



MED-NET CONCEPTS LETTER ©

Where Compliance and Ethics, Risk Management/Safety, Quality Assurance and Performance Improvement, Reimbursement and Law Come Together.

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Dear Colleague,

Awareness is the first step toward an effective Compliance, Risk Management, Quality Assurance, Performance Improvement, and Law program. The following true reports are intended to broaden your understanding and awareness of potential exposures of liability throughout healthcare settings with the expectation that, as a starting point, forewarned is forearmed.

We believe a first-hand opinion of our sector of healthcare provides invaluable insight into the daily challenges facing our community.

Remember, it is important to immediately report any abuse of residents/patients, no matter the circumstances.

Please contact us for additional information as well as to discuss potential proactive programs to detect, prevent, and mitigate potential exposures and damages.

ALERTS



EEOC legal staff filed 199 merits lawsuits alleging discrimination in fiscal year 2018.

The lawsuits filed included 117 individual suits and 45 suits involving multiple victims or discriminatory policies and 37 systemic discrimination cases.

At the end of the fiscal year, the EEOC had 302 cases on its active docket. The EEOC achieved a successful outcome in 95.7 percent of all district court resolutions. See their stats [here](#).

Six Senior-Care Centers in Southern Arizona Accused of Discriminating against the Deaf

Six Tucson-area facilities that provide assisted living with skilled nursing care for older adults are being sued by a nonprofit housing council claiming they discriminate against deaf individuals. The Southwest Fair Housing Council, an organization in Tucson, is naming a dozen nursing homes and assisted-living facilities in the Tucson and Phoenix areas it says are breaking state and federal laws, including the Fair Housing Act and the Americans with Disabilities Act. The housing council used “testers” to determine whether the facilities would supply a sign language interpreter and other services for a deaf resident if requested or necessary. The testers, who used aliases when they went to the facilities, posed as grandchildren inquiring on behalf of fictional deaf grandparents who use American Sign Language. Audio recordings by telephone and/or videophone calls were made of all contacts between the testers and facility employees regarding what services were available for the deaf grandparents. Testers also visited facilities in person and recorded the conversations.

Risk Management Perspective:

Healthcare providers have a duty to provide appropriate auxiliary aids and services when necessary to ensure that communication with people who are deaf or hard of hearing is as effective as communication with others (ADA 28 C.F.R. § 36.303(c)). The U.S. Department of Justice expects that the healthcare provider will consult with the person and consider carefully his or her self-assessed communication needs before acquiring a particular auxiliary aid or service (56 Fed. Reg. at 35566-67).

Two Residents and One Officer Injured in Baltimore Nursing Home Fire

Two residents were injured in a fire at a Baltimore nursing home and one officer was treated for smoke inhalation. When firefighters arrived on the scene, no fire or smoke was visible, but when they entered the second floor of the three-story nursing home, they were immediately hit with an immense amount of smoke, a Baltimore Fire Department spokeswoman said. Thanks, in part, to a working sprinkler system, the fire was contained to one unit, she said. Residents on the first two floors were evacuated and those on the third floor were told to shelter in place as firefighters put out the fire.

Towels Spontaneously Combust Forcing Boston Nursing Home Evacuation

A late night fire forced the evacuation of 40 residents at a Boston nursing home. No one was hurt, and damages were minimal, but residents were forced outside for a short period of time to escape the smoke and haze caused when a pile of towels spontaneously combusted at 11:47 p.m., according to South Boston Fire Chief Steve Phillips. The towels, which had been used to clean the kitchen oven with oven cleaner, had been washed with laundry detergent, dried, folded and placed in a clothes basket in the laundry room. "Apparently there was some sort of chemical reaction from the oven cleaner used and the laundry detergent that caused the spontaneous combustion that smoked up the building," Phillips explained. The residents sat outside, wrapped in blankets provided by fire department and rescue squad personnel. Firefighters set up fans to remove the odors, smoke, and haze from the dining room and front lounge, so the residents could be returned inside while firefighters continuing airing out the rest of the facility.

Risk Management Perspective:

Each facility must have a policy and procedure in place regarding all emergency responses, and all personnel should be current in their training. Safety systems in a facility should be periodically checked to ensure they are in good working condition.

Louisiana Nurse Dies Days after Attack by Patient

A nurse died days after being physically attacked by a mental health patient at a Louisiana hospital. During the attack, the nurse tore a muscle in her leg and had other injuries, but was able to finish her shift. After the attack, she went to the emergency room where she was treated and released. She returned to the hospital six days later to be seen in the emergency room and was admitted to the ICU. She died a few days later of a blood clot in her right leg and a pulmonary embolism, a blood clot that has formed in or traveled to the lungs. The death was ruled a homicide.

Risk Management/Safety Perspective:

This matter highlights the importance of an effective workplace violence prevention program that includes the following five elements:

1. Management commitment and worker participation
2. Worksite analysis and hazard identification
3. Hazard prevention and control
4. Safety and health training
5. Recordkeeping and program evaluation

Nursing Home Provider to Pay \$25,000 to Settle EEOC Pregnancy Discrimination Suit

A nursing home provider will pay \$25,000 and provide other relief to settle a pregnancy discrimination lawsuit brought by the US Equal Employment Opportunity Commission (EEOC). The EEOC charged that the provider violated Title VII when it denied a reasonable accommodation to a pregnant employee with a medically imposed lifting restriction and then unlawfully required the employee to resign because of her pregnancy-related lifting restriction. According to the EEOC's lawsuit, the certified nursing assistant was subjected to disparate treatment as the provider refused to accommodate her pregnancy-related lifting restriction, while accommodating the restrictions of other non-pregnant employees who were injured on the job and who were similar in their ability or inability to work.

Human Resources Perspective:

Supervisors and managers should be aware of the need for pregnancy light duty if other light duty is provided to employees. Review all such requests with senior management for direction based on your facility's policies and procedures. Internal and external audits should ensure that all requests for accommodation have been documented.

Oregon Hospital Hit with Whistleblower's Complaint

A whistleblower, who alerted state healthcare officials about hazardous and neglectful conditions for patients at an Oregon hospital, quit and filed a complaint claiming the hospital system's management retaliated against him for raising concerns. The complaint filed by the longtime nurse to the state Bureau of Labor and Industries made new allegations about how the hospital system had responded to the investigation by the Oregon Health Authority, the one the former nurse helped spark. Specifically, it suggested that the management sought to punish him after he complained of safety issues, and also kept him from talking to state investigators on more than one occasion.

Compliance Perspective:

Educate staff during new-hire orientation and quarterly regarding the facility compliance plan and the reporting of issues, including the hotline. Ensure staff are able to communicate their concerns, management listens to their concerns, and there is no retaliation.

Yours truly,



David S. Barmak, JD, CEO.

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