

Curbside Opinions Update



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The Risk Department frequently receives questions about informal consultations, or “curbside opinions,” including what qualifies as one and what does not. Because legal protections may be interpreted narrowly, physicians and advanced practice providers should take specific precautions when offering informal guidance.

Although these are “bird’s eye view” examples and depend on the facts, here are some of the types of questions along with our responses:

Question: “If I don’t receive compensation, they can’t sue me, right?”

Answer: That is not correct. The question is: “Is a duty owed to the patient regardless of whether the physician/Advanced Practice Provider receives any type of compensation?” The determination of whether this duty exists is largely fact dependent. However, if compensation is received, there is little doubt that the duty is owed.

Question: “If I am volunteering my time, such as performing physicals for the local sports team or at a health fair, with no intention of establishing a physician-patient/APP-patient relationship, this would be treated the same as an informal/curbside opinion, and therefore insulate me from liability?”

Answer: No. By voluntarily placing yourself in a position whereby you are expecting and/or are expected from the patient’s point of view to perform medical care, evaluation, testing, or treatment, the duty with the patient has been created and, thus, you could be liable for your own negligence.

Question: If the defense of informal/curbside opinion is determined not to be available, **can I** still rely on the “Good Samaritan” law to protect me?

Answer: Not necessarily. Although healthcare providers may sometimes invoke a Good Samaritan law, protection depends on the specific facts and the law of the state where the care is rendered. Physicians, APPs, other medically trained healthcare workers, and emergency responders may not be protected when acting within their professional capacity or under a pre-existing duty to treat the patient. Relevant considerations may include whether the provider was off duty. For example, at least one court has held that a physician walking through a hospital outside the physician’s customary assigned practice area could not rely on the Good Samaritan law because the physician had a pre-existing duty to care for patients within that facility.

See below for a refresher on how to handle curbside opinions to best protect yourself.

The terms “informal *consultation/curbside opinion*” are 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.” They also frequently happen via a phone call from a colleague.

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 confirm with the requesting physician 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 state that the discussion is informal and should not be documented or relied upon as a patient-specific consultation. Although consistently establishing these parameters cannot eliminate potential liability, doing so may help demonstrate the limited nature and scope of the communication if a claim later arises.

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