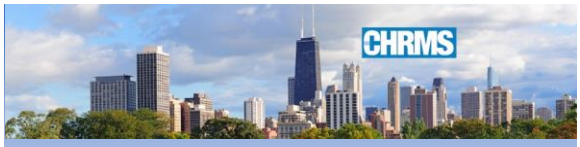

Panel Discussion

Navigating The Journey of The Shared Patient

CHRMS Annual Meeting April 26, 2019

MagMutual®

Bill Kanich, M.D., J.D.

Dr. Kanich is the Chief Medical Officer for The Institute at MagMutual and is responsible for leading all clinical risk management initiatives, including all educational speaking programs. He also serves as the Medical Director for the editorial committee, The Preserve Program, and 24/7 physician hotline.

Dr. Kanich is Board Certified in Emergency Medicine and was practicing in Charleston, South Carolina before accepting the CMO position in January 2017. While practicing medicine, Dr. Kanich also served on MagMutual's South Carolina Claims Committee for eight years. Dr. Kanich received his undergraduate degree from Georgetown University, his law degree from the University of North Carolina, and his medical degree from the Medical College of Virginia. He completed his residency in Emergency Medicine at the University of Virginia.

Northwestern Medicine

Barbara A. Giardino RN BSN MJ CPHRM CPPS

Barbara Giardino is the West Region Manager of Risk Operations for Northwestern Medicine and is based at Delnor Hospital in Geneva, Illinois. Ms. Giardino is a registered nurse with a clinical background in emergency and trauma nursing. She received her Bachelor of Nursing from the University of Iowa and her Master of Jurisprudence in Health Law from Loyola University Chicago, School of Law. She is a Certified Professional in Healthcare Risk Management and a Certified Professional in Patient Safety. She has risk management experience in both community and tertiary care hospitals and has responsibility for proactive risk management and patient safety efforts.

Ms. Giardino has been a CHRMS and ASHRM member since 2001, serving as a Board Member for CHRMS and has presented on both the local and national level for the Joint Commission, ASHRM, CHRMS, the American Hospital Association and the National Quality Forum.

Marilyn Hanzal

Marilyn Hanzal is a highly experienced health lawyer and a nationally recognized expert in privacy and security compliance. She most recently served as the Vice President & Deputy General Counsel of the Illinois Health & Hospital Association. Prior to that, she was an Associate General Counsel for University of Chicago Medicine, where she served as a trusted advisor for the medical center, including the Biological Sciences Division of the University.

Her practice includes health care operations, regulatory compliance, information technology, protection and stewardship of data and intellectual property, conflicts of interest, tax, transactions, clinical research, patient care and administrative policies, and strategic advice. She has served as an Associate General Counsel for Weiss Memorial Hospital, Director of Legal Services for University Health System Consortium, Director of Graduate Legal Programs for Loyola University Chicago School of Law and Director of the Institute for Health Law. She served as the lawyer for the City of Chicago Board of Ethics and worked in litigation at two law firms, one in Chicago and one in Indianapolis.

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Joan R. Stohl

Ms. Stohl defends physicians, nurses, hospitals, skilled nursing facilities, and long-term care facilities. She has litigated medical malpractice, skilled nursing and long-term care matters and has taken numerous medical malpractice and other personal injury matters to jury verdict.

At the appellate level, Ms. Stohl has authored briefs which have prevailed in the Illinois Appellate Court and Illinois Supreme Court.

Ms. Stohl received her Juris Doctor from DePaul University College of Law in 1990 and Bachelor of Arts from North Central College in 1987.

While in law school, she served as contributing editor of the DePaul Journal of Health and Hospital Law.

Ms. Stohl is licensed to practice law in Illinois and is also admitted in the U.S. District Court for the Northern District of Illinois. She is a member of the Chicago Healthcare Risk Management Society (CHRMS) and the Defense Research Institute (DRI).

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Laura G. Postilion

Ms. Postilion's areas of expertise encompass the representation of hospitals, medical corporations, and various medical providers in negligence and disciplinary matters.

Ms. Postilion adeptly secures favorable outcomes by taking an early proactive stance and developing compelling defense themes. Through innovative motion and appellate practice, she engenders the trust and confidence of clients by providing cost effective legal advice that often results in the dismissal of health care defendants.

