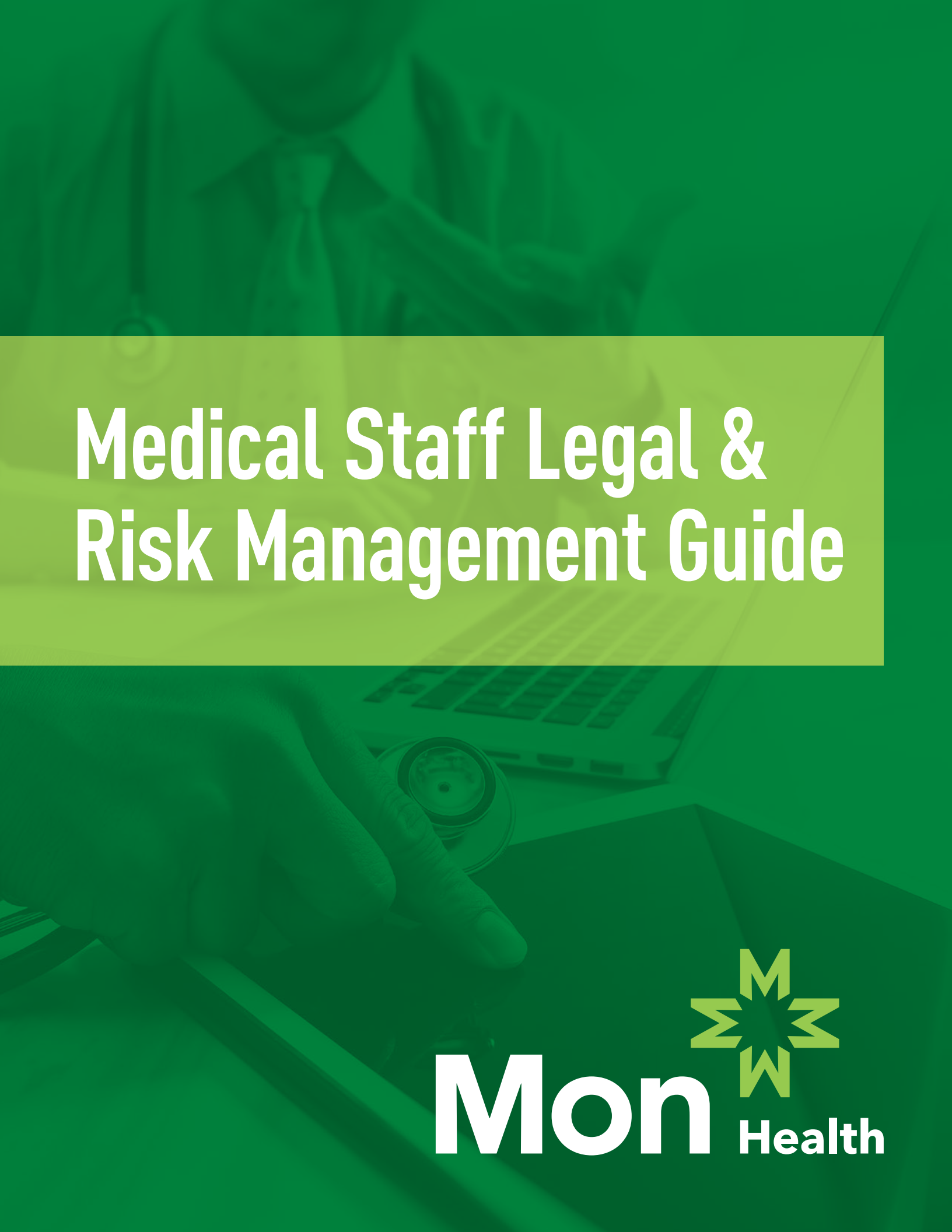
Medical Staff Legal & Risk Management Guide



Mon Health

Preface

This guide was developed by the Mon Health Legal and Risk Management Departments to serve as a resource for Mon Health Medical Staff. It addresses general legal and risk management issues in brief, and is not intended to provide an exhaustive, detailed examination of all the issues discussed here. If you need additional information on the issues presented in this guide or other legal or risk management issues, please contact a member of the Legal or Risk Departments.

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Table of Contents

Contents

Legal Department

The Mon Health Legal Department handles a wide variety of legal issues for all the Mon Health-affiliated entities. The Legal Department reviews, drafts and assists in the negotiation of agreements and contracts on behalf of Mon Health; manages lawsuits and litigation-related requests; offers advice and counsel on legal issues raised in either the operation of the hospital or the care of its patients; assists other departments on employment and insurance issues; and advises the company on legal risks and liabilities. In collaboration with the Risk Management and Compliance Departments, the Legal Department also advises on legal and regulatory compliance issues and provides training to the company on an assortment of legal topics.

