Ethical Considerations in High-Risk Office Situations

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Disclosure

All faculty and planning committee members have indicated that they have no actual or potential conflict of interest in relation to this educational activity.

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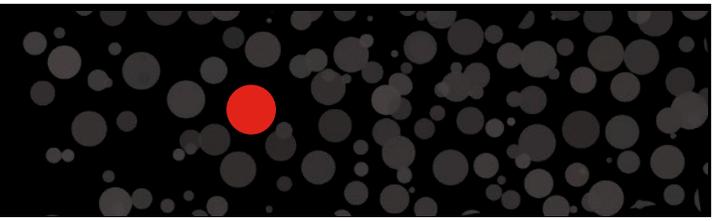
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Objectives

- Explore high-level risk management and ethical topics for physician offices.

- Discuss approaches to mitigate these topics and reduce potential liability.

- Scrutinizing the new normal in the office, the emotional impact on our professionals in these settings, and operational concerns surrounding patient care and patient safety practices.

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Overview

The COVID pandemic has created a new normal for healthcare, especially in medical groups and offices. With this new normal comes high-risk concerns that have significant ethical implications.

This presentation is designed to highlight some of these high-risk areas, address the inherent ethical conflicts, and stimulate thought on next-steps.

We will be exploring the new normal in the office, the emotional impact on our professionals in these settings, operational concerns surrounding patient care and patient safety, and the vital role our community plays in rebuilding our practices.
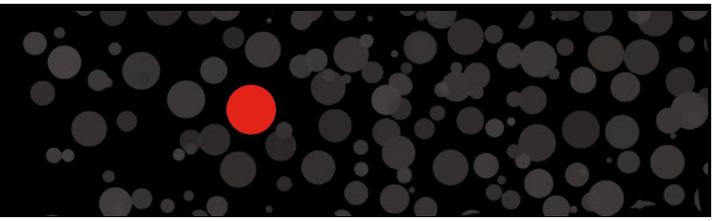
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High-Risk, Ethical Topics

Discussion Sections

- The New Normal

- The Professional

- The Patient

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The New Normal

- Physician Patient Relationship

- Rebuilding Practice

- Masks and Office Expectations

- Telemedicine

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The New Normal

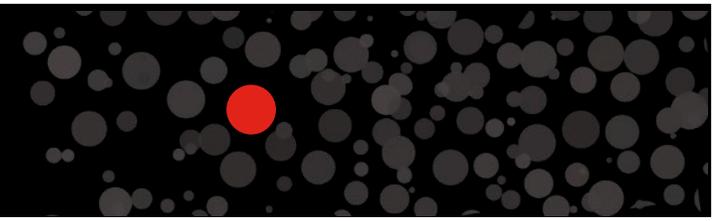## Topic: The Physician-Patient Relationship (Maintaining Relationships)

Discussion
- Physical and emotional separation from patients (PPEs, telemedicine)
- Empathy and clear communication indicator of skill and competence
- New approaches have different impacts based on age, access to technology, and health literacy

Risk Management Concerns
- Limited examinations increase risk of miscommunication and connection with patients
- Patients can become agitated and frustrated, resulting in conflicts and decreased compliance
- Poor communication is often linked with increased liability

Ethical Considerations
- Patients are receiving less care due to relationship and process constraints
- Maintaining clear communication with patients and explaining step-by-step can improve trust
- Self-assess for personal distress and anxiety

Bradshaw P. (2020). Has the COVID-19 pandemic changed the doctor-patient relationship forever? *British Journal of Medicine Opinion*.

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The New Normal

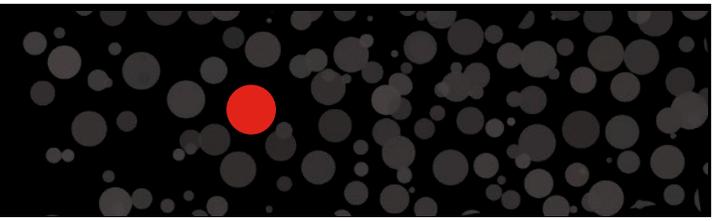## Topic: Rebuilding the Practice (Opening, Scheduling, Infect. Cntrl.)