Ms. Postilion's strong medical and legal knowledge and collaborative work style are well-suited to the courtroom, and have translated into successful representation of health care defendants at trial and in the appellate court.

Ms. Postilion received her Juris Doctor from The John Marshall Law School in Chicago in 1994 and Bachelor of Arts *cum laude* from Loyola University Chicago in 1989.

She is licensed to practice law in Illinois and Nevada and is admitted in the U.S. District Court for the Northern District of Illinois. Ms. Postilion is a member of Chicago Healthcare Risk Management Society, Chicago Bar Association, Illinois Association of Healthcare Attorneys, and the Appellate Lawyers Association.

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Transfer of Medical Information: Privacy and Security Issues

Privacy:

Under PIPA and HIPAA, consent/authorization is not needed between providers treating the patient for the same condition.

This information may or may not be part of the medical record of the receiving institution.

- Hospital policy will dictate whether this third party information from the skilled care facility is part of the definition of the hospital's medical record.

Security:

The transmission of the information must be secure under HIPAA and PIPA.

Access to the solution that receives the information must be secure under HIPAA minimum necessary (privacy) and HIPAA access controls (security).

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JUST THE FACTS

Propagation of Incorrect EMR Data

"EPIC medical history does not appear to be quite accurate. It says he has cancers, cataracts, diabetes, and sleep apnea. He and his wife deny he has any of that. He was tested for apnea, but the report indicates he doesn't have it. It also states he has thyroid problems, but he denies that."

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JUST THE FACTS

Information Imparted by Family

Allegation

The medical records of [receiving hospital] state that after [the patient] was found on the floor at [the SNF] that nursing staff placed him into his bed and noted that he seemed "ok," but that he had bruising on the left side of his nose and his glasses were broke.

Family's report to receiving hospital

The patient was sent over to SNF for rehab. At that point, he fell and hit his head and was later found to be unresponsive.

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JUST THE FACTS

The *Documented* Facts

Transferring SNF Nurse's Post Fall Documentation
Neuro signs: alert. Fall related injury: no apparent injury. Post Fall Status: No change from baseline.

Receiving Hospital ED documentation
No evidence of head trauma. No bruising.

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TAKE AWAYS

Effective Communication During Handoffs

- Nursing should objectively describe the wound and consider staging only by a trained wound care nurse
- Regular meetings and communication between local SNFs and hospital
- Systemize/improve the handoff processes between local SNFs and hospital
- Two-person skin assessment within 8 hours of admission
- Accurate, current skin assessment when handing off patient to SNF
- Interoperability of data (e.g. Epic's Care Everywhere)
- Secure transmission of documents via portal, e-mail, fax
- Avoid scribe errors
- Correctly identify source of data
- Promptly correct EMR errors
- Verify information given by family members
- Attorneys: Early defense counsel meetings and promote unified causation defense

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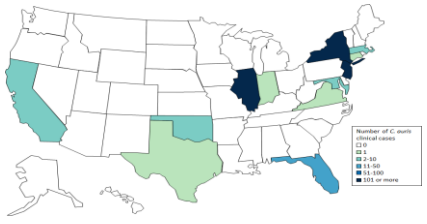
Clinical Cases of *Candida Auris* Reported as of February 28, 2019



2019 Centers for Disease Control, Tracking *Candida auris*, March 29, 2019: Case Count Updated as of February 28, 2019

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Candida Auris: A Looming Threat

Candida auris is a fungus that causes severe illness in hospitalized patients. Patients can remain colonized with *C. auris* for a long time and the fungus can persist on surfaces in healthcare environments. This can result in spread of *C. auris* among patients in healthcare facilities.

Most *C. auris* cases in the United States have been detected in the New York City, New Jersey, and Chicago areas. *C. auris* cases resulted from inadvertent introduction into the United States from a patient who recently received healthcare in a country where *C. auris* has been reported or resulted from local spread after such an introduction.

