

To Policy or Not to Policy, That Is the Question



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Written policies in a work environment are often beneficial, especially from an administrative standpoint. They can provide clear directives and help ensure understanding, compliance, and consistency. They ensure that each employee is aware of their responsibilities and follow standardized protocols developed or adopted by the organization. Because of these benefits, many practices and providers believe that by having written protocols, their exposure to malpractice risk will be greatly reduced. If the written policies and procedures are accurate and consistently followed, they can help reduce the likelihood of malpractice claims. However, as we sometimes see, these same written protocols that were intended to prevent malpractice claims, can be used against the practice to establish the basis for the claim. When an employee deviates from the established written policies of the practice, it can potentially be used as evidence of negligence in a medical malpractice case. This risk increases significantly if the patient's injury could have been prevented by adherence to the established protocol.

In a medical malpractice lawsuit, the applicable standard of care that must be proven by the plaintiff is established within the subject medical community. However, a plaintiff's

attorney could argue that the practice's written policy reflects its own "institutional standard of care". In other words, the written policy created a specific or possibly higher standard for that particular practice. An employee's failure to follow that policy could then be presented as a breach of that institutional standard, making it easier for the plaintiff to prove negligence. An example would be a surgery center that has a written policy that all patients are required to remain at the center for four (4) hours post-procedure before being discharged. However, a patient is erroneously permitted to leave two (2) hours post-procedure and dies on the way home. If expert testimony establishes that the patient would have survived if he had been observed/monitored for the full four (4) hours, consistent with the "institutional standard of care" established through the surgery center's written policy, it could be difficult to defend such a claim.

The decision as to whether or not to rely upon written policies and procedures is up to the providers and the practice after carefully considering the benefits and the risks associated with each policy/procedure especially when they directly relate to patient medical care, medical decision-making, and/or the potential creation of an "institutional standard of care". It is always advisable to have any written policies or protocols drafted, reviewed, and/or approved by the practice's personal legal counsel. All staff should be educated on these policies when newly hired, and they should be reviewed periodically.

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