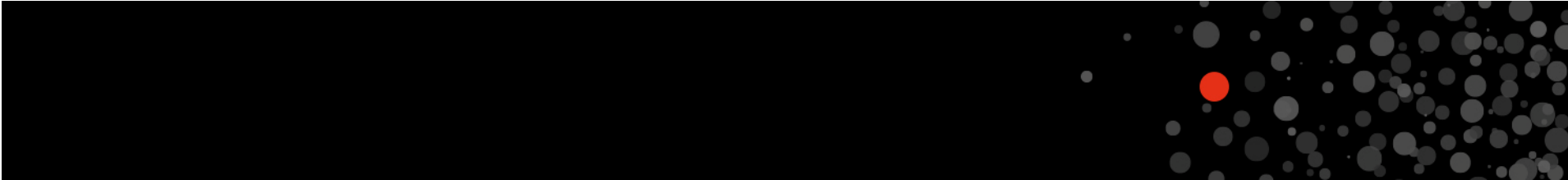




# Risk Management for Governing Boards:

## What You Need to Know



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FEATURED

## Medicare officials fault hospital board

By Amie Windsor, Staff Writer, amie@sonomawest.com Sep 5, 2017 2



PREV

NEXT



Stewards of the Coast and Redwoods presents

### OLD GROVE FESTIVAL

DEAD WINTER CARPENTERS & ONE GRASS TWO GRASS

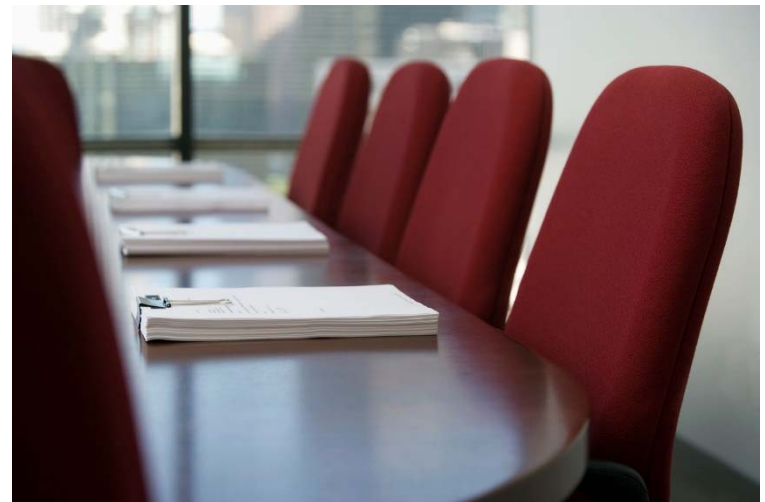
<b>VENUE &amp; TIME:</b> Armstrong Redwoods SNR Saturday, Sept. 16, 2017 Gates Open at 4:30 PM	<b>TICKETS &amp; INFO:</b> www.OldGroveFestival.org stewards@stewardsofcoast.org (707) 869-9177
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Sonoma West  
Times & News 9-7-17

TRENDING NOW

# Major Board Functions

- Ensuring high quality and safe patient care
- Hiring and retaining an effective CEO
- Mission development and long-range planning
- Oversight of medical staff credentialing
- Financial oversight
- Board education and development, including self-evaluation



# What are Strategic Risks?

- Brand
- Reputation
- Competition
- Failure to adapt to changing times
- Health reform
  - New payment mechanisms
  - Quality vs. quantity
  - Outcome vs. process
  - Efficiency
- Customer priorities



# More Strategic Risks. . .

- Managed care relationships
- Partnerships
- Conflict of interest
- Marketing and sales
- Media relations
- Mergers & acquisitions
- Divestitures, joint ventures, affiliations and other business arrangements
- Contract administration
- Advertising



# Strategic Risk Management

- Compliance with governmental billing regulations
- Inability to effectively engage patients
- Our workforce is resistant to change
- Impact of trend toward value-based compensation models
- Information privacy and cybersecurity
- Aging workforce
- Clinical risk



# Emergency Medical Treatment and Labor Act (EMTALA)



- Nondiscrimination statute
- CMS regulation
- EMTALA requirements:
  - Determine if an emergency medical condition exists
  - Stabilize
  - Transfer



# EMTALA

- Risk Management Implications
  - Noncompliance may result in an investigation.
  - Civil penalties
  - Forfeiture of Medicare provider agreement
  - **Private cause of action**
  - Failure to report another hospital that is suspected of having violated EMTALA may result in a \$50,000 fine.





