They slip, you fall: Have policy and procedures for hazards to avoid accidents, legal grief

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You know what to do with patients who come into your practice hurt — but what about patients who come to the office and then get hurt? Establish some ground rules for addressing hazards and handling patients who suffer an on-premises injury, while under treatment or not, and avoid legal complications down the road.

Stories of patients getting injured in the doctor's office turn up now and again in the news — recently, for example, a patient in Peoria, Ill., accidentally discharged a pistol in his jacket pocket, shooting himself in the buttocks, reports the Feb. 13 *Peoria Journal*. Less exotic injuries, such as slip-and-falls, don't usually make the news, but can be a hassle for the medical provider.

David B. Goodman, an officer with the Greensfelder, Hemker & Gale law firm in Chicago, recalls a case he tried involving an accident at a hospital that took place just outside the cafeteria when "someone slipped on a french fry," he says. The hospital had a good case because they periodically inspected the area as a matter of regular routine, says Goodman. "It was a high traffic area where people carried food trays; when you do that, stuff falls," he says. Under the circumstances, "if they drop a fry, and I slip on it, there was nothing they could have reasonably done. The jury concluded that the inspections, which were documented, occurred on a regular enough basis to make the actions to prevent accidents reasonable and we won."

Maintenance a must

The moral of that story is: Attend to all potentially hazardous situations and document that this oversight is done regularly, as a matter of procedure.

"If I were the risk manager, I'd be putting procedures in place" to prevent foreseeable injuries, says Lorie A. Brown, RN, MN, JD, founder of the Brown Law Office P.C. in Indianapolis. "Policies and procedures set the standard of care. Without that, there's no standard. It helps everybody to do the same thing. If you follow the rules and follow the policy, and the standards are reasonable, and are followed, no jury will find you guilty of negligence. If you don't, it's a breach of your duty of care."

Even if you don't serve french fries, there may be several occasions for accident in your office, including:

- Low stools.
- Wet areas in hallways.
- Unsecured rugs.
- Sharp table edges.

These should be assessed and, if a danger of recurrence exists (as with wet floors), a protocol established, e.g., regular inspection and, whenever a hazard is noticed, immediate corrective action such as mopping and placement of floor safety signs.

Note: These procedures must be written and followed and you must document that they were followed with sign-in sheets, etc. "If I warn but then fail to periodically confirm that they are on the lookout, I may have exposure for failure to supervise," says Brown.

Might be malpractice?

Note also that you could be liable not only for negligence as a business owner maintaining a hazard but, if the hazard emerges under medical care, for medical malpractice, says Brown.

"If you have a patient who has low blood pressure and you leave her by herself on the table, that's not a good idea because it could be a fall risk," says Brown, because that risk was foreseeable and was not addressed. But if a healthy, non-challenged patient "is fine, gets off the table, and falls — if there was nothing that should have been foreseen — that would be on the patient, as they didn't exercise due care."
Foreseeable risk is especially a concern with previously injured, disabled or geriatric patients who may suffer from balance or mobility issues and with patients who've just had a blood draw or other treatment that might impair their responsiveness.

"Procedures such as drawing blood that might result in a patient being lightheaded and at risk for falling should cause the people who are performing those services to be on the lookout for warning signs of imbalance," says Goodman. "If I just send somebody off to the bathroom after I've done something that could have an effect on their balance without taking steps to confirm that the person is not dizzy, then where a fall is reasonably foreseeable, I have exposure for failure to prevent the fall."

Mind your HIPAA

Experts are clear that, whether the incident occurred under treatment or not, when a patient is injured, you should prepare an incident report separate from the medical record, because the latter is protected by HIPAA.

The medical notes also might include the incident if it's germane to treatment — e.g., if you treated the patient's injury. "Say you tell the patient, 'Here's a cup, go to the bathroom down the hall and get a urine sample,' and on the way they slip and fall," says Paul Edelstein, a personal injury specialist with Edelstein, Faegenburg and Brown in New York City. "That's not needed in the medical record, but you should record it in an accident report, depending on the nature of the incident. If the nature of the incident is in any way related to care, like a patient transfer from a wheelchair, it has to be in the medical record as well. If it has no bearing on treatment — like the gun in the Peoria case or a slip and fall, or a tile falling from the ceiling — that needs to be recorded in some fashion [in] a regular accident/incident report, not a medical record."

Get all the relevant details — time, location, reaction, treatment — and "record in real time, accurately, as close in time to it happening as you can," says Edelstein, because a contemporaneous report is "much less likely to be challenged. When you don't record, you leave a big gap. After a while people don't remember what they saw. A cover-up may be suspected."

Get expert help

After any "emergent needs are satisfied, the next step should be a call to risk management or the practice's legal counsel — which may be the same person or entity," says Flynn P. Carey, an attorney with Mitchell Stein Carey Chapman in Phoenix.

The idea is to make sure the practice is prepared in the event of an issue such as a lawsuit or publicity. "Even if the practice has met the standard of care, risk management and legal counsel can typically be more effective if they are involved as early as possible," says Carey.
The counsel/risk manager will likely call for "an internal investigation of the incident, the creation of documentation which is appropriate for the circumstances, a plan for addressing media inquiries and remedial measures, if applicable," says Carey. "Depending on the condition or circumstances that led to the injury, a risk manager may also consider proactive measures such as putting the premises liability carrier on notice of the on-premises injury in the event that an unsafe condition in the office caused or contributed to the injury."

What if you did it?

What if something goes wrong — or the patient thinks something's gone wrong — in the course of treatment as a result of the provider's actions, and the patient questions it? Edelstein says your manner should be forthright and accommodating.

"Immediately say, 'You have a right to get whatever help you need and I'll answer any questions you have," he says. "Don't be put off or try to hide anythingÉ Oftentimes, they won't see a lawyer if they think they're getting answers. They go to lawyer because the doctor is not answering their questions. Also, if the word 'attorney' comes up, and you say that's totally fine, it makes the patient think you're not hiding anything — and makes them less inclined to actually see an attorney. The last thing I would do is clam up."

On the other hand, don't say too much, says Goodman, "You don't want to say something like 'this should never have happened.' That's like an admission of liability. Obviously, if you cut somebody, treat that appropriately... A patient will want to know why it happened. If asked for a response, you could say, 'I addressed some bleeding subsequent to an incision.' It's better to stick to the facts. You shouldn't make a statement of opinion [about what you did]. And if you say 'I can't talk to you, I have to talk to the risk manager,' that's a weird answer and it looks like something is there."

But you should call your insurance carrier, says Brown, and fast — just don't announce it. "I would tell the patient, 'Thanks for sharing that with me, I have to step out, be right back' — and call the carrier. You might even want to call ahead of time if you anticipate an issueÉ don't handle it yourself. That's how doctors dig a deeper hole for themselves."