

# Stay in Your Lane ... and Follow the Rules of the Road



**By Tim Behan, JD**

On a recent road trip to south Florida to move my daughter across the state, I took note of all the bad driving going on around me. It's not that I haven't seen a lot of bad driving in the past, and I am certain that other drivers could criticize my driving skills and behaviors from time to time. For some reason, perhaps due to the start of the summer vacation season, the inability of drivers to consistently stay in their lanes and follow the rules of the road was leading to extreme chaos. We literally came to complete stops on the interstate, in the left-hand lane, due to drivers veering in and out of the traffic. I thought to myself, this reminds me of cases and calls I have handled over the years at SVMIC. And with that, a Sentinel article was born.

When I think about staying in my lane and following the rules, the word 'boundaries' enters my mind. I've written in a previous article about the rising inability of patients to respect providers' boundaries and follow their rules of the medical practice road. There seems to be a decrease in the number of calls I am receiving from our policyholders regarding negative patient behavior. But unfortunately, we know there are still challenging patients

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and situations. Nonetheless, there are numerous roads in the medical- legal world, not just the ones we travel on with patients. The rules of those roads are sometimes easy to follow; and sometimes not. But they all have potential dangers that can lead to trouble when the traveler fails to stay within the lanes and follow the rules.

Perhaps the most heavily traveled road that I see daily is that of medical record requests. It is the superhighway of the medical-legal world. The attempts to get medical records come in many ways and are potential traps for the unaware. I am not speaking of the valid HIPAA signed authorizations by patients. I am speaking of attempts by others to get records, particularly subpoenas, from lawyers. This is especially true of family law lawyers in divorce or custody dispute cases involving confidential mental health records of the children that might need protecting. I also see subpoenas sent from other states saying that the recipient must comply with the rules of their jurisdiction. There is a legal pathway lawyers are to use when sending out of state subpoenas, but it is easier and cheaper to forego that process. Admittedly most of the time subpoenas are valid, however if you receive a confusing subpoena, it is always best to contact the claims department so that one of the attorneys may assist you. Some less frequent avenues used to obtain records are requests from out of state record collection companies, investigators of some kind, and family members claiming to have power of attorney rights to records. Again, when in doubt, contact us for help so that you don't unwittingly commit "traffic" violations of some sort.

I have seen instances in the past where providers chose not to stay in their lane and follow the rules of the road and suffered the consequences. A while ago, one of our surgeons and his physician assistant were sued for alleged post-op wound care issues. One of the plaintiff's claims was that the surgeon delegated his duties to the PA, even those that the PA was not qualified to handle. Essentially, according to the plaintiff's lawyer, the PA provided care that should have been provided by the surgeon, to the patient's detriment. Their defense lawyer gave the surgeon and PA instructions on what road to follow during the trial to best present their case. At trial, the defense lawyer deftly produced testimony from the two that they were staying in their lanes and performing within their roles and duties. But between breaks the jury saw the PA fetching items for the surgeon, getting glasses of water for the doctor when the doctor could have easily done so, and performing other tasks at the surgeon's request. They veered off the pathway with their actions. What was seen made a greater impact than what was said to the jury, and they rendered a verdict for the plaintiff.

Another instance that I recall where the provider failed to stay in a lane and follow the prescribed "rules of the road" occurred a few years ago with a nursing home director who also provided care to the residents. The nursing home was being sued in a medical malpractice case. The physician was not a defendant in that case. But an investigator with the State reached out to the doctor about the conditions of the nursing home. These conditions were part of the lawsuit. The doctor reached out to us, and I advised not to speak with anyone until I could get a plan in place to protect the physician's interests. But this doctor was very mad at the administrators of the facility and disregarded my advice.

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The physician spoke with the investigator thinking it was an off-the-record conversation. It, of course, was not. The defense lawyer for the nursing home got a record of the conversation and brought the doctor into the lawsuit. The physician's "road rage" if you will lead to a poor decision that resulted in a settlement payment and databank report.

There are many more examples that could be given. Suffice it to say, just like driving on the interstates of south Florida, the various avenues we encounter in the medical-legal field are equally fraught with peril. We must always navigate carefully, stay in our lanes, and follow the prescribed rules of whatever road we are traveling. It lessens the chaos and keeps complicated matters simple. And as always, if help is needed navigating your medical- legal roads, we are a phone call away to help guide and assist you on your journey.

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