# Healthcare “Fraud”

- Billing for services that were not rendered
- Making false statements to obtain payment/enhanced payment
- Receiving payment for referrals
- Making prohibited referrals for certain health services

# Healthcare “Abuse”

“Abuse describes practices that, either directly or indirectly, result in unnecessary costs to the Medicare Program. Abuse includes any practice that is not consistent with the goals of providing patients with services that are *medically necessary, meet professionally recognized standards, and priced fairly.*”

# Fraud and Abuse Penalties

- Imprisonment
- Fines
- Loss of licensure
- Exclusion from Medicare
- Civil liability



# Penalties for False Claims

Up to three times the government's loss, plus an additional \$ 21,563 per claim



# Qui Tam Lawsuits

- Incentive for whistleblowers – receive up to 30 percent of a False Claims Act recovery
- Most common whistleblowers
  - Ex-business partners
  - Current or former employees
  - Competitors
  - Patients



# Anti-Kickback Statute

- Criminal offense to knowingly offer, pay, solicit, or receive any remuneration **directly or indirectly to induce or reward referrals of items or services** reimbursable by a Federal health care program
- Regulations provide exceptions “safe harbors.”
- OIG provides “advisory opinions” and “fraud alerts.”

# Physician Self-Referral Law (Stark Law)

- Prohibits a physician from making a referral for health services to an entity in which the physician has an ownership interest or compensation arrangement
- CMS provides advisory opinions.



# HIPAA Privacy Rule

- Inspect and copy PHI
- Confidential communication
- Request corrections/amendments
- Right to restrict disclosure
- Right to receive an accounting of disclosures
- Authorization required for release unless:
  - Treatment
  - Billing
  - Healthcare operations

# HIPAA Security Rule

- Applies only to electronic PHI (e-PHI)
- Requires organizations to ensure the following with regard to data:
  - Confidentiality
  - Integrity
  - Availability

# Enforcement: Civil Monetary Penalties

Violation	Each Violation	All Identical Violations per Calendar Year
Did Not Know	\$100 - \$50,000	\$1.5 million
Reasonable Cause	\$1,000 - \$ 50,000	\$1.5 million
Willful Neglect - Corrected	\$10,000 - \$50,000	\$1.5 million
Willful Neglect – Not Corrected	\$50,000	\$1.5 million

Responsible Federal Agency: Office of Civil Rights

# Enforcement: Criminal Penalties

Cause	Fine	Prison
Knowingly obtaining or disclosing	\$50,000 and/or	Up to 1 year
Obtaining or disclosing under false pretenses	\$100,000 and/or	Up to 5 years
Obtained or disclosed for commercial advantage, personal gain or malicious harm	\$250,000 and/or	Up to 10 years

Responsible Federal Agency: Department of Justice

# OSHA

- Federal agency of the US DOL
- State laws often mirror OSHA
- Requires employers to provide safe workplace
- Inspections-planned or unplanned
- Right to object to warrantless inspection
- Penalties for violations-\$12,000 to \$126,000

