




# BUSINESS OF MEDICINE

Hidden Liabilities  
Lurking in Your Business



RISK MANAGEMENT SEMINAR


**PROASSURANCE** — **NORCAL GROUP**

## BUSINESS OF MEDICINE

### Hidden Liabilities Lurking in Your Practice

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### DISCLAIMER

The information contained herein and presented by the speakers is based upon sources believed to be accurate at the time they were referenced.

The speakers are not engaged in rendering legal or professional services other than risk management. If legal advice is required, the services of an attorney should be sought.

This document was designed for discussion purposes only and is not intended to present detailed information on our analysis and findings. It is incomplete and not intended to be used without the accompanying oral presentation.


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### FACULTY AND PLANNERS

The faculty and planner of this activity have no relevant financial relationships to disclose.

**FACULTY**



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**LEARNING OBJECTIVES**

This educational activity will support your ability to:

- Identify various types of liability exposure
- Assess liability vulnerabilities in your own practice
- Understand the types of insurance that address various exposures
- Appreciate the potential impact business practices may have on patient safety
- Implement strategies to minimize risks and mitigate potential damages thereby improving patient safety and protecting the medical practice

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**SOURCES OF POTENTIAL LIABILITY**

The diagram features a central teal circle labeled "Hidden Liabilities". Three yellow arrows point from this central circle to three smaller circles on the right. The top circle is labeled "Contracts" and contains an image of a document. The middle circle is labeled "People" and contains an image of a group of people. The bottom circle is labeled "Regulations & Other" and contains an image with the text "SOCIAL MEDIA".

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**CONTRACTS**

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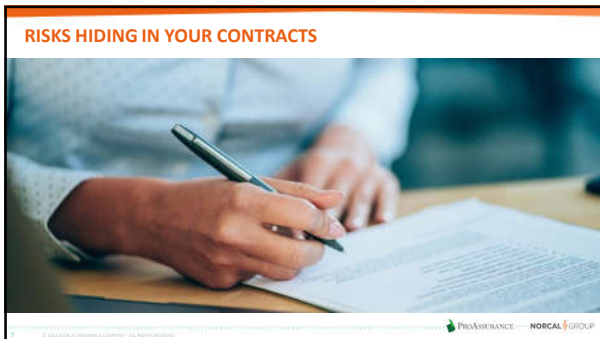
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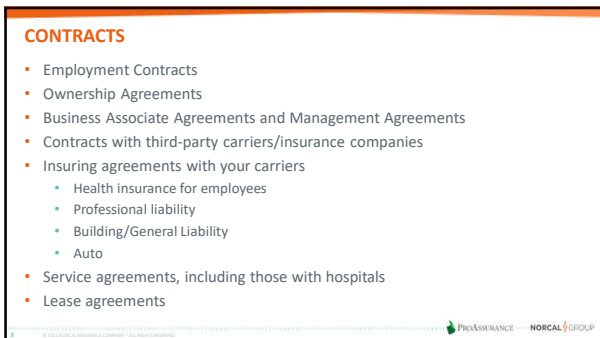
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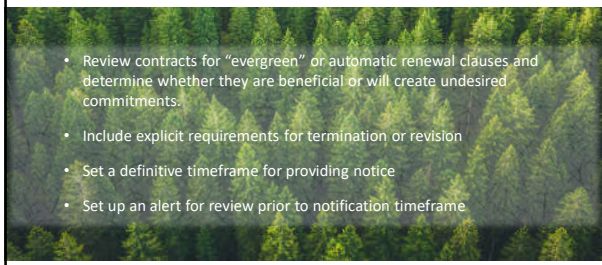
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**AUTOMATIC RENEWAL CLAUSES**

- Review contracts for “evergreen” or automatic renewal clauses and determine whether they are beneficial or will create undesired commitments.
- Include explicit requirements for termination or revision
- Set a definitive timeframe for providing notice
- Set up an alert for review prior to notification timeframe



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**INDEMNIFICATION/HOLD HARMLESS CLAUSES**




*Indemnify or hold harmless:*

- to assume another party's risk.

**Examples:**

- Indemnification by physician group of a hospital
- Indemnification by a hospital of a physician group
- Indemnification by physician of a group
- Indemnification by a group of a physician



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**INDEMNIFICATION/HOLD HARMLESS CLAUSES**



Have an attorney review any contract containing the terms “indemnity,” “hold harmless” or similar language.



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**CERTIFICATES OF INSURANCE CLAUSES**

- Include proof of insurance clauses in contracts with outside contractors.
- Require the other party to provide a Certificate of Insurance that indicates the dates of coverage and policy limits.
- Ideally, require consistent coverage limits.
- Monitor the certificates for expiration dates, proper coverage and limits.