Discussion
- Is it safe to reopen? Fear of infection from staff and patients, increase in people leaving healthcare
- The approach to scheduling and seeing patients has changed
- Increase in telemedicine visits and remote working

Risk Management Concerns
- Staff fear for self and patients afraid to come in for routine or urgent care, delaying care, scheduling
- Infection control protocols to reduce infection
- Patients dissatisfaction; technology and provider limitations

Ethical Considerations
- Explaining how and why the office is taking steps to prevent infection engenders confidence
- Rethink how to maintain contact with chronic patients given their limitations and abilities
- Assess the personal impacts of remote working on staff and mitigation techniques

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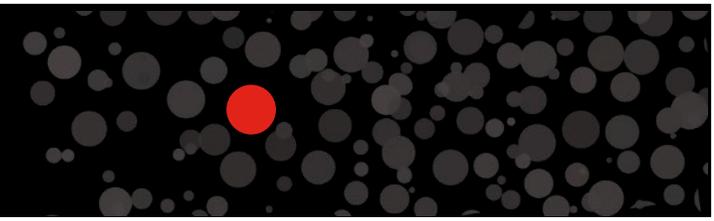## Topic: Masks and Office Expectations (Nudging v. Enforcement)

Discussion
- Laws about wearing face masks are inconsistent throughout the country
- Wearing face masks and taking preventive measures reduce transmission
- Offices need to determine what steps they should take to protect their staff and patients

Risk Management Concerns
- Requiring face masks and enforcing protocols can be very difficult to enforce
- If the office is inconsistent or not aligned on expectations, discrepancies will arise
- Staff may not feel empowered or too intimidated to address violations

Ethical Considerations
- Refrain from engaging in political or moral arguments regarding precautions, rely on evidence-based research (masks, risk questionnaires, temperature checks)
- Establish and enforce clear expectations that clearly define the ethical obligations of the patient

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Topic: Telemedicine (Here to Stay)

Discussion
- Has become necessary in the practice of medicine, but the technology and skills to use are nascent
- Examinations are limited and subject to implicit and provider bias
- Cost and convenience are huge motivators in the future use of telemedicine
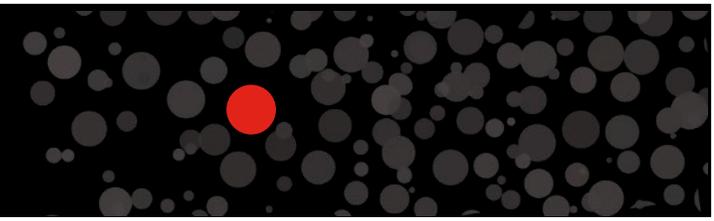
Risk Management Concerns
- Telemedicine increases risk of miscommunication- loss of verbal and non-verbal cues
- Decreases patient satisfaction and impatience, impairs physician-patient relationship
- Poor communication and opportunities for misdiagnosis or missed diagnosis increases liability

Ethical Considerations
- Warm tone, relaxed engagement, and active listening can mitigate communication concerns
- Clearly explain how telemedicine works and what to expect
- Patient privacy, dignity, and autonomy is maintained during visit

Bradshaw P. (2020). Has the COVID-19 pandemic changed the doctor-patient relationship forever? *British Journal of Medicine Opinion*.

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The Professional

- Scope of Practice

- Burnout/Distress

- Personal Safety

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Topic: Scope of Practice (SoP)
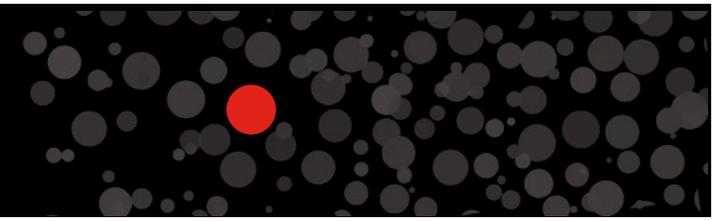
Discussion
- During the pandemic, some professional duties expanded and may have exceeded SoP
- Volunteers have stepped up to assist in decompressing the work loads from healthcare providers
- Some states allow unlicensed practitioners to work to perform minor tasks for providers

Risk Management Concerns
- Providers and staff that work outside of SoP increase liability due to lack of competency
- It is critical to monitor the SoP of volunteers, regardless of their backgrounds and training
- Understand the rules, exclusions, limitations, and time-frames for unlicensed staff

Ethical Considerations
- Staff should not be required or encouraged to work outside of their scope, moral distress
- Disclosure to patients that some of the people working with them are unlicensed or volunteers
- Licensed staff should be clear on the roles and limitations of unlicensed and volunteer staff