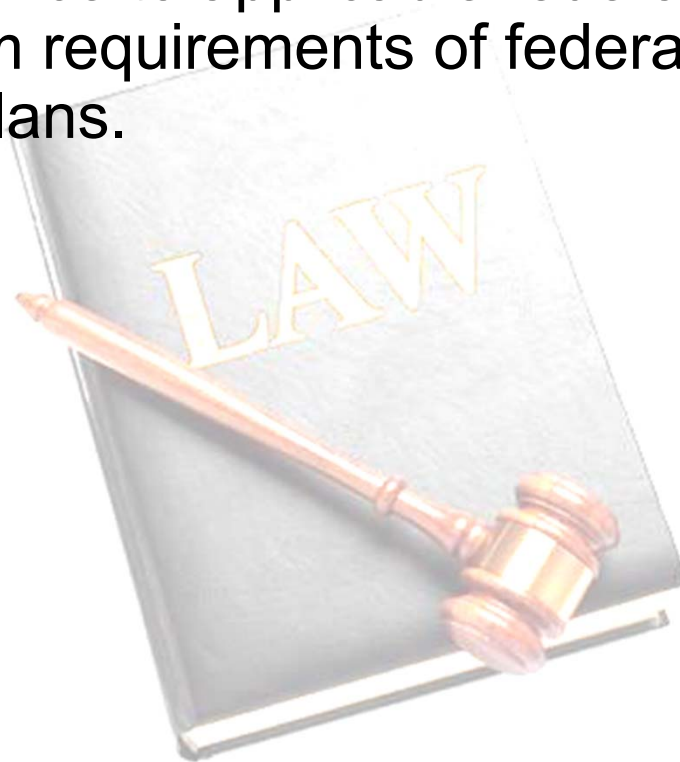


# Examples of OSHA jurisdiction

- Needlestick Safety and Prevention Act (2000)
- TB Exposure Control Plan
- Hazard Communication- MSDS
- Infection Control practices-TB, blood borne pathogens regulations
- Exposure to toxic substances
- Workplace violence prevention program

# Corporate Compliance Program

The primary purpose of a compliance program is to promote adherence to applicable federal and state law and the program requirements of federal, state, and private health plans.





# OIG - Compliance Program Basics



## Seven Fundamental Elements

- Written policies and procedures
- Compliance professional
- Effective training
- Effective Communication i.e. process for receiving complaints (hotline)
- Internal monitoring (audits)
- Enforce your standards
- Promptly respond to issues

# Financial Board Duties

- Establishing and ensuring the organization's compliance with proper financial systems and controls;
- Regularly evaluating the organization's financial health; and
- Ensuring that the organization is on a financially sustainable path.



# Policies

- **Conflict-of-interest policy** to guard against self-dealing transactions.
- **Document retention policy** to protect against loss or inadvertent destruction of documents.
- **Code of ethics** to establish conduct guidelines for board, management, staff, and volunteers.
- **Whistleblower policy** that protects staff and volunteers who report unethical or unlawful practices within an organization.

# Governing Body Accountability

Boards govern, CEOs run operations,

**YET**

The Board is ultimately responsible for ensuring that high quality care is consistently and effectively delivered to patients.

A major function of the Board is the establishment and use of effective policies and procedures for appointment and reappointment of physicians and providers to the medical staff.

# Operational Risks

Operational risks are related to inadequate or failed processes, people or systems



# Operational Risks

- Inefficient systems leading to increased costs
- Ineffective systems leading to patient harm
- Communication problems
- Inadequate staffing
- Staff competence
- Lack of physician engagement
- Technical failures
- Inadequate policies and procedures
- Lack of interoperability

# Operational Risks

- Reorganization due to mergers, acquisitions, partnerships, restructuring
- Lack of a robust culture of safety





# Risk Identification

- Event Reporting
- Verbal Reports
- Patient and Visitor Complaints
- Record Requests by Attorneys/Claims Data
- Patient Satisfaction Surveys
- Quality/Patient Safety Data
- Utilization Data
- Clinical Risk Assessments
- Survey Reports
- Walking Rounds



# Adverse Event Management

What we know:

- Provides a record of individual events
- Includes near miss reporting
- Gives the ability to track and trend
- Offers data to prioritize improvement work
- Supports reporting requirements
- Culture impacts willingness to report



# Culture of Safety

A culture of safety emphasizes

- Blameless reporting
- Successful systems
- Knowledge
- Respect
- Confidentiality
- Trust



# Actions for Organizational Leadership

## Leaders and Boards of Health Organizations

- Prioritize transparency, safety, and continuous learning and improvement.
- Frequently and actively review comprehensive safety performance data.
- Be transparent about the membership of the board.
- Link hiring, firing, promotion, and compensation of leaders to results in cultural transformation and transparency.

