

Risk Matters: Curbside Opinions



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The term “*curbside consultation/opinion*” is often used to describe an informal opinion or interpretation between colleagues that does not result in a “formal” consultation. Curbside consultations are transient in nature and typically occur in the hallway, break room, golf course, etc. often beginning with “Hey, let me run something by you.” In most cases, the physician who is “consulted” has no intention of becoming involved in the patient’s care, billing for services, or having their identity documented in the record. They also have no reasonable expectation of becoming involved in a claim or lawsuit due to this informal discussion. Unfortunately, when the curbside opinion is used to make or confirm treatment decisions, and a claim or lawsuit is subsequently asserted related to those decisions, the identity of the colleague who provided the informal consultation may be revealed because it can often strengthen the defendant physician’s defense. Consequently, the consulting physician may be deposed and then potentially brought into the lawsuit and exposed to potential liability.

The best advice for physicians who participate in an informal consultation is to establish the following at the outset:

1. They are not being formally consulted
2. They do not have all the facts or the benefit of examining the patient
3. They have not reviewed the records
4. Their opinion or interpretation is general in nature and does not apply to any specific patient.

They should also confirm that this discussion is “strictly off the record”. While consistently establishing these parameters as part of the communication won’t guarantee that the consulting physician will never be exposed to potential liability, it does provide them with a basis for a defense later, if needed.

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