Curbside Consults: Practice Considerations in an Evolving Legal Landscape

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Introduction

Curbside consults are an age honored tradition in medicine. A vast majority of physicians make one, or more, of these consults weekly in-person, by phone, e-mail, text or even through the medical record.

This collaboration and brainstorming contribute to better quality of health care, at least some of the time. Other evidence suggests that part, or even most, of curbside recommendations change with formal consultation. However, the ubiquity of such consults contribute to their perceived safety with regards to legal liability. Recent court decisions make it evident that the appropriateness of a curbside consult should be carefully considered. This is particularly important in Consult Liaison Psychiatry where "liaising" may be easily construed to become "curb siding" and thereby place physicians at risk legal liability.

There is no singular definition for what a curbside consult is. Generally, it can be broadly identified to mean when **a physician informally requests or provides information about patient care** involving communications via phone, email, in-person, text, electronic medical record etc.

What constitutes a curbside versus a formal consult may vary wildly between physicians, institutions, and perhaps most importantly, between medicine and the courts.

Cases

Case One

66 year old female with a history of dementia brought in from home with agitation x1 week. Discharged from outside hospital a week prior for agitation and UTI.
-Psychiatry was consulted to give recommendations for agitation
-Patient was not seen and instead verbal recommendations were provided for agitation
-No consult note was placed. Patient was given Olanzapine 5mg IM and lorazepam 1mg IM
-Chart review would have revealed a history of Parkinson's, recurrent UTI

Case Two:

52 year old male with a history of bipolar disorder was brought in by family with confusion and unstable gait.
-Cholecystectomy seven days prior, lethargic with slurred speech on discharge but thought to be from anesthesia.
-Had been psychiatrically stable x10 years on lithium 600mg TID, Clonazepam 2mg TID, Risperidone 2mg daily, benztropine 1mg TID

Case Two Cont.

-Consult placed, psychiatrist determined that patient did not meet LPS criteria and recommended holding psychiatric medications and checking lithium level.
-Psychiatry was consult again the next day for agitation, determined based on initial note that patient did not need to been seen and provided verbal recommendations for agitation.
-Failed to check diagnostics which had revealed a lithium of 3.3 and creatinine of 2.39 requiring emergent dialysis. ECG demonstrated AFIB with QTc of 513.
-Based on verbal recommendations patient was given multiple emergent injections of Haldol, lorazepam, Benadryl and midazolam.

Malpractice and Liability of Psychiatric Consults

Malpractice involves four parts:
1) Duty to a patient
2) Breach of that duty
3) Proximate cause
4) Damages

Part one is generally felt to mean that there must be "treatment relationship" between physician and patient

Warren v Dinter (2019)
-Minnesota Supreme Court ruling which established the "foreseeability test"
-Ruled a physician may be liable for medical malpractice even without a treatment relationship if it is "reasonably foreseeable" the patient could be injured by the advice

Psychiatric Consult Liability

Special Expertise
-Expectation that consultant will provide recommendations within the standard of care
-Liability can arise when standard of care is not met

Doctor Patient Relationship
-limited due to nature of consults as primary team remains responsible for synthesizing information between various teams and render treatment

Determining Formal vs Informal

Formal Consult:
1) Visits Patient
2) Reviews Chart
3) Participates in care plan
4) Charts the assessment, plan, recommendations etc.
5) Bill for services

Informal (Curbside)
-Brief, simple, not patient specific
-Does not see patient or review chart
-Does not write in chart
-Does not bill
-Physician has no obligation for a formal consult

Discussion

Curbside consults remain an important aspect of medicine but ambiguity in the definition and lack of understanding can lead to unnecessary legal risk for physicians.
Defining clear guidelines for what constitutes a formal consult versus an informal one can help physicians determine which type of consult is warranted or avoid providing information that creates expectations unknowingly.

Guidelines specific to psychiatric consults take on special significance due to the ability to liaise, which can be easily misconstrued to mean "curbside." As evidenced by the cases, even common consults are often far more complex. Recommendations based on only partial information may end up being incorrect and even dangerous.

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