# Credentialing & Privileging

Two key board functions in credentialing and privileging

1. Attending to process
2. Decision making

Inadequate processes and decision-making information can contribute to liability for negligent credentialing



# Negligent Credentialing

If the hospital knows or should know that a provider may not be qualified to provide a service or perform a procedure but allows them to do so anyway, the hospital is at risk for allegations of negligent credentialing if a patient is injured as a result.



# Traditional Hazard Risks

## Natural disaster and business interruption



- Fire, flood, wind, earthquake
- Security issues
- Aging facilities
- Loss of valuables
- Facility management
- Construction/renovation issues

# Other Hazard Risks



- Loss of use of medical equipment
- Known incident not reported timely
- Management errors and omissions
- Pollution, mold, terrorism
- Punitive damages, government fines



# Emergency Management: Prevent or Mitigate

## Hazard vulnerability analysis

- Identify Hazards
- Evaluate associated risks
- Develop an Emergency Plan
- Re-evaluate insurance coverage



# Emergency Management: Prepare

- Develop an Emergency Operations Plan (EOP)
- Incident Command System (ICS)



Sources: Roberta Carroll (Series Ed.) and Peggy Nakamura and Roberta Carroll (Volume Eds.), *Risk Management Handbook for Healthcare Organizations*, Sixth Edition, Volume 1: The Essentials, John Wiley & Sons, Inc., San Francisco, CA, 2011, pp. 513-536; The Joint Commission, *Accreditation Requirements – Hospital Program*, Introduction to Emergency Management Chapter, The Joint Commission, Joint Commission Resources, Oakbrook Terrace, IL, Effective July 1, 2015.

# Emergency Management: Implement and Respond

- Training
- Drills
- Evaluation
- Improvement



# Emergency Management: Recovery

- Documentation of damages
- Financial impact
- Employee recovery
- Public relations
- Equipment and supply inventory



# General Security measures

- Require identification for all patients and staff members
- When appropriate require ID for visitors, contractors and vendors
- Control access to sensitive areas.
- Respond immediately to a security incident or failure.
- Implement emergency security measures.
- Develop a plan for treating VIPs.
- Implement a workplace violence prevention plan.

# Parking Lot Security

- Surveillance cameras
- Security guard patrol
- Weather related maintenance
- General upkeep
- Slip and falls in parking lots—GL/WC

# Infant Security

Hospital policy should address:

- Special personnel identification procedures
- Newborn/parent identification method
- Strictly controlling access to the nursery
- Visitor restrictions
- Use of agency, float staff



# ED Security

ED security policies should address:

- Dedicated security officer coverage
- Weapon use by security and law enforcement
- Enhanced monitoring of entrance areas
- Use of metal detectors, alarms
- Access and visitor control
- Non-violent crisis intervention



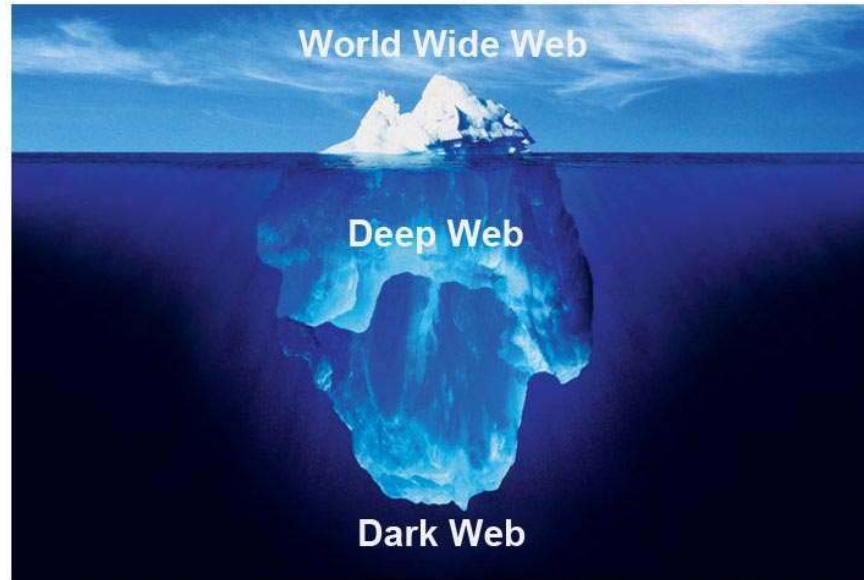


# Wired to succeed

- Drives efficiencies & federal payment incentives
- Improves patient care
- Health care-associated infection surveillance
- Population health management
- Improves patient experience
- Patient portals
- Obtain, use and share their information securely
- Data analytics
- Reporting quality metrics
- Secure messaging
- Telehealth