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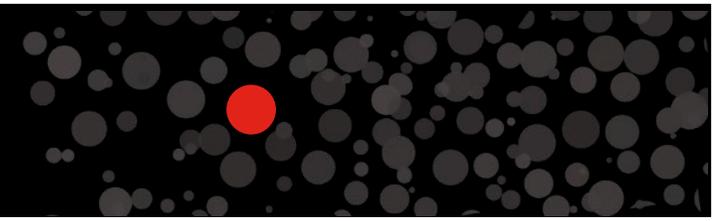
Topic: Burnout and Distress

Discussion
- Providers and staff are experiencing burnout and distress at high levels
- Burnout and distress result in affective, cognitive, somatic, and behavioral outcomes
- These impacts to the healthcare provider and office ultimately impact patient safety and harm

Risk Management Concerns
- Providers and staff that continuously work in a toxic stress environment have down stream effects
- Decreases staff satisfaction results in absenteeism, poor retention, and
- Those experiencing burnout perform human factor errors more frequently, increasing liability

Ethical Considerations
- Those experiencing severe burnout and distress should be treated fairly and justly
- Staff will need support and caring rather than judgment and punitive acts
- Develop or support programs to encourage managing burnout and distress

Hyatt J. (2017). Recognizing moral disengagement and its impact on patient safety. *Journal of Nursing Regulation*. 7:4

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The Professional

Topic: Employee Safety and Privacy (PPEs, Confidentiality)

Discussion
- The pandemic has resulted in a shortage of PPEs and confusion what PPEs are appropriate
- Volunteers have stepped up to assist in decompressing the work loads from healthcare providers
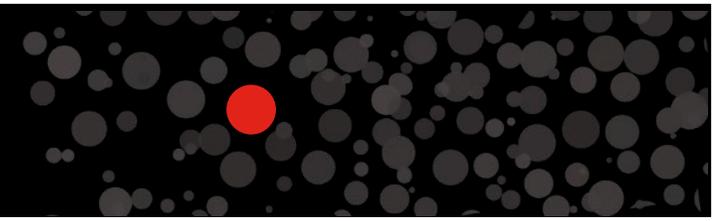- Extra precautions are needed with the rights and privacy of infected staff

Risk Management Concerns
- A lack of adequate PPEs exposes liability from patients, visitors, and employees
- Staff who do not feel staff may not work, experience moral injury, increasing risk of harm
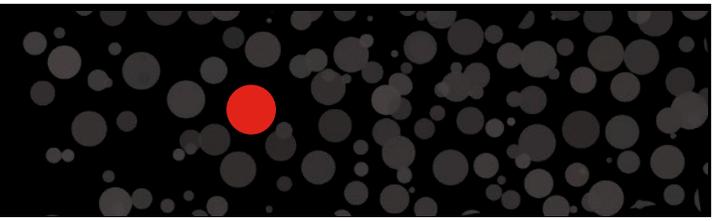- The group has legal duty to keep employee health information confidential

Ethical Considerations
- Is there a duty to treat when there is a shortage of PPE
- Refusal to provide care (staff in a high-risk group, family members at risk)
- Employee health information- confidential

Maguire BJ, et al. (2020). The ethics of PPE and EMS in the COVID-19 Era. *Journal for Emergency Medical Services.*

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The Patient

- Errors and Harm

- End-of-Life Care and Advanced Directives

- Autonomy

- Beneficent treatment

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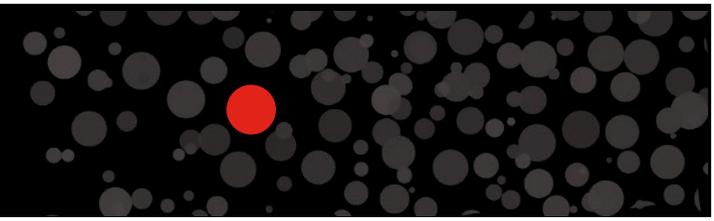## Topic: Errors and Harm (Provider Blindness, Bias, Follow-Up)

Discussion
- Provider blindness and explicit/implicit bias are major contributors to patient harm during pandemic
- Providers may see all symptoms through the lens of COVID, missing larger issues
- Follow-up with test results create unique challenges and ethical duties to providers

Risk Management Concerns
- Provider blindness increases opportunities for missed or misdiagnoses
- Delays in treatment and diagnosis increase liability
- Follow-up on test results, especially when staff not in office- need tracking process

Ethical Considerations
- Be aware of personal decision-making and be alert for bias
- Look at policies and practices to see if there are elements that are unjust to specific populations
- Moral duty to follow-up on all test results

Rose JA. (2020). Heightening awareness of implicit bias and its impact on patient care druing COVID-19. *HSS.*.

