Physician Telephone Answering Service Communications

One of the “communication chasms” that impacts healthcare delivery involves the medical answering service. In most instances, the telephone answering service or exchange works quite well. Some believe that the use of smartphone technology - taking advantage of specialized apps and web-based communications - will decrease reliance on the physician telephone service or exchange. In fact, it is likely to be a mainstay of physician communication as long as patients use a landline, VOIP, handheld or smartphone.

What types of communication failures impact the physician telephone exchange? Some occur on the originating site, the physician telephone answering service. Such communication failures include:

- Dialing the wrong number.
- Not redialing a number after receiving a busy signal.
- Not dialing a backup number or using a backup paging system.
- Inaccurate message content.
- Not telephoning the physician in a timely manner.
- Not telephoning the physician or backup on-call care provider.

A serious but infrequent risk involves the operator who exceeds the bounds of the physician telephone service operator role and offers treatment advice to the caller. While the operator may mean well, such action could lead to delay in care and also set the stage for an allegation of practicing medicine without a license.
On the receiving end of communications, one can find a number of failures impacting patient care including:

- Providers turning off their telephones or pagers.
- Placing the telephone in silence mode only.
- Relying on a telephone or pager with poor reception or no reception.
- Relying on a telephone or pager with a low battery.
- Not returning calls from a patient.
- Not returning calls while serving as the on-call provider for a hospital.
- Not returning calls while serving as the backup on-call provider for a medical group or a number of medical groups.
- Not returning calls from another care provider for the patient.

A practical communication issue involves patients who require language interpretive services. Appropriate follow-up may be difficult if either the answering service provider or the physician cannot understand the caller.

Some may believe that there is little risk of litigation involving physician answering services. Two cases - some 24 years apart - may help dispel such beliefs. Considering how Alexander Graham Bell’s instrument, the telephone, is used today, there are some practical suggestions to promote better telephone answering service communications for busy physicians.

**The Legal Rulings.**

In a 1988 case, a couple sued their son’s physician for medical malpractice after their son died from meningitis.

On a July evening, the child had developed a temperature and had become lethargic. He also displayed signs of nausea. When his condition worsened around 8 p.m., the parents called the physician’s office. The baby’s mother was informed by the doctor’s answering service that the office was closed but that Dr. F. was on call and that he would return her telephone call.

After an hour, with the child’s condition becoming worse, the baby’s mother called the doctor’s office again. The mother was told by personnel from the physician answering service that “Dr. F. is just getting ready to pick up his calls and that he would call...shortly.” About five minutes elapsed and an unidentified caller telephoned the parents and indicated that she was calling on behalf of Dr. F. She said that they
should continue to provide cool baths and Tempra drops. She also suggested that the baby had a stomach virus and that the parents should give the child Gatorade.3

The next morning the mother brought the child to the physician’s office. The doctor recognized that the child had meningitis and the child was rushed to the hospital. He died two days later.4

In the lawsuit, the parents alleged that their son had died due to Dr. F’s negligent failure to advise them to take the child to the hospital for emergency care. The doctor denied this claim and moved for summary judgment. He testified that he had never received a telephone message from the parents and that he was unaware of the child’s illness. He claimed that he was on vacation until the morning after the unidentified woman spoke with the mother. He also claimed that he had not authorized anyone to pick up his messages or telephone his patients on his behalf.5

The night supervisor for the physician’s answering service gave contradictory testimony. She said that she had reviewed the message slip containing the parents’ emergency telephone call. The slip had been stamped and initialed indicating that it had been given out soon after the message had been received by the answering service. Further, the supervisor indicated that the parents’ message was provided to Dr. F. along with other messages.6

Testimony from personnel who worked for the physician answering service made clear that it was customary to write on the message slip to whom it was directed “...unless it was given to the person to whom it was directed.”7

The trial court denied the physician’s motion for summary judgment. The Court of Appeals of Georgia affirmed the lower court ruling. The appellate court viewed the evidence “in a light most favorable to the respondent,”8 and gave the respondent the benefit of the doubt as is required in motions for summary judgment. In this context the court noted that there was a dispute over whether Dr. F. was on-call when Mrs. F. placed the call and that the doctor was to be available to child. The facts also revealed that the answering service sent the parents’ message to the doctor soon after it was received. As the court pointed out, along with the mother’s testimony that she called the doctor’s answering service twice, there was sufficient evidence to dispute the physician’s claim that he did not receive the emergency call about the baby. Hence, the appellate court rejected the trial court decision denying a motion for summary judgment for the physician.9
In a 2012 ruling from the Court of Appeals of Louisiana, the court considered a trial court’s grant of summary judgment in favor of a medical answering service.\(^\text{10}\)

The facts of the case arose from a 2008 roof accident in which the plaintiff broke his ankle. Two days after the episode Dr. T.M. operated on the plaintiff and repaired his ankle at L.G.M.C. On the day of the operation, another physician, Dr. T.A. placed a pain pump for the plaintiff. The next day, the plaintiff was discharged from the hospital.\(^\text{11}\)