Risk Management

Risk management seeks a patient care-centered environment that meets the best interests of both patients and providers. Successful risk management requires strong rapport and communication between providers and their patients. Risk management encourages the development and maintenance of technical and diagnostic skills and urges careful documentation of all patient care provided. It also includes gaining informed consent from patients, which requires that healthcare providers actively discuss treatment alternatives, known risks and expected results with their patients.

Please acquaint yourself with the written policies and procedures that apply to your patient care setting, and then follow them. If they are outdated or if you feel that they display inappropriate care patterns, work with the appropriate multidisciplinary council to change them to reflect current practice, being mindful of national and local standards. Please remember that in defending a claim or lawsuit, our patient care will be measured against our own policies and procedures, as well as local and national standards.

Communication

An open line of communication between the patient and the healthcare provider is a key factor in reducing claims and lawsuits. Studies have shown that patients who have good rapport with medical staff file fewer claims. Patients have a right to as much information about their healthcare as they desire. Please encourage patients to ask questions, in order for them to be fully informed when consenting to treatment. In addition, good communication among all members of the healthcare team is vital to providing quality patient care.

When there is a less than optimal outcome or if a patient suffers an iatrogenic injury, the need for physician/provider support is often at its highest. Facing these situations by discussing them openly and honestly, with an extra dose of caring, practitioners can keep the confidence of their patients and reduce the likelihood of litigation. Treating family members and friends courteously may also contribute to a patient's positive perception of the quality of care.

Attorneys/Lawsuits

Contact the Mon Health Legal Department – Do not talk to attorneys about patient care matters without first consulting with the Legal Department. Revealing sensitive patient care information to unknown individuals, regardless of whom they say they are, is a violation of confidentiality and may subject you to liability. If the attorney is pushing hard for responses, please simply indicate that you need to consult with legal counsel before responding.

The Legal Department or Risk Management will place a courtesy call to a physician when he/she receives notice of an attorney requesting records, and it is determined that the record review may indicate the beginning of litigation activity.

Expert Witness Testimony

If you are not an involved witness or a defendant in a case and are asked to testify, it will likely be as an expert witness. **It is inappropriate for Mon Health-employed physicians to serve as expert witnesses against the interests of Mon Health or to create precedents that may be contrary to the interests of Mon Health.** Whenever asked to provide an expert opinion regarding a patient's care or medical possibilities in which you have no involvement, your services are optional, and you may not be required to testify. If you elect to do so on your own time, you are entitled to receive an expert witness fee from the requesting attorney for your services based on what your time is worth.

When considering testifying as an expert, it is your professional responsibility to assure that you have no conflict of interest and are adequately qualified. In any case, you should contact the Legal Department to assist before agreeing to any such request.

Medical Examination at Request of a Lawyer

It is common in personal injury lawsuits for a lawyer to request a non-treating physician to perform an independent medical examination of the person who is seeking an award of damages. The examination may be arranged with the consent of all attorneys involved in the lawsuit or may be ordered by the court in which the lawsuit is pending. The attorney who requests the examination is responsible for paying the physician's fee for conducting the examination and preparing a report.

The scope of an examination may be limited by verbal or written agreement of the attorneys or by the court order. The attorney arranging the examination has the obligation to notify the physician of any restriction on the examination, including specification of the time, manner, conditions and scope of the examination. In the absence of a restriction, the physician may take a history and perform such examination as may be necessary and advisable, in the physician's judgment, to formulate an informed opinion regarding the person's medical condition.

The physician who performs an independent medical examination should communicate findings and opinions only to the attorney who arranged the examination. Such examinations typically do not result in the establishment of a physician-patient relationship. Prior to performing any independent medical examination at the request of an attorney, you should consult with the Legal Department for guidance as to the scope of the request and your obligations or desire to participate.

Medical Reports for Lawyers

Although physicians are required by law to provide a copy of pertinent office records to a patient's attorney if presented with an appropriate authorization signed by the patient, the physician is not legally obligated to provide an attorney with a medical report that summarizes, explains or supplements the medical record. However, because such medical reports are often useful in the disposition of claims, physicians may, after consulting with the Legal Department, provide such reports under proper circumstances. If you are requested by a lawyer to provide a medical report related to your care of a patient, you should immediately contact the Mon Health Legal Department, which will advise and guide your response.

Informed Consent

Necessity

An informed consent is necessary (except in emergency situations, see below) before performing any procedure or treatment other than simple or common procedures wherein the risk is low and commonly understood. In order to give a valid consent, a patient must freely consent to the treatment or procedure, having been given enough information explained in layman's terms to make a knowledgeable decision whether to undergo the treatment or procedure. It is ultimately the treating physician's duty and responsibility to obtain consent.

