

Peer Reporting of Suspected Physician Misconduct

Physicians are ethically required to investigate the actions of problematic colleagues, even if the entire practice will come under scrutiny.

Commentary by Nancy H. Nielsen, MD, PhD

Dr. Phillips, a family physician with 10 years of clinical practice, works in a busy suburban practice along with 4 other partners. Dr. Phillips's group practice logs between 10 000 and 15 000 patient visits annually. Late one afternoon, Dr. Phillips is catching up on billing sheets for patients he has seen over the past few days. He is interrupted by Dr. Over, one of the partners, who tells him of an important last-minute meeting of the group partners at 7 AM the next morning. Surprised by the urgency of the meeting, he asks what the meeting is about. Dr. Over simply shrugs his shoulders and replies, "I guess we'll all find out."

Early the next day, all 5 doctors in the group attend the meeting, along with Josie Myers, the group's billing manager. It was, in fact, Ms Myers who called the meeting, and she tells the partners that on review of the last 2 months' billing records, it appears that Dr. Phillips may have billed for services that he did not provide. Specifically, she notes that he had billed a number of patients for cryotherapy of minor blemishes that were not noted in the medical record. Dr. Phillips responds by admitting that he may have "fudged" a few billing sheets, but that no patient was ever harmed by his actions, and, in fact, some additional money was brought into the practice. He said he was just trying to find a way to bill for all the extra time he spent with his elderly patients.

After Dr. Phillips is asked to leave the meeting, the partners—obviously uncomfortable with their partner's behavior—discuss how to proceed. Dr. Over states that the behavior may constitute misconduct and that they have a duty to report such action to the state medical board. Dr. Lee counters that bringing the state medical board into it puts all of the partners at risk for review. She suggests instead that Dr. Phillips should receive a verbal warning from the partners and should be strongly encouraged to make accurate billing sheets. As the clock nears 8 AM, and the first patients of the day have started to arrive, the partners adjourn the meeting with no set decision.

Commentary

Dr. Phillips is a busy family physician with a decade of experience in clinical practice. He is a partner in a 5-person group. The group's billing manager found that Dr. Phillips had been billing patients for cryosurgery on skin lesions without any chart documentation that the procedures were actually performed. Due to the nature of the procedures, no pathology specimens are available. The patients are described as elderly, which implies that they are covered under Medicare, but some may have other insurance coverage as well.

When the allegations are presented in an emergency group meeting, Dr. Phillips makes a stunning admission of fraud, which he undertook to increase his reimbursement for time spent with patients—time that he states was unbillable. Medicare does pay for time spent with patients, as time is one element utilized in Current Procedural Terminology (CPT) coding, but even if Dr. Phillips's contention were true, there would be no excuse for billing fraudulently [1]. "Fudging" is not the issue—fraud is.

A desire to be paid adequately for services rendered is legitimate, but physicians have to abide by agreements they enter into when they contract with anyone to perform services. Just as billing a patient directly for a service not

performed is clearly wrong, so is billing a third-party payer. A physician is obligated to bill honestly for services. If Dr. Phillips was unhappy with Medicare reimbursement, he had the opportunity to leave the program or stop accepting Medicare patients.

His motivation for the fraudulent billing is immaterial to the authorities, who have to be notified, but may be germane to his partners. If he billed out of ignorance, lack of knowledge of billing procedures, or simple error on his part or by his staff, the group may wish to counsel him in writing, provide instruction, and monitor his future practices.

Dr. Phillips makes no pretense of ignorance, nor does he express any remorse. His fraudulent billing creates an enormous legal liability for his group, which must respond promptly and firmly. Advice from the group's legal counsel is essential, as is a detailed audit of the extent of his billing irregularities. His charts should be scrutinized for all billings, not just cryosurgery procedures. The audit should cover billings for several years prior to the discovery of the problem. At a minimum, monetary restitution will be necessary to all insurers identified by the audit to have been billed fraudulently.

The group needs leadership, a strong moral compass, and a firm grasp of its legal obligations. A verbal rebuke is not enough. The group's immediate concern should be its liability with respect to Dr. Phillips's actions. If the partners share assets, they also share the liabilities. They could face treble damages under the Civil False Claims Act, 31 USC 3729, if they fail to report the fraud to federal authorities within 30 days. It is important that the group do a self-disclosure either to the Inspector General of the Department of Health and Human Services (HHS) or to the US Attorney for the region.

Dr. Phillips is liable under the same civil statute and also faces criminal penalties under the Health Care Fraud Act, Title 18 US Code Section 1347. It is not immediately necessary for the group to report Dr. Phillips to the state medical licensing board, although they may be required to do so under that state's regulations. A thorough investigation should occur first. Federal authorities will automatically report him if he is found guilty. Dr. Phillips and his group need separate legal counsel.

For each instance of false claims, the person or group is liable to the US government for a civil penalty of \$5500 to \$11 000, plus 3 times the amount of damages the government sustains because of the false claim. Criminal penalties may include fines and imprisonment for up to 10 years.

The group needs to consider very carefully what has just been learned about this physician's character. Next, legal counsel and the group's bylaws should be consulted to determine immediate options related to their partner. Can they suspend or terminate him? A written reprimand and audit of all future billing are the minimum actions that should occur without delay.

The group must take the following actions against Dr. Phillips: stop him, report him to the appropriate authorities, and then decide if it will be able to continue a professional relationship with him after his admission. The group should do some self-examination about its billing practices and undertake corrective actions such as random chart reviews to ensure that this type of conduct cannot happen easily in the future.

None of the legal obligations precludes the partners from reaching out to Dr. Phillips to see if he may be impaired, under significant stress due to financial or marital troubles, or suffering for some other reason. It would be important for someone in the group to make an effort to find out. What would not be appropriate is to fail to report the fraud.

Physicians have ethical, regulatory, and legal obligations as individuals and as members of group practices. An MD license is a privilege, not a right, and states regulate that privilege to protect the public from harm. Government agencies vigorously prosecute apparent fraudulent practices, with serious civil and criminal consequences for those found guilty. Honesty is a basic tenet of our profession; a dishonest physician does not deserve the public's trust.

Reference

1. Opinion 6.10 Services Provided by Multiple Physicians. *Code of Medical Ethics 2008-2009 Edition*. Chicago, IL: American Medical Association; 2008:184.
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