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Topic: End of Life and Advanced Directives
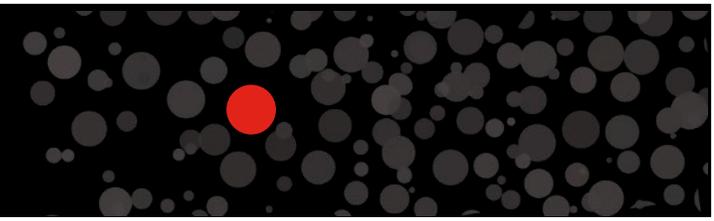
Discussion
- 2/3 deaths attributed to COVID-19 are in inpatient care settings
- Absent of family members and health care decision-makers
- Give new urgency to talking about Advanced Directives

Risk Management Concerns
- Not having Advanced Directives impedes: patient's wishes and provider's approach
- Increases conflicts between providers and families
- Conflicts between surrogates, sometimes unclear who should make decisions

Ethical Considerations
- Encourage end-of-life discussions to ensure the patient's values and wishes are supported
- Develop Advanced Directives: Patient autonomy and provide direction to the healthcare teams
- Maintain contact with families and healthcare decision-makers

Smith TM. (2020). End-of-life challenges during COVID-19: What doctors must know. *AMA Journal of Ethics.*

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Topic: Autonomy (Consent and Refusal)
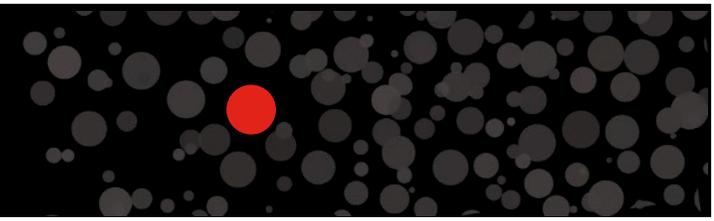
Discussion
- Variations in practice can result in patient rights violations
- Challenges with sick patients can make getting verbal or signed consent more difficult (isolation)
- Blanket waivers of liability may not be effective

Risk Management Concerns
- Ensuring that procedures requiring informed consent are followed and documented, informed refusal
- If there is a substantial change in condition, consents should be redone
- Consult with legal counsel on the usefulness and legality of waiver of liability documents

Ethical Considerations
- Appropriate discussions of the risks of COVID, and other possible infection risks
- Patient coercion or making decisions under distress
- Surrogate decision-makers

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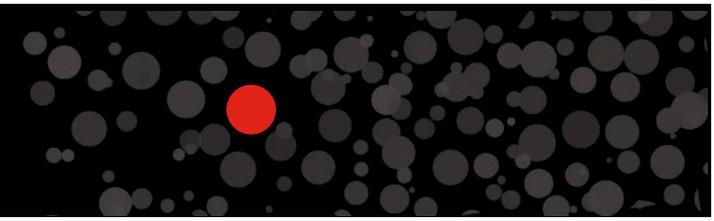
The Patient

Topic: Beneficence

Discussion
- Off-label drug use
- Routine care
- Allocation of resources and rationing healthcare services

Risk Management Concerns
- Evidence-based treatment protocols are used and off-label is carefully assessed and documented
- Routine care becoming dangerous, when it is safe to proceed, risk COVID infection
- Steps to address allocation and rationing in place

Ethical Considerations
- Using unorthodox medications (i.e. hydroxychloroquine) or treatment approaches
- Weighing the moral injuries of delaying routine care or elective procedures with risks
- Rationing protocols and access to testing

