We physicians are human beings and, as such, we make mistakes. When patient outcomes are different from what was expected, we sometimes get the blame even though we’ve done the best we can. Yet most of us engage in magical thinking. We assume that we are different from our peers—that somehow we can be more careful than others and dodge the bullet of a lawsuit. Sure, there are ways to mitigate that risk, and some physicians will make it through their whole career without being sued. More likely, it is just a matter of time before you are named in a medical malpractice claim.

Harvard researchers found that by age 65, 75 percent of physicians in low-risk specialties such as family medicine, pediatrics or psychiatry will have faced a malpractice claim; the rate for high-risk specialties is reported to be 99 percent.1 In high-risk specialties such as neurosurgery and cardiovascular-thoracic surgery, approximately 19 percent of practitioners face a claim each year.1 The same investigators also found the average physician spends almost 11 percent of a presumed 40-year career with an open, unresolved malpractice claim.2 That doesn’t include the time from the date of the injury to when a claim is actually filed, which is nearly two years on average. That period can be extremely stressful, as the physician must deal not only with the emotional impact of the adverse outcome but also with the fear of a possible lawsuit.

Because we can’t eliminate the risk of being sued, we need to develop healthy ways to think about this inevitability and to embrace practices that will promote resiliency and minimize the negative impact of unanticipated events on both you and your patients. Here are five principles to take to heart.

1 Communication is all-important
A review of the malpractice literature suggests that a breakdown in the patient-physician relationship, as evidenced by communication problems, is one of the leading reasons for malpractice claims.3 In addition, poor communication is consistently cited as the third most common reason for sentinel events.4

Communicating in a compassionate, empathetic manner is as important as relaying accurate, understandable information. People may or may not remember what you say, but they will definitely remember how they felt when you said it. The importance of establishing good rapport with patients, families, colleagues and other members of the care team cannot be over-emphasized. Good rapport involves communicating with the goal of ensuring that your words and intentions are understood. It also requires treating people with kindness, dignity and respect. If you remember the “favorite uncle rule” (treat each patient as you would your favorite uncle), you will make the patient feel as if he or she is the most important person in the world and lessen your chance of being sued.

Small actions such as calling patients the day after surgery or checking in with those who had worrisome complaints when you saw them in the clinic or emergency department will make a huge difference to them. Such gestures may nip a problem in the bud if things aren’t progressing as you would have expected. Sitting down with your patients, asking about their lives, extending a caring touch or making an empathetic remark also go a long way toward establishing trust and encouraging good communication. Routinely asking if their concerns were addressed or whether they have additional questions shows that you are committed to their well-being. And, if you keep the concept of “communicate for understanding” front and center, people will feel comfortable asking you questions. This applies to interactions with patients, their family members and your staff.
Another aspect of communication is the informed consent process. Obtaining informed consent is the legal duty of any physician performing a procedure or delivering treatment. As such, it should not be delegated to another health care professional, such as a nurse preparing the patient for the procedure. It’s important that you take the opportunity during the informed consent conversation to create realistic expectations about the likely results of the procedure. Be sure to document discussions about the work-up, differential diagnosis, recommendations, and risks and alternatives and note the patient’s concerns, questions and understanding. The outcome of a medical malpractice claim may be significantly affected by whether all of these things are included in the patient’s record.

**Humility is an important virtue in the practice of medicine**

The days of the “lone wolf” are over. We are practicing in a time when no one physician can possibly know all the answers. We also are living during a time when many resources are available to us. It is imperative that we use them all. We can obtain prior medical records, review literature and consult with colleagues when faced with clinical challenges or conundrums. You will be hard-pressed to explain why you didn’t take advantage of these resources if something goes wrong.

New technologies and procedures will always be a part of medicine, but you must make sure you are technically competent before using them. Know your limits and get help when you need it; always put your patient’s best interest ahead of your ego.

Also, avoid “jousting” or criticizing another clinician’s care. It won’t help the situation. In a case where there was a mishap, there is little chance that you will fully understand what transpired and what resources were available to the physician who was caring for the patient. Jousting only makes patients and families feel worse, in addition to inviting lawsuits.

**Patients and family sue because they want information**

One of the most commonly held myths about medical malpractice is that patients sue because they want money. More often, what they want is an explanation about and an acknowledgement of what happened, an apology, information about the consequences they may experience and reassurance that everything will be done to make sure the same thing does not happen again. That said, when it’s clear that mistakes have been made and that the patient suffered adverse consequences as a result, that patient is justified in seeking compensation for their injuries.

A relatively new approach to dealing with unanticipated outcomes, pioneered at the University of Michigan Health System, is gaining traction in the medical community and improving physician, patient and family satisfaction.

This approach involves committing to being honest and apologizing when an adverse event happens. Proponents of apology cite data that show it can result in fewer lawsuits, lower insurance premiums, decreased defense costs and lower settlements.

