

## "Jousting" Revisited: Don't Fall Into This Liability Trap

*"I'm not sure why Dr. Jones took you off your medication, but it clearly made you worse."*

*"I would never have advised you to have that procedure. What was Dr. Green thinking?"*

*"What a terrible scar! Who did this to you?"*

Consider this actual case scenario:

Cinda Velasco, R.N. J.D.  
Attorney, Risk Management states:

Summary:

If you have ever had the urge to say something like this, you are not alone. Most providers are occasionally tempted to chastise or criticize a colleague. Fortunately, most resist the temptation. Hearing comments like these may cause a patient to sue for malpractice, and the prior-treating physician may not be the only one sued.

Making critical comments about another provider's care, either directly to the patient or in the chart, is called "jousting." When one physician criticizes another's care, both are at increased risk for a malpractice claim from the patient. With such unprofessional behavior, a claim is much harder to defend.

*An on-call physician delivered an unexpectedly large infant, with considerable difficulty and complications that included several perineal tears. On her first post-partum check the patient saw her regular physician, Dr. A, who asked, "What on earth did Dr. B. do to you?" Although nothing negligent had happened, the alarmed patient immediately sued the on-call physician. In the Complaint, her lawyer cited Dr. A. as an "expert willing to testify" that Dr. B. was negligent.*

"We have seen numerous cases where one physician's offhand criticism of a previous physician's care or diagnosis has led the patient to bring a claim. And more often than not, the critical physician does not have all of the facts."

Patients may not be completely accurate or honest about what another physician did or said. By jumping to a critical conclusion, many physicians have found themselves having to explain their comments to an understandably angry colleague, or worse, under oath at a deposition. In some cases, the criticizing physician winds up being sued as well.

Jousting does not always take place in person.

One entry, taken from a medical record in a malpractice case, read:

According to Ms. Velasco.

The practice of medicine is a careful balancing of scientific judgment and professional instincts.

Some risk management tips to help you avoid jousting in any form:

Conclusion:

Open criticism in a patient's medical record often comes to light when the patient requests a copy of their chart. The result may be more than embarrassing -- it may result in your being sued. To a jury, unprofessional charting will imply unprofessional treatment.

*Although it's Dr. K's position that this patient was stable enough to transfer, I do not think the lab values supported that decision and the patient's subsequent arrest and death proves me right.*

“This type of dispute plays directly into the hands of a plaintiff's attorney. A case that is otherwise defensible may be destroyed by a provider's venting in the medical record. In this case, the physician 'proven right' found herself sued right along with the doctor she criticized.”

Every decision you make is potentially vulnerable to attack from a colleague who may disagree. While practitioners recognize differences of opinion are healthy and even to be encouraged, patients may see such dissension as a malpractice claim opportunity.

- Be aware of your body language when seeing a patient for a "second opinion." Frowning, sighing, rolling your eyes, or shaking your head are all signals the patient may interpret as critical or negative.
- Avoid insinuating a patient's current condition is harder to manage because of another physician's treatment decisions.
- Gather all of the medical facts before drawing any conclusions patients often distort or misstate information when recalling events or test results.
- Document objectively without criticizing other providers.
- Ensure that your charting adequately reflects the care and treatment you are providing.

Certainly there are cases where a provider may legitimately believe another's care was inappropriate, even negligent. If a surgical instrument was left inside a patient, or an obvious fracture missed on an x-ray, the patient needs to be told of the findings. It is never advisable to be dishonest with a patient or to try to cover up or minimize another's

clear error. However, few situations are so clearly defined. In any case, the consulting physician should be very careful to obtain all of the facts before reaching a conclusion.

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