Emergency

An informed consent is not necessary in a medical emergency, even if the person is a minor, when: (1) the patient is not able or competent to give consent; (2) the patient has not previously withheld consent for the planned procedure; and (3) a valid surrogate is unavailable to give consent. The chart notes should clearly document the situation. A medical emergency, for consent purposes, is defined as a situation that necessitates medical treatment (1) to preserve the life of the patient, or (2) to prevent serious impairment of the patient's health.

Documentation

Please do not hesitate to call the Risk Management Office for guidance regarding documentation at any time.

Reducing Liability Through Improved Charting

The patient's medical record almost always becomes the primary focal point throughout a malpractice action. As the memories of the plaintiffs and defendants can be faulty, selective or both, courts (as well as individual healthcare providers) must rely upon the medical record as the primary account of what actually transpired. Therefore, it is **very** important to document all relevant and appropriate information regarding a patient's healthcare in the chart. Further, it should be done legibly. A plaintiff's attorney may be convinced to take on even the most marginal of cases if the medical records are incomplete, inaccurate or poorly written.

What to Document

The following items should be documented: facts; dates and times; patient's condition; treatment recommended; treatment provided; non-compliance with recommended treatment, prescriptions or missed appointments; all prescriptions and refills; evidence of informed consent; sources of information if other than the patient; rationale for any unusual type of care; complications, mishaps or unusual occurrences; significant discussions with patient or family; worries or concerns expressed by patient or family; brief record of legal threats and complaints about the quality of care from the patient or family; responses to entries by others that require your action; and any other information you feel is necessary in describing the patient's course of treatment.

What Not to Document

The following items should not be documented: risk-prevention activities; anything about an incident report; matters that have legal implications but have no value to patient care; an entry requiring action by you or other staff unless you are certain it will take place; disagreement with another entry unless there is a reasonable explanation; opinions regarding the actions of other healthcare providers; statements blaming the hospital or economic factors; disapproval or a negative value judgment of the patient; or self-serving statements.

Corrections to the Medical Record

Documentation in the medical record should be done timely and efficiently. Include conversations with families and patients describing the plan of care, as well as voiced understanding from the receiver. Refrain from using words such as negligence, duty or breach in your documentation. Addendums can be made to the document, providing that they have a time stamp showing the time the record was amended. If an adverse event occurs, do not hesitate to reach out to the Risk Management Department if documentation guidance is warranted.

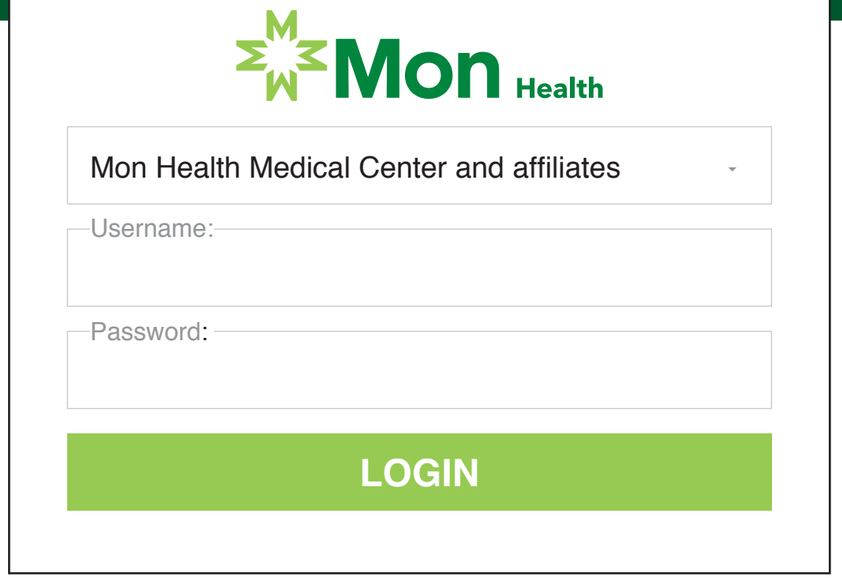
Occurrence Reports

The Occurrence Report is an important communication and risk management tool used within the hospital to provide confidential notification of any situation involving injury or potential injury to a patient, visitor or any third person, or any event that may contribute to liability problems in the future. Occurrence Reports allow the Risk Management Office to identify potential liability and intervene early in an effort to reduce or eliminate liability. Occurrence Reports are confidential. *As a result, an Occurrence Report does not become part of the patient medical record, nor should any mention of an Occurrence Report be made in the patient's chart.*

The RL Occurrence Reporting Icon is located on all Mon Health computer desktops.

For contracted medical staff, the sign-on is: mongeneral (all lowercase) and password: MGHpass!

For employed medical staff, the sign-on and password are the same as the email address before the @. For example, John Smith's sign-on is "SmithJ" and the same password to log into email.

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