The day following his discharge from the hospital the patient and his wife informed the on-call physician, Dr. S.Y., of the man’s increased pain. Dr. S.Y. told them to call him back if the pain increased. The following day, the patient and his wife tried to reach Dr. S.Y. They had to leave a message with the defendant answering service, A.B., Inc. When the couple did not hear from Dr. S.Y., they decided to go to the L.G.M.C. emergency department. This was at approximately 4:16 p.m.\(^\text{12}\)

From the emergency department the couple continued to try and reach Dr. S.Y. However, they were informed by the answering service that they would not forward messages to the physician since they were already in the emergency department.\(^\text{13}\) At approximately 7:15 pm. the patient was assessed by an emergency department physician. He diagnosed the patient has having compartment syndrome. Dr. S.Y. performed surgery on the patient that night.\(^\text{14}\)

In August 2009, the husband and wife filed a medical review panel proceeding against the physician who placed the pain pump, Dr. T.A., and Dr. S.Y. The hospital was also sued. On December 23, 2009 the plaintiffs filed a lawsuit against the answering service.\(^\text{15}\)

The defendant answering service, A.B., Inc., filed a motion claiming that the timeframe for a lawsuit had elapsed. Similar to exceeding the statute of limitations in common law jurisdictions, the “prescription extinguishes the plaintiff’s right of recovery for failure to exercise his right to litigate within the timeframe to do so.”\(^\text{16}\)

The trial court agreed and granted the motion to dismiss. The trial court determined that the Louisiana Medical Malpractice Act did not suspend the prescription period because the answering service was not a healthcare provider under the Act. Therefore the court affirmed the trial court’s grant of summary judgment for the defendant.\(^\text{17}\)

In a strong dissent, an appellate court took issue with the majority’s suggestion that under the Medical Malpractice Act the prescription period could be suspended against a joint tortfeasor if that party was a non-
healthcare provider. The dissenting judge pointed out that during the discovery process the plaintiffs learned that the answering service had never forwarded any messages to Dr. S.Y. notwithstanding the fact that he had asked the answering service to notify him personally if the patient and his wife called again.\textsuperscript{18}

As the dissenting jurist pointed out, to suggest that the answering service “could not foresee that its negligent failure to convey a recent surgery patient’s calls to his surgeons (particularly considering one of the surgeons specifically instructed [A.B. Inc.] to notify him should Plaintiffs’ call) could have serious medical consequences for the patient, for which it could be jointly liable, flies in the face of Louisiana Law.”\textsuperscript{19} [Emphasis added]

For his part, the dissenting judge would have reversed the summary judgment and remanded the case for further proceedings to determine whether

“the answering service’s negligence in failing to call and alert Dr. [S.Y.] combined with the healthcare providers’ negligence in causing Plaintiffs’ damages, which allegedly resulted from a delay in assessment and treatment of this ongoing condition. If so, they are jointly and divisibly liable. This is a question of fact that does not turn on [A.B. Inc.’s] status as non-healthcare providers or whether its negligence sound in medical malpractice or ordinary negligence.”\textsuperscript{20}

**Observations on the Two Cases.**

There are some key common factors in the two cases. First, there was the use of a physician answering service. In the Georgia case, the facts suggest that the answering service did follow protocol. It relayed messages and documented the information appropriately. That there was evidence to substantiate that the messages had been sent to the child’s doctor, made it difficult for the care provider to claim that he did not know about the serious nature of the patient’s condition.

The Louisiana case demonstrates troubling issues that may arise when a physician answering service fails to fulfill specific instructions from a care provider. Not only did the inaction of the answering service let the physician down, it may have contributed to the patient’s injury. Although the appellate court ruling precluded the case from going forward against
the answering service, the dissenting opinion reflects how such a case might evolve if the ruling were to be overturned by the Supreme Court of Louisiana or another case comes along with the right set of legal arguments.

The second common factor was a delay in care involving communication involving answering service messages. In the Georgia case, it was the lack of a prompt response by the doctor “to” the message that was a focal point of the litigation. In the Louisiana case, it was the failure to communicate by the answering service to convey “to” the physician the plaintiffs’ message that gave rise to the unsuccessful lawsuit.

Telephonic communication or pager communication remains a key process in provider-patient relationships and among care providers as well. With the answering service in the middle acting much like a turnstile on a railroad track, steps must be taken to maintain the communications to prevent patient harm.

**Strategies for Risk-Prone Practices in Physician Telephone Answering Service Communications.**

Whether the call is *from* a patient to the care provider via a telephone answering service or a response *to* a message from the answering service, the communication hand-off should be efficient, prompt, and accurate. Several practical strategies can be used to reduce risks associated with physician answering service communications, including the following:

1. **Set Expectations with Patients and Family Members.**
   Use the practice brochure, website, and office signage to help inform patients and families about the “after hours” communication system. Describe in understandable terms the operations of the physician answering service or exchange. Make certain that the message makes clear that if the situation requires immediate attention, to seek treatment at an emergency department. [See sample tool].

