

Navigating the Risks of Curbside Consults

Key Considerations
for Those Being Asked
for (or Seeking) Advice



SCENARIO 1: A PCP sees a patient who has just returned from Southeast Asia and is suffering from severe diarrhea. Later that day in the hospital cafeteria, the PCP bumps into a colleague who is an infectious disease specialist. The PCP asks his colleague “what is best to treat traveler’s diarrhea from Southeast Asia for a patient with a sulfa allergy?”

SCENARIO 2: A midwife calls an obstetrician (who she doesn’t know) and asks her to look at a patient’s fetal monitoring strip. It’s later in the evening and the midwife doesn’t want the obstetrician to see the patient and insists on just getting her advice.

Which of the above scenarios may increase liability risk for the physician who is being asked for his or her advice? Both of these situations are examples of informal consults, also referred to as “curbside consults.” But, there is a key distinction: one of the scenarios represents asking a colleague for more general information, while the other is asking for very specific advice on a patient.

In simple terms, a curbside consult is an informal solicitation of another physician’s advice or opinion. It is generally characterized by the following:

- Typically limited in scope.
- The physician being consulted doesn’t review the patient’s chart, talk to the patient, or examine the patient.
- Often times, it involves physician colleagues who know each other.
- The physician being consulted does not charge for his or her service or have a financial relationship for the consultation.
- The consults can occur on the phone, in person, or via email.

IS THERE A PHYSICIAN-PATIENT RELATIONSHIP?

This is the core question in terms of liability with curbside consults. Here are some factors that are examined in order to answer this:

- Does the consultant physician have a formal contract or agreement with the treating physician or the hospital/facility where the treating physician works?
- Is there a financial relationship (i.e., is your group paid to be on call or do you bill to answer the question)? Any financial remuneration is a key factor in establishing a physician-patient relationship, and if a court finds a monetary relationship with the consultant, there will likely be liability.
- How complex is the advice being sought? Low-risk consults would include general informational requests, no request for a diagnosis or testing, and non-specific advice. A question such as “how long should you be off of an anti-platelet drug pre-scope?” would be considered a simple, informational question.
- Whereas “when would you do surgery on this patient?” would require more details than a simple phone discussion.
- How much is the asking physician relying on the advice of the physician who is consulted? An “implied” physician-patient relationship may be established when a physician provides advice that changes a patient’s treatment plan, even if it is via another medical provider.
- An implied physician-patient relationship does exist if you are covering a patient for a colleague. This also applies for physicians who are supervising allied health professionals when the physician is responsible for making a patient care decision.

The more a physician being consulted provides advice specific to a patient, like ordering tests or adjusting medication, the more likely the physician may be exposed to liability or may be viewed as part of the care team.

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CLARITY IN COMMUNICATION IS IMPORTANT

The requesting provider should be very clear and keep questions concise and general. They should also ask themselves if an official consult is warranted. Make sure you provide adequate information that is not colored by the answer you want. If you are asking for specific advice, offer the consultant a chance to officially see the patient.

On the part of the informal consultant, clarify whether your discussion is going to be documented in the medical record. If you believe the case warrants you officially seeing the patient, then say so. If the requestor is going to document your discussion, review the wording that they will be using.

CONSIDER THESE APPROACHES TO CURBSIDE CONSULTS

If you are requesting the informal consult:

Keep your questions concise and general. Try to avoid presenting a case biased toward what you feel the diagnosis or treatment should be. Don't put the informal consultant in the position of providing specific advice without an opportunity to see the patient. Ask permission before putting an informal consultant's name in the medical record.



Sample language to document the discussion:

"I discussed the case with Dr. <> who provided general information (or a general opinion) without formally consulting on the patient and he/she did not personally interview or examine the patient."

If you receive a request for an informal consult:

Specifically state if you are willing to provide a curbside consult. If you believe the case warrants that you officially see the patient, speak up. Some physicians choose to retain notes of their discussion about what the treating physician asked them along with a general summary of what was discussed.



Questions to ask the physician requesting a consult:

"Are you going to document our discussion?"
"What are you going to document?"

BE AWARE OF THESE HIGH-RISK SITUATIONS

1 Obstetrics

COPIC advises that you avoid curbside consults on a small piece of the patient's care without the benefit of the full story, like labor progress and prenatal course. The second scenario in the beginning where the obstetrician was asked to weigh in on a fetal monitoring strip without getting the full story is a high-risk area. We have seen situations where the obstetrician is asked a simple question (i.e., what do you think of the strip) and later deterioration in the patient occurs. In these situations, it may be alleged that the consult started at the first call.

2 Emergency department

When you are on call for the emergency department (ED) you must abide by EMTALA. Under EMTALA, anyone on call for the ED has a duty to any ED patient with an emergency condition that the physician is contacted about. When the EM doctor or allied health professional calls you in these situations, you may be considered the treating physician, creating a physician-patient relationship.

3 Critical illness or rapidly deteriorating

These patients likely require a thorough evaluation by a consulting physician (if at the same facility) so one can make timely recommendations. It may be alleged that the consultant's involvement started at first contact.

4 Email

One issue with email is that a permanent record is created. Review what you have written down before you send and consider including a disclaimer that you are only providing general information.