

GAIL HARRIS

The Changing Legal Landscape of Healthcare-Associated Infections

NARRATOR: Gail Harris, senior risk consultant with malpractice provider Medical Protective Company, recently spoke at a conference of the Association for Professionals in Infection Control and Epidemiology about the changing legal landscape of healthcare-associated infections. In this podcast, she discusses the ever-changing factors that clinicians and hospital administrators must consider as they develop infection prevention and control procedures.

INTERVIEWER: Today you talked about the changing legal landscape of healthcare-associated infections, and you asked many in the audience whether or not they felt the change in the atmosphere, or the change in regulations, and the change in awareness of HAIs is going to lead to more legal claims. And you had outlined some things you think are really going to impact future claims. I would like for you to address that a little bit here.

G. HARRIS: Sure, probably one of the first things that has happened that may have a big impact on an increase in claims is the mandatory reporting that we are seeing, and the public's access to that data. So many states have their reporting of healthcare-associated infections—it is already mandatory—and others are considering it, or have something on the agenda. The federal government is considering mandatory reporting of MRSA. So all of that is just sort of one spotlight focusing on HAIs. Another is the whole CMS prospective payment system. They have clearly identified at least two infections, healthcare-associated infections, that they are allegedly not going to pay for beginning in 2009, and have at least a couple of more infections on their agenda for future cuts, if you will, in payment. That, too, is going to focus the spotlight on HAIs and perhaps even say to folks that these infections are 100 percent preventable; and they aren't. Then thirdly, another big issue is the whole media focus.

Just so much media is focused on healthcare-associated infections, and sometimes particular bugs. We actually think of MRSA as maybe a celebrity bug because it is out there so much. So those things, and others—new rules and regs—are just altogether going to focus so much attention that I think we are going to see more healthcare claims related to this.

INTERVIEWER: Guidelines specifically, now that there are guidelines that hospitals are to be following, I suppose that if a hospital does not follow that guideline, therefore they become at more risk for a claim?

G. HARRIS: I think they will. That will come up during the discovery process, and I think plaintiffs' attorneys are going to know those guidelines better than some of us know them. I think if a hospital isn't following a guideline, particularly something that comes from the CDC, that they are just going to really throw that in our face during the course of the claim. So I advise folks that if they aren't going to follow those guidelines, to have a really good reason for it, and to document it in some minutes somewhere; then I think they might be okay. But you just can't ignore it.

INTERVIEWER: Right. Whose responsibility, if you had to say there is one person in the hospital whose responsibility it is to make sure that everyone in the hospital is keeping an eye on following the regulations and making sure that they are legally compliant? Is there one person, or is it a team of people who need to address this?

G. HARRIS: Really good question, and there is not one person. I think there are people in a variety of places. Of course we have compliance officers who look at certain rules and regs. We certainly have department heads in different areas who should know their specialty and make sure those things are introduced to the organization, and then implemented and followed. The infection preventionist, of course, has the obligation to bring the latest and greatest information to their organization, but overall, the person who holds the overall responsibility is clearly the CEO and the COO. They really need to be the ones to be sure that they are in the loop; that they know what is happening, and that their folks are making it happen.

INTERVIEWER: Given this new landscape and what we anticipate in the next five, ten years, what are some of the prevention tactics that hospitals can employ now to help protect themselves?

G. HARRIS:

I think the most important thing, and I tried to indicate that to the group today, is to just keep doing the right thing. As we get guidelines, as we learn more about infection prevention, you have got to go with that and give it your very best; educate people, influence behavioral changes, work with your state health department, just give it your best shot to keep preventing infections. I think we need to work very closely with COOs and CEOs, and they need to be much more involved in this than they have been in the past. They kind of used to talk to infection prevention folks and say, "What is our rate? Ah, it's four percent, that is under five percent, that is good enough. Keep up the good work." That was all they knew about it. They certainly need to be much more involved and to know what is going on, on really a day-to-day basis with regard to infections.