

Healthcare – awash in regulation

A PracticeHQ interview with Michael Manere, founder and VP of Total Compliance Solutions

To provide its' members with the latest information on compliance in the medical practice, Practicehq interviewed known compliance expert, Michael Manere, VP and founder of Total Compliance Solutions, Inc. Mr. Manere has been at the forefront of the movement to outsource physician's office regulatory compliance.

PracticeHQ: Why Compliance?

Manere: There is hardly any aspect of Healthcare that is not now regulated by the federal or state government. In fact, the amount of regulation has more than tripled in just the time I have been in the business – and I thought there was a great opportunity back then, 17 years ago.

And the penalties and other costs to the medical practice for some transgressions have become truly life altering. \$20,000 each time you make the same mistake in coding, \$1,000 for not posting an OSHA poster. Jail terms for relatively simple mistakes. Physicians can no longer afford to practice without some assurance that they will not fall afoul of the employee from hell... or the patient who thinks he's a lawyer... or maybe is a lawyer.

Physicians all the time tell me that they will not fall victim to any of these difficulties – but never realize that their own patients feel that way about every ailment they come to them about. These things do happen – and a lot more regularly than auto accidents, and who has never had one of those?

PracticeHQ: What should physicians and physician practices be concerned about in the area of compliance?

Manere: There are several highlights: One of which is FACTA. Who's ever heard of FACTA? Not many, but did you realize a doctor could face penalties of up to \$2,500 for each patient's name that is released to the public with confidential financial information – just a name matched with a social security number is considered financial information. Whereas the government requires the doctor's office to retain patient medical records, in some cases indefinitely, if they loose any of it – they could be in big trouble. Lawsuits carrying as much as \$1 million in statutory damages, plus punitive damages, have already hit other commercial brethren.

Manere: Another area to be concerned about is HIPAA. While we're talking data management, who among you hasn't suffered from the onset of HIPAA? Who are you releasing Medical Records to... and how do you know? Is your release staff trained in the law? The exposures here are financially extraordinary – and threaten your license to practice – forever.

On OSHA: Who among you has not occasionally run across the "employee from hell"? Employees are "dropping a dime" on anyone who gives them grief – like your complaining about their 2 hour lunch. While it is wonderful that OSHA has caused some very unsafe conditions to be cleaned up – employees now hold the threat of an OSHA inspection over their employer's heads – knowing that the law will protect them from any liability even if they were totally wrong.

Similarly, your violations of the National Fire Prevention Administration guidelines will be cited by your local fire department – when it gets a call triggered by one of the agencies that may inspect your facilities. Fire violations resulting from an OSHA inspection? You bet.

About the DEA: Not to be out done by the Columbian Drug cartel, Massachusetts based DEA agents occasionally make a big bust in medical offices – or in other places where they trace the schedule 2s, 3s and 4s to a physician – and sometimes to his supply of free samples. He's at risk here, no matter how benign the action – DEA agents follow drugs aggressively – and they are empowered with all sorts of punitive tools.

Practicehq: So what about disposing of the needles, drugs and samples?

Manere: Did you know that you have a lifetime responsibility for the hazardous waste you generate in your practice? Where are your sharps going? How do you dispose of your outdated drugs? Do you know for sure that they are being properly destroyed – or will they turn in the publics drinking water and public landfill or needles up on a beach somewhere? You may not think of the DEA, DEP, EPA very much when you think of compliance – but they are on the list of "other agencies" who will get a call if you run afoul of any other agency's regulations. And their penalties do hurt.

Practicehq: And what about CMS FINANCIAL COMPLIANCE?

Manere: All those special agents who were looking for Al-Qaeda are more recently looking for fraud and abuse in your billing – and by all accounts – with more success. You might think that under-coding is the way to go – but coding wrong is coding wrong. Don't bill for services different than provided, don't bill for services that were unnecessary, don't bill for another provider, don't "unbundled" services to increase the reimbursement. The list of "don'ts" is daunting – and you had better have an expert prospectively review a representative sample.

PracticeHQ: In the barrage isn't there also CORPORATE COMPLIANCE to adhere to?

Manere: This is a broad and somewhat misleading title – but it refers to all those things your practice might be doing which are of interest to the attorney general – like referring patients to another provider in which you have a financial interest... sometimes this has turned out to be your hospital. Think hard about what arrangements you have. And don't even think of taking a "gift" from a drug company. Their records are examined far more than yours. Sorry, but those trips out on the lake and those nice dinner receptions are often illegal too.

Most will not think of an Americans with Disabilities Act police – but every person is entitled to file a complaint – disabled or no. So do you have arrangements in place for an interpreter, for access to your facility by a particularly obese person, for translation – its no longer people who must accommodate – its you. There are people out there just looking for ADA accessibility violations so they can make the point and get publicity. They may even be well meaning – but this is not the kind of pressure you want causing your ADA compliance plan initiatives.

Practicehq: Are there compliance issues with HEALTH PLANS?

Manere: Third party payers have been held liable for claims from patients who were directed to a select list of providers. That's the reason they have their own inspection teams. They can't afford to have a provider that does not have in place a good risk management program. The first thing any of these plans will look for is your record of problems with patients, regulatory agencies and malpractice carriers.

Manere: Speaking of MALPRACTICE INSURANCE CARRIERS...Malpractice insurance companies may pay out just a few times a year, but today, those settlements and judgments are often exceedingly large. If a malpractice carrier can eliminate just a few claims, it can cut in half its total claim losses for the year. And surprise – the practices that have had difficulties with regulatory authorities are the very ones most likely to have major malpractice claims. (If they don't have an effective employee safety plan, for instance – it's pretty likely they haven't much of a risk management plan either.) These are the practices that pay the really big premiums – if they can get insurance at all.

PracticeHQ: So, what's the bottom line through all of this?

Manere: Getting into trouble with one regulation can start a cycle of referrals to other agencies that can be mind numbing. If the hassle of dealing with these regulators isn't enough, the legal fees, the increased insurance costs – and the lost employees and patients will likely have you wondering why you just didn't put a little more effort into your compliance plans in the first place – especially when partnering with an expert can save you money from day one.

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