

Malpractice: The Hidden, Emotional Costs
Midwest Medical Insurance Company Risk Management
Committee

I just operated on the
wrong child

A young child was hospitalized with pneumonia and abdominal pain. An x-ray showed free air in the abdomen, so the treating physician called in a surgeon. An exploratory laparotomy was negative. Shortly after the operation it was determined that a mix-up had occurred when another boy, with the same first name, was taken for an x-ray by mistake. As that child had just had surgery, the presence of free abdominal air was normal. The surgeon, very distraught, called MMIC and said, "I just operated on the wrong child. What do I do now?"

Alleging a delay in
diagnosis of breast
cancer

A thirty six year old woman saw her family physician for a lump in her left breast. A mammogram noted scattered, mild fibrocystic changes. The radiologist recommended clinical follow up of any palpable mass. The physician telephoned the patient and advised her to return in one month if the lump persisted. The patient did not return until seven months later. At this time, the lump was more prominent and firm. A biopsy confirmed the diagnosis of breast cancer. She filed a malpractice claim alleging a delay in diagnosis of breast cancer and failure of the physician to follow up. The case went to trial and the jury returned a verdict in favor of the physician.

Alleging improper
treatment

An elderly woman was seen by her physician complaining of diarrhea, stomach discomfort, weakness, and poor appetite. Lab test results were put into her chart, and given to the physician for review. He noted her glucose level to be 468 and prescribed an oral hypoglycemic medication. Two days later, the patient was found in an obtunded state and rushed to the emergency department. Her glucose level was 28. She suffered an occipital infarction secondary to hypoglycemia. She remained in a persistent vegetative state until her death, four months later. When her physician reviewed her lab findings again, he was surprised to see that the high glucose report on her chart

Getting Sued: The Hidden Costs

Being sued for malpractice is often described as a traumatic life experience.

What exactly is medical malpractice?

belonged to a diabetic patient and had been placed in the wrong chart. A malpractice claim alleging improper treatment was settled with a payment to her surviving sons.

Negligence. Malpractice. Lawsuit. These are all very stressful words for physicians. In today's world, every physician is aware of the possibility of being sued for malpractice. A study of physicians' emotional reactions to malpractice litigation by Sara Charles, M.D., showed over half of the physicians experienced anger, inner tension, depressed mood, frustration, irritability, and insomnia. These are the hidden costs of malpractice.

The actual cases described here highlight a few of the varied circumstances, allegations, and outcomes in malpractice litigation. These cases had one thing in common: the physicians involved all felt the emotional stress of a malpractice claim.

The AMA Board of Trustees has stated that, "The biggest cost of suits brought under the malpractice system is the emotional injury that a physician experiences when he or she believes that he or she had done the best possible under difficult circumstances." While you cannot completely avoid the emotional reactions a malpractice claim elicits, there are ways to cope. Understanding the process you face is a first step.

The Malpractice Process

It is defined as professional negligence, or the failure to meet the standard of care for your profession. It can be a blatant error, such as operating on the wrong patient or body part, or it can be a more subtle error, such as failing to note that the wrong lab results were filed in a patient's chart. Either situation may lead to a claim that you breached the standard of care in treating the patient.

In a medical malpractice claim the injured patient (plaintiff) alleges the physician (defendant) was negligent in some way and requests an award of damages (money) as compensation. The plaintiff must prove that you breached the applicable standard of care, usually by using another physician to testify as an expert. This

Often you know when a mistake has been made and you can prepare for any consequences that follow.

The news of a malpractice claim against you could reach you in one of several ways.

However you find out, discovering you are being sued creates an unpleasant mix of emotions.

Once the lawsuit is begun, the "hurry up and wait" or "discovery" process begins.

During discovery

breach must be the direct cause of the patient's injuries for the patient to recover any money. In the example above, the doctor's failure to note that the wrong patient's lab results were in the chart led to his prescribing an oral hypoglycemic, causing the woman's brain injuries and death.

The physician who operated on the wrong child knew the moment he left the OR that he faced a claim.

Sometimes, however, a patient's adverse outcome or missed diagnosis will not come to your attention until the claim is brought.

A letter from the patient or his attorney alleging negligence and asking for some type of compensation may arrive in your morning mail. A summons or complaint served by your local sheriff may be your first notification of a malpractice claim. Note that this "service of process" marks the beginning of the formal legal action -- the plaintiff's attorney files the summons or complaint with the court, stating the claims against you, then you and your attorney you must respond within a specific time. Yet another way you may find out about a lawsuit is through the local newspaper. When a complaint is filed with the court it becomes public and the local paper may publish the allegations against you.