# Profit & Loss of Cyber Attacks



- Name, address and social security number  
\$ 1 - \$ 3
- Detailed medical records with unique patient identifying numbers  
\$ 150 or more



# 2017 Breaches

St. Mark's Surgery Center	33,877
Pacific Alliance Medical Center	266,123
Plastic Surgery Associates of South Dakota	10,000
Anthem BlueCross BlueShield	18,000
Women's Health Care Group of Pennsylvania	300,000
Peachtree Neurological Clinic	176,295
UC Davis Health	15,000
Verizon	14 million
Bupa Global Health Insurance	108,000
Indiana Medicaid	1.1 million
Cleveland Medical Associates	22,000
Airway Oxygen	500,000




# 2017 Breaches

The DarkOverlord (hacker) “A Business a Day”	12,300
Washington State University	1 million
Molina Healthcare	4.8 million
Harrisburg Gastroenterology	93,000
Bronx-Lebanon Hospital Center	Many millions
The DarkOverlord (hacker) Aesthetic Dentistry, OC Gastro, Tampa Bay Surgery Center	180,000
Skyscraper (hacker)	500,000
Lifespan, Providence, RI	20,000
HealthNow Networks	918,000

# Risk Strategies

- Build a cybersecurity assessment into the basic IT security program.
- Who is responsible for what aspects of the system
- How to escalate a concern
- Collaboration & handoff in multi-department concerns
- Address specific threat related to medical devices including software updates and patches
- On-going training



# Morale

“The behavior of individuals employed by an organization is driven by employee morale which may be defined as the spirits of a person or group as exhibited by confidence, cheerfulness, discipline, and willingness to perform assigned tasks ("Definition of Morale," 2000). ”

# Retention and Turnover



# Absenteeism

- Bullying and harassment
- Burnout, stress and low morale
- Childcare and eldercare
- Depression
- Disengagement
- Illness
- Injuries
- Job hunting
- Partial shifts





# Compensation

- Three critical healthcare board responsibilities:
  - Executive compensation, goal-setting
  - Performance evaluation
  - Succession planning

# Board Strategies

- Talent strategy
- Employee engagement surveys
- Organizational structure
- Health and safety strategy
- Diversity and inclusion
- Hotline and follow up

# Clinical & Operational Risk: 11 Core Areas of Harm

1. Adverse drug events (ADE),
2. Central line-associated blood stream infections (CLABSI),
3. Catheter-associated urinary tract infections (CAUTI)
4. *Clostridium difficile* (*C. diff*) bacterial infection
5. Injuries from falls and immobility
6. Pressure Ulcers
7. Sepsis and Septic Shock
8. Surgical Site Infections (SSI)
9. Venous thromboembolism (VTE)
10. Ventilator-Associated Events (VAE)
11. Readmissions

# Hospital Acquired Conditions (HACs)

Conditions that are present as a secondary diagnosis, and could reasonably have been prevented through the application of evidence-based guidelines.

CMS Inpatient Prospective Payment System (IPPS) implications for HACs began October 1, 2008.

In 2017, the Hospital-Acquired Condition Reduction Program (HACRP) penalizes the lowest performing 25% of hospitals with respect to risk-adjusted HAC quality measures by 1% reduction in payments.

# Adverse Event Reporting

- Mandated reporting of 29 adverse events that may result in patient death or serious disability in numerous states, including both Washington and Minnesota.
- Reporting requirements include submission of root cause analysis (RCA) findings and actions with measurement of success.
- RCA process requires oversight by the governing board.





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