2. **Contractually Establish Mandatory Communication Screening Questions.**
   Require the answering service to use a series of screening questions to identify communication issues including the following:
   a. Is the caller using a telephone that only permits outgoing calls? If so, what number should be dialed by the care provider to communicate with the caller?
b. Is the caller using a cellular telephone that has poor reception? If so, is there another number that the care provider may dial with better telephone reception?

c. Does the patient or caller require language interpretation services? If so, this information should be conveyed to the care provider who may then secure language interpretation when returning the call unless the care provider is fluent in the language used by the caller.

d. Is the situation one that requires immediate medical attention? If so, ask the answering service to direct the caller to dial 911 to have the patient transported to a hospital emergency department.

3. **Establish Backup Communication Systems.**
   Consider telecommunications redundancy, especially for those situations in which the care provider is relying on a cellular telephone. Think about secure text messaging or a pager as a backup. Give thought to the backup telecommunications service residing on a different carrier, especially one with a different communications footprint.

4. **Have Appropriate On-Call Backup in Place.**
   Recognize that the patient census may require more than one care provider to be available on-call. Note that call volume may be high for specialists (OB, cardiac, surgeons), for those covering multiple practices, and for on-call care providers for an accountable care organization (ACO). Establish a “roll-over” call mechanism so that if the primary on-call provider notifies the answering service that he or she is unable to take calls while treating a patient, subsequent patient calls will roll-over to the backup care provider.

5. **Build in Performance Expectations in the Answering Service Contract.**
   Make certain that the answering service contract includes specific performance measures related to timely, accurate, and efficient service. Such expectations may include:
   a. Having a sufficient number of telephone receptionists to handle telephone traffic, based on volume data.
   b. Having available telephone receptionists who speak the dominant languages (other than English) in the service population.
   c. Using an established protocol for obtaining key information from the patient or caller.
   d. Using an established protocol to communicate with the care provider using the telephone numbers (land line or cellular phone) or methods (pager system) identified by the care provider.
provider.
e. Require re-dial of the care provider when the telephone receptionist receives a busy signal.
f. Time frames for contacting the on-call care provider.
g. Time frames for initiating the “roll over” to the backup care provider.
h. Training for telephone receptionists that includes personnel refraining from giving medical advice.

6 Monitor Answering Service Performance.
Review monthly reports per the contract to make certain that contractual performance measures have been met in terms of timely, accurate, and efficient call management. Use patient satisfaction data to identify issues involving telephone answering service communication.

7. Be Poised to Take Corrective Action.
Address patient dissatisfaction or complaints regarding the telephone answering service. Take a similar approach to deficiencies identified in terms of performance reports from the answering service.

Conclusion.

Long a mainstay of care provider-patient communication, the telephone answering service continues to play a key role in the healthcare delivery system. New telecommunication systems may add to existing challenges with physician answering systems. By taking some practical steps, risk-prone situations can be averted in terms of communications hand-offs, particularly between answering services and care providers.
Sample Tool

“After hours” communication system with the Doctor

This sample Tool is designed for a medical practice with an internal on-call physician service. It can be adapted for use in a multi-practice system in which care providers rotate on-call responsibilities among a number of medical offices. The message suggested below helps to set patient expectation about after-hours communication with care providers. Such a message should be used in practice brochures, websites, and office-based signage.

This office is open Monday through Friday 8:30 a.m. to 4:30 p.m. and on Saturdays from 8:30 a.m. to 12:30 p.m. The office is NOT open on Labor Day, Thanksgiving, Christmas, Memorial Day or Independence Day (July 4th).

The office participates in an after-hours physician answering service exchange. This means that doctors in our office take turns responding to patient calls from other care providers in the practice. If you dial the office after hours an answering service receptionist will ask you some questions, including the name of your care provider and the reason for your call.

For the doctor to respond to you, please give the telephone answering service receptionist a convenient telephone number to call. Please make certain that the telephone number is one that can receive calls. If you are using a cellular telephone and the reception in your area is poor, consider giving the doctor another number to call.

Please remember that if the reason for your call involves a life or health-threatening situation, seek immediate treatment. Call 911 or ask someone to call emergency medical services for you.

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3 Id.
4 Id.
5 Id, at. 208.
6 Id.
7 Id.
8 Id.
9 Id., at 208-209.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id.
17 D.M. v. S.B., Inc., 2012 La.App, LEXIS 1579 (No. 12-632, La.App., 3 Cir. 12/05/2012) at 1583-1584, referencing La.R. S. 40:1299.47(A)(2)(a). The court also ruled that the answering service was not a solidary or joint obligor with a healthcare provider.
19 Id. at 1589.
20 Id. at 1590.