Feelings of anger, betrayal, shock, and humiliation are not uncommon. Many physicians report an overwhelming urge to talk to everyone about the case to try and validate their actions. Others withdraw and hope the whole thing will go away. Getting a handle on your emotions can be critical, as the technical legal process may be a long and painful one.

The Lawsuit

Hidden costs of the claim begin to accrue in the form of the time you spend in this phase of the lawsuit -- meetings with lawyers, answering questions, and telling what happened over and over again.

Your lawyer will help you answer, under oath, written questions from the plaintiff called

"interrogatories." Expert witnesses will testify both for you and against you; you will be asked to review each opinion. You will most likely give a deposition, under oath and recorded by a court reporter, where the plaintiff's lawyer will ask hundreds of questions about your professional background and what happened with this patient. All of this will take place long before a trial might begin. Each new step may cause a roller coaster of emotions. As the litigation wears on, fear or humiliation may give way to anger and depression. You may just want the whole thing to be over, but fear the embarrassment of settling the case.

Settlement may be considered at any time during the litigation process.

A settlement is an agreement between the parties that resolves the dispute. Often, once discovery is complete, the plaintiff realizes the case is weak and the suit is dismissed. This can sometimes be accomplished early in the process. In other cases, a payment is made on behalf of the physician to resolve the claim. The decision to settle a claim against you may cause feelings of self-doubt, resentment, or failure. These intense feelings may impair your ability to objectively evaluate the nature of the claim.

If your case is not settled or dismissed

It will go to trial. Few malpractice cases -- nationally, only about 10 % -- go to trial. If your case does go to trial, your lawyer will expect you to attend every day. The trial may last several weeks, creating intense stress. It can be difficult to sit through the trial listening to the plaintiff's attorney point out your "mistakes and failings." Ultimately, a jury of lay persons will review all of the evidence and return a verdict for either the patient or for you. When the trial ends, you may be left with a sense of great loss, no matter the outcome.

In Dr. Sara Charles' studies

The Emotional Impact: Talking it Out

96% of the physicians acknowledged some emotional reaction to being sued. A variety of symptoms clustered into two common groups. One group was described their symptoms as depressed mood, insomnia, loss of appetite, loss of energy, and decreased sex drive. A second cluster of symptoms was characterized by feelings of overwhelming anger, along with feelings of frustration, irritability, headache, inner tension, gastric distress, insomnia, and depressed mood.

Stress symptoms invariably carry over into work and family life.

Over half of physicians who have gone through litigation felt that they and their families had suffered emotionally. Spouses may suffer feelings of stress similar to yours.

One way to cope is to realize you are not alone.

If you are sued, some methods to cope include:

The anger can cause you to view every patient as a potential litigant and negatively effect your patient relationships. You may find you are unable to stay focused at work. Some physicians react by ordering extra tests, referring their difficult cases, and avoiding patients with the same condition as the plaintiff. The clinic staff may feel the stress and also become anxious and irritable.

A deep sense of loss, marital isolation, fear of financial vulnerability, and social isolation can pervade the family. Many physicians fail to discuss their feelings with family members in an attempt to protect them from the stress. This isolation can cause more stress. The cycle of emotions generated by a malpractice claim needs an outlet. You may be instructed not to discuss the case with anyone, but the feelings you are having need to be discussed so that you can receive the emotional support that will help you cope with the rigors of a lawsuit.

Litigation Stress: Ways to Cope

Although statistics tell us thousands of physicians nationwide will be sued this year, many of the physicians in Dr. Charles' study felt alone in their ordeal. It is important to remember that other physicians have gone through what you may be experiencing. You can benefit from sharing the emotional fallout with a colleague who has been there, and survived.

- ✓ Actively involve yourself in the defense of your case. Help choose your experts, review the medical literature, and share your feelings with your insurance company representative and the defense attorney working with you.
- ✓ Become more informed about the legal process to decrease the fear of the unknown. Understanding the steps will help deal with the frustration of the slow-moving pace.
- ✓ Share your emotional responses with your spouse, children, any support network you may have. While you can't discuss the actual facts of the case, you can discuss how it's making you feel.

For more information
contact:

- ✓ Seek professional counseling if you feel overwhelmed by your reactions. Don't wait until your emotions interfere with your judgment, leaving you vulnerable to another mistake.

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