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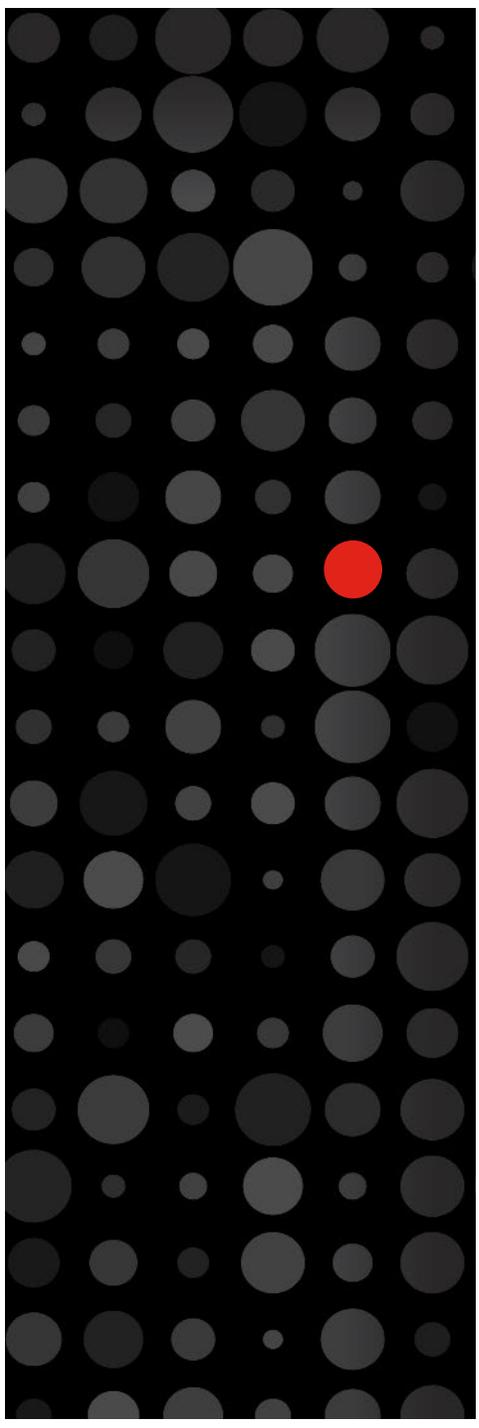## Topic: Beneficence

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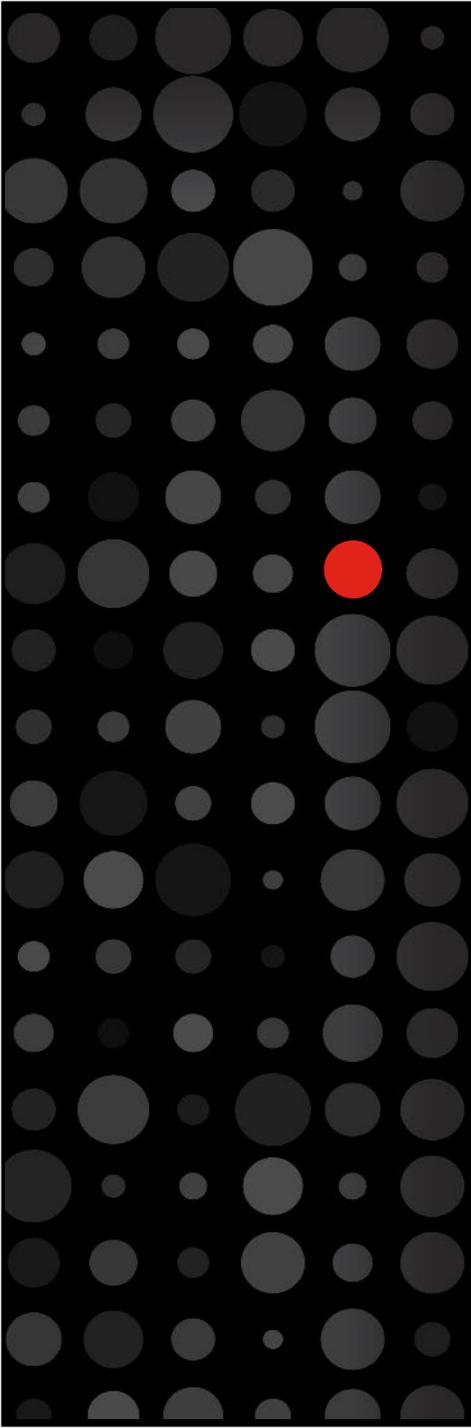
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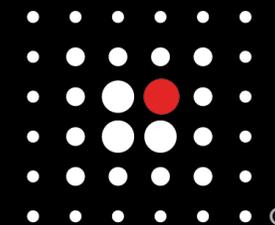- Rationing protocols and access to testing

FDA. (July 1, 2020). FDA cautions against use of hydroxychloroquine for COVID-19 outside of the hospital setting

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Thank you

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