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**MANAGING AND MAINTAINING CONTRACTS**



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**RISK MANAGEMENT STRATEGIES**

- Develop a written policy to define who in your organization has the authority to enter into a contract with an outside organization.
- Require all contracts with outside organizations to be in writing. Discourage oral agreements.
- Develop and maintain a list of all contracts, agreements, leases, and other contracts with outside organizations.
- Create reminders to review existing contracts prior to renewal dates.

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**RISK MANAGEMENT STRATEGIES**

- Carefully review all contracts and consider having your business attorney provide a review. (See NORCAL's sample *Contract Review Checklist*.)
- Do not agree to a term in a contract if you do not understand the effect it will have.
- Do not ignore unacceptable contract terms assuming they can be resolved at a future date.
- Enter into BAAs with any outside vendors or organizations that have access to patients' PHI.

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 **PEOPLE**

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**Vicarious Liability** – a principal or employer can be held vicariously responsible for the acts or omissions of an agent or employee that are committed in the course of employment

**Ostensible Agent** – a person who reasonably appears to be an agent of another

**Vicarious Liability**

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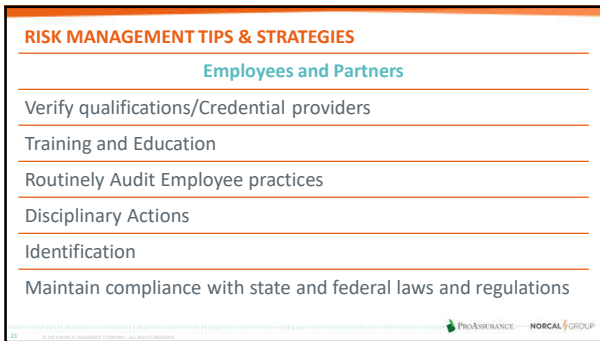
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**RISK MANAGEMENT TIPS & STRATEGIES**

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**Independent Contractors and Consultants**

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Badges and Logos

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Separate Malpractice Liability Requirement

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Notify Patients of Independent Provider

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Avoid Statements of Agency Appearance

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Independent Billing

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**RISK MANAGEMENT TIPS & STRATEGIES**

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**Contracts and Agreements**

Consult with an attorney to discuss the specific state laws and regulations that address vicarious liability and ostensible agency as they pertain to your contracts and agreements.

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Avoid entering into contracts that give the practice too much control over an independent contractor's interaction with patients. Request a business/corporate attorney to review contracts that include independent contractor agreements.

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Ensure that all contracts and agreements clearly articulate the working relationships of the involved parties.

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
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**LAWS AFFECTING AGREEMENTS TO SHARE SPACE**

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Section 1877 of the Social Security Act [42 U.S.C. 1395nn], also known as the physician self-referral law and commonly referred to as the "Stark Law"



Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)]

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**RISK MANAGEMENT TIPS & STRATEGIES**

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**Sharing Office Space and Resources**

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Identification of separation using signage

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Do not share advertisement, logos, or other written materials

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Do not share clinical or administrative employees

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Develop strict referral policies

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Comply with federal and state laws and regulations

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**REGULATORY COMPLIANCE**



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**HEALTHCARE FRAUD AND ABUSE LAWS**

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False Claims Act [31 U.S.C. §§ 3729–3733]

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Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)]

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Civil Monetary Penalties Law [42 U.S.C. § 1320a-7a]


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Physician Self-Referral Law [42 U.S.C. § 1395nn]

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Exclusion Statute [42 U.S.C. § 1320a-7]

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**FRAUD AND ABUSE LAWSUIT PAYOUTS RIPPED FROM THE HEADLINES**

“\$330,000 settlement to resolve allegations - medical services not medically reasonable or necessary”<sup>1</sup>

“\$3 Million to Settle Whistleblower Suit”<sup>2</sup>

“Kickback Allegations, Settling for \$18.25 Million - EHR Vendor”<sup>5</sup>

“\$6.75 million to resolve allegations that he performed medically unnecessary procedures”<sup>3</sup>

“A Capital Management Company and Its Affiliate Agree to Pay \$3.6 Million to Settle Stark Law, AKS, and False Claim Act”<sup>4</sup>

See References for article citations

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**RISK MANAGEMENT RECOMMENDATIONS**

Become knowledgeable of state and federal laws and regulations

Staff competencies

Third Party Billing Vendor

Implement Compliance Program

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 **OTHER EXPOSURES**

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**ADVERTISING**

**World-Class Physicians Providing Expert, Trusted Care.**

We know our patients have a choice in almost all other areas, so we go out of our way to deliver the best of care and compensation for yours and for your team. Results delivered on appointment with us today.



