advances, still relied heavily on paper records, even as other industries had moved to the digital age. As healthcare institutions and providers understood the benefit of coordinated care and sought to improve quality, paper records were an obstacle to these goals. Now, most advanced healthcare institutions have integrated electronic health records. The federal government has offered payment incentives for their adoption, and in the next few years that incentive will turn to a penalty; providers who do not have electronic health records will receive reduced payments for services.

LG Health's integrated electronic health record, along with Community Connect, allow providers to access up to date medical information in one location. Further, as the payment model moves toward value-based payment, electronic health records enable healthcare institutions to capture and analyze data that would have been inaccessible in a paper world.

### 7. FEAR THE BREACH: HEALTH CARE PRIVACY AND SECURITY

In 2009, the federal government passed the Health Information Technology for Economic and Clinical Health (HITECH) Act to enhance the privacy and security requirements of HIPAA. Health care providers must now notify the affected patient and the government anytime there is a breach of protected health information, such as

a stolen laptop with Protected Health Information (PHI), inappropriate access to PHI, or misdirected faxes or mailings. Providers face sizable monetary penalties if the federal government determines they had inadequate controls to secure PHI. With electronic health records, privacy and security is paramount. Since 2011, over 1,100 breaches, each individually affecting over 500 patients, have been reported to the Department of Health and Human Services.

#### 8. THE DOCTOR WILL SEE YOU NOW...FROM YOUR HOME

As the technology age has advanced at a hurrying pace, so too has the health care industry with telemedicine and e-visits. Many health care providers now offer home e-visits for defined and relatively minor medical symptoms such as coughs, sinus problems, and red eyes.

For more complex cases, telemedicine (or telehealth) has gained considerable traction over the past few years, and it is even possible, for example, for a burn specialist to interact with an emergency room physician and the patient via videography to visualize the burn and recommend treatment. Telemedicine can take many forms, including off-site monitoring of surgical procedures, routine patient visits, and consults.

Many regulatory and accrediting agencies (e.g. The Department of Health and the Joint Commission) have made an effort to update their regulations and standards to permit telemedicine, while still protecting the patient and the patient's privacy and security. However, the rapid advance of telemedicine still poses implementation challenges due to outdated regulations and standards.

#### 9. TO VACCINATE OR NOT? STILL A QUESTION?

As I covered in a prior *Journal* article,<sup>3</sup> courts since 1905 have agreed that the state, in appropriate circumstances, can require individuals to be immunized.

As the public health benefits of immunizations have become well-founded, and the risks associated with immunizations have decreased, many healthcare institutions require their employees to be immunized, including the influenza vaccination. Not surprisingly, this re-ignited the debate between individual rights and public health benefits.

Most recently, the media has covered the measles outbreak extensively and many leading medical experts and ethicists have contributed to the debate over mandatory vaccinations. There are wide discrepancies among the states in the ease with which individuals can obtain exemptions for religious or philosophical reasons. Pennsylvania's vaccination law only recognizes exemptions for religious beliefs and medical contraindications.

#### 10. POLST: THE NEW PINK TOOL IN THE ADVANCE CARE PLANNING TOOL BELT

The inaugural medico-legal article for the *Journal* by Robert Macina addressed the importance of advance care planning,<sup>1</sup> which remains just as important today and is an integral component of a patient's care. In keeping with the tenor of our times, advance care planning enhances the patient's right to autonomy by enabling health care providers to honor the patient's wishes when the patient is no longer able to express them.

The latest advance care planning tool is the Pennsylvania Orders for Life-Sustaining Treatment (POLST), which has been previously discussed in detail in this *Journal*.<sup>4</sup> Importantly, POLST contains actionable medical orders that direct the medical care a patient desires at end-of-life. Printed on bright pink paper, the form travels with the patient across all care settings. Lancaster County is a leader in the implementation of POLST, of which we can be proud.

#### REFERENCES

1. Macina, RP. Advance Directives: Since Schiavo, More Important Than Ever. *J Lanc Gen Hosp.* 2006; 1 (1):15-17
2. O'Connor, CM. Brain Death: A Review Of Recent Cases In The Media. *J Lanc Gen Hosp.* 2014; 8(2): 52-54
3. O'Connor, CM. What Right Does the State Have to Compel Vaccination? *Human Papilloma Virus and Its Implications.* *J Lanc Gen Hosp.* 2008; 3 (1): 6-8
4. Costella, MF. Pennsylvania Orders for Life Sustaining Treatment (POLST): Taking Patient Autonomy to the Next Level. *J Lanc Gen Hosp.* 2011;6 (4): 127-128

Christopher M. O'Connor, Esq.  
Associate General Counsel  
Lancaster General Health  
555 North Duke Street  
Lancaster, PA 17604  
cmocon@lghealth.org