2019 Centers for Disease Control, Tracking *Candida auris*, March 29, 2019: Case Count Updated as of February 28, 2019

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TAKE AWAYS

Transition of Care

- Daily culture reports monitored by Infection Prevention
- Positive Test result? Patient restricted to room and enhanced room cleaning is performed
- Update policies and procedures related to *candida auris*
- Notify receiving facility during transfer handoff process
- Attorneys: anticipate clients' needs by identifying problems before they arise and advising as to recommended plan of action

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POA and Patient's Best Interest

The Conundrum

After 8-Month Hospitalization on IM Unit

POA refuses nursing home placement. He does not want anything in Cook County due to "politicians." POA refuses antipsychotic meds and ECT recommended by psychiatrist. It was suggested that POA bring the patient home with 24/7 care. POA refuses, stating the patient needs nursing and psychiatrist care 24/7. It was suggested that patient be transferred to another hospital, but POA would only agree to 2 hospitals, neither of which would accept the patient due to her length of stay here.

Hospital's Petition to Revoke Guardianship

Hospital has discussed placement options with patient's POA for 6 months, suggesting 18 facilities during 26 conversations. He refused any Kane or Will County facilities, insisting on DuPage. He refuses any Cook County facilities due to "politicians." [Nursing Home] accepted her. POA refuses to consent or to meet with hospital to discuss discharge planning.

CHRMS POA and Patient's Best Interest

The Ultimate Outcome

After Transfer to NH, Reversion to Original POA

[Brother] wishes to have patient discharged. There are two different documents in the chart. The most recent is a photocopy that appears to have been altered, with some sections whited out. Explained that for patient's safety, she may not leave the hospital until guardianship issue is cleared up. Both documents faxed to Legal. Concurrently, social work reached out to the State to clarify most recent guardianship determination. Per Legal, the later document is valid and brother has guardianship. Brother upholds his decision to leave the facility AMA.

CHRMS POA and Patient's Best Interest

Questionable Competency of POA

Annual Probate Report Filed by POA

Although there is no known cure or effective treatment of [mental health condition], the guardian and the guardian's attorney have been conducting research and found certain studies recommending the consumption of red wine and ginkgo biloba for improvement of the condition. The Ward's diabetes is somewhat going into remission as her blood sugar levels have been fairly low.

CHRMS The Law: Selection of Guardian

The Probate Act, 755 ILCS 5/11a12(d)

The selection of the guardian shall be in the discretion of the court, which shall give due consideration to the preference of the person with a disability as to a guardian, as well as the qualifications of the proposed guardian, in making its appointment. However, the paramount concern in the selection of the guardian is the best interest and well-being of the person with a disability.

CHRMS The Law: Guardian Qualification

The Probate Act, 755 ILCS 5/11a-5(a)

A person is qualified to act as a guardian if the court finds that the proposed guardian:

1. Is capable of providing an active and suitable program of guardianship for the disabled person;
2. Is at least 18 years old;
3. Is a resident of the United States;
4. Is of sound mind; and,
5. Has not been convicted of a felony (with statutory exceptions for certain considerations).

CHRMS The Law: Best Interest Factors

***In re Estate of McHenry*, 20176 IL App (3d) 140913**

In determining the best interest of the disabled person, the trial court may consider multiple factors, including:

1. The degree of relationship between the disabled person and the proposed guardian;
2. The recommendations of persons with kinship or familial ties to the disabled person;
3. Conduct by the disabled person prior to the adjudication demonstrating trust or confidence in the proposed guardian;
4. Prior conduct by the proposed guardian indicating a concern for the well-being of the disabled person;
5. The ability of the proposed guardian to manage the disabled person's estate (the proposed guardian's business experience and other factors); and
6. The extent to which the proposed guardian is committed to discharging any responsibilities which might conflict with his or her duties as a guardian.

CHRMS Advance Care Planning

Illinois Power of Attorney Act (755 ILCS 45/)

- The individual appoints an agent to make decisions for the individual when the individual cannot.

Illinois Living Will Act (755 ILCS 35/)

- The individual identifies what he or she wants when certain conditions are present.

Health Care Surrogate Act (755 ILCS 40/)

- The individual indicates his or her wishes for resuscitation and intubation, but it is not effective without a physician's signature.

Mental Health Treatment Preference Declaration Act (755 ILCS 43/)

- The individual identifies the mental health care that can be provided without consent.

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TAKE AWAYS

Advance Directive Considerations

- Implement training at every touch-point to secure, document, and share the patient's wishes
- Involve social workers
- Freely consult Risk and Legal Departments and consider ethics consult in thorny situations
- Carefully document all family/patient/POA interactions – including questionable POA/family decisions that may adversely affect a patient's best interests
- Work with legal, risk, and social workers to promote patient's best interest, even if that involves court intervention