<https://o360.com/portbldu/>

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**ADVERTISING RISK MANAGEMENT CONSIDERATIONS**

- Know the physician advertising laws.
- Be truthful.
- Do not promise or guarantee results.
- Avoid making claims related to cures and outcomes.
- Avoid using superlatives.
- Accurately state board certification and ensure statements are specifically associated with the appropriate physician in the practice.
- Do not imply credentials or specialty training that does not exist.

**World-Class Physicians Providing Expert, Trusted Care.**



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**ADVERTISING RISK MANAGEMENT CONSIDERATIONS**

- If a procedure is experimental or unproven, do not imply it has proven value or is accepted practice.
- Carefully review fee structure, cost, refunds and financing information to ensure it is complete and not misleading.
- Protect patient privacy.
- Ensure your marketing or advertising company is familiar with healthcare advertising restrictions
- Have your website and advertisements reviewed by a healthcare attorney.



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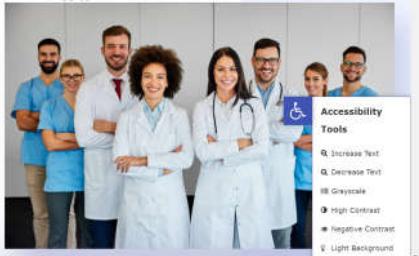
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**WEBSITE COMPLIANCE WITH THE ADA**



Accessibility Tools

- Increase Text
- Decrease Text
- Grayscale
- High Contrast
- Negative Contrast
- Light Background

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**TIPS FOR WEBSITE COMPLIANCE WITH THE ADA**

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Create alt tags for all images, videos and audio files.

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Create text transcripts for video and audio content.

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Identify the site's language in the header code.

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Offer alternatives and suggestions when users encounter input errors.

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Create a consistent, organized layout.

[businessnewsdaily.com/10900-ada-website-requirements.html](https://businessnewsdaily.com/10900-ada-website-requirements.html)

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**GETTING TO KNOW YOUR INSURANCE POLICIES**



INSURANCE POLICY

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**INSURANCE POLICY ELEMENTS**

- Declaration page** – identifies the insured and what is being covered
- Insuring agreement** – contains the insurer’s obligation
- Conditions** – covers many obligations of both the insurer and the insured
- Exclusions** – bars coverage for certain types of risks the insurer is unwilling to cover
- Endorsements** (amendment including exclusions & additions)
  - May add coverage for something that is not covered under the base policy
  - Adds exclusions for what may have been covered to clearly define that it is not.
  - If an endorsement provides coverage for what was not intended to be covered, often at an additional cost.

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**KEEP ORIGINALS OF INSURANCE POLICIES!**

Terms can **change** from policy period to policy period, so your current policy language may not apply to a loss incurred under a previous policy period.

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**COVERAGE TERMS**

- Occurrence
- Claims Made
- Prior Acts (Nose) Coverage
- IBNR (Incurred But Not Reported)
- Retroactive Date
- Extended Reporting Period Endorsement (ERE) also known as Tail

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**OTHER TERMS**

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Coverage Trigger

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Excess Policy

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Umbrella Policy

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Legal defense inside or outside the policy limits

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**CLOSING THOUGHTS**

- Adequately credentialing and/or verifying qualifications and skills of those providing medical care.
- Properly identifying staff members' role to avoid confusion regarding patient expectations and with regard to scope of practice.
- Properly documenting medical services and medical necessity, which improves coordination of care.
- Properly promoting your organization through your website and social media outlets can not only offer patients and potential patients information and education, it can be instrumental in establishing realistic expectations for care and outcomes.
- Understanding your risks, what insurance products cover and assessing your needs may make the difference between sustaining your business or closing it, impacting the ongoing care of your patient panel.

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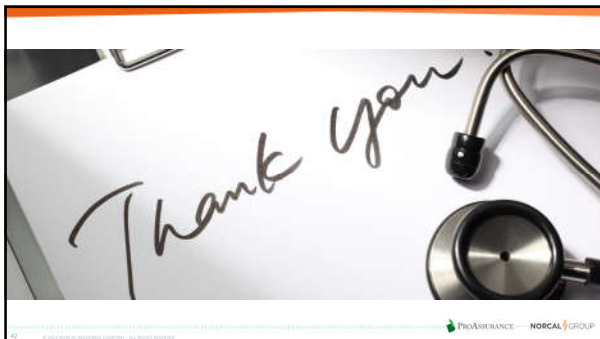
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