Opponents contend that it may do more damage than good by making a defense case weaker. In any event, when you sincerely say, “I’m sorry this has happened to you,” it does not imply that you are responsible or liable for the outcome; it just implies that you have appropriate and natural feelings of regret. In fact, the absence of these simple words when medical care goes wrong can do damage, as the silence can be deafening.

Saying you are sorry can help repair your relationship with the patient, decrease the amount of time spent in resolution, and help both you and your patient heal and move forward. It also opens the door to allowing both parties to better understand what went wrong and how it could be prevented in the future.

Thirty-four states and the District of Columbia have passed laws preventing apologies by health care professionals from being used in a lawsuit. Minnesota does not currently have a health care apology statute. Because the scope of these laws differs by state, you should seek professional advice about the situation in your state.

Transparent communication does not mean telling patients and families all the details of an event while in the acute setting. Rather, it means sharing information when it becomes available and when patients are able to absorb it. This requires working with patient safety and risk management personnel to set a stage in which open, honest and empathetic conversations can occur. Promising to get back to patients when you have more information and following through on this promise can make or break a relationship that has been rendered fragile by an unanticipated outcome. The truism that “people will fill in the blanks” when they aren’t kept in the loop is especially true when medical care goes awry.

In addition to apologizing and making a commitment to open, honest disclosure, you may need to communicate with your clinic or hospital business office so that bills are not sent to a patient in the midst of an adverse event. Depending on the event, it may be appropriate not to bill the patient at all. Exercise the same sensitivity around other expenses the patient and their family may incur related to the event such as those for parking, meals, hotel stays and missed days of work. Insensitivity to financial concerns can irritate patients and further damage your relationship with them.

**Caring for yourself is imperative**

Burnout is characterized by emotional exhaustion, depersonalization and a sense of low personal accomplishment; it leads to decreased effectiveness at work. Studies show that burnout is prevalent among physicians at all stages of their careers. In a study of almost 8,000 practicing surgeons, Mayo Clinic researchers found that major medical errors were strongly related to a surgeon’s degree of burnout. A survey of residents by the same group from Mayo
found that 76 percent of the 115 respondents met the criteria for burnout.7 Those residents were significantly more likely than residents who weren’t experiencing burnout to report at least one episode of providing suboptimal care per month, including discharging a patient early to make the workload more manageable, making a medication error for reasons other than lack of knowledge, not performing a test because of a desire to discharge a patient, paying little attention to the social or personal impact of an illness on a patient, and having little emotional reaction to the death of a patient.8

The problem of burnout and its effect on patient care and safety is garnering more attention these days. Medical schools, hospitals and clinics are developing programs to promote well-being and resiliency; they also are attending to the emotional needs of providers affected by unanticipated outcomes. Participating in physician wellness programs, many of which teach stress-management techniques, may be one of the best investments you can make to help you cope with the stress associated with an adverse event and possible malpractice claim.

5 Surviving, even thriving, after a lawsuit is possible

Physicians want to help people, so it’s not surprising that an adverse event knocks us off kilter. Studies show that after such an event, physicians often experience post-traumatic stress-like symptoms, a phenomenon known as the “second victim” response.9 They may feel numb, fearful and isolated from others. And they may become depressed or have symptoms such as headaches and difficulty sleeping, eating and concentrating. Many report feeling personally responsible for the adversity, as though they have failed the patient. And most replay the scene over and over in their minds, and second-guess their skills and knowledge going forward.10 This makes them vulnerable to another unanticipated outcome.11

Second-victim response is normal. But far too often, we are reluctant to admit how much stress we are experiencing. We tend to retreat and isolate ourselves when we feel the shock, sadness, shame, sense of failure and overwhelming guilt that go along with an unanticipated outcome. When this happens, our colleagues and other care providers may be afraid to approach us. Ultimately, this is damaging not only to us but also to our community of care providers.

Health care organizations are starting to recognize the impact of the distress felt by physicians involved in unanticipated outcomes and related lawsuits; some are even developing clinician-support programs. For your sake—and that of your current and future patients—take advantage of these programs. The University of Missouri Health System has developed an in-depth program to support second victims and documented six stages of recovery after an adverse event. Its creators note that outside forces such as malpractice claims, root cause analyses or disciplinary investigations can trigger new memories of the original event.12 During the final stage of recovery from an adverse event or lawsuit, “moving on,” physicians either drop out, survive or thrive.13

Several factors seem to influence how a physician comes away from an adverse event. Personal resilience is a key predictor of thriving. And recovery often requires us to forgive a colleague, another member of the health care team or ourselves, which is much easier said than done. When physicians don’t take time to heal and they merely survive, they put themselves at risk for burnout and all that goes along with it including depression and an increased likelihood of committing further errors.

Conclusion

In spite of our best efforts, adverse outcomes and subsequent lawsuits are a part of medical practice. Both cause physicians to experience significant stress. Fortunately, more and more resources are becoming available to support distressed physicians and help them realize that their response to such events is normal. If your patient experiences an unanticipated outcome, remember that you are not as alone as you might think. Reach out and ask for support. And in turn, offer support to peers who might be in a similar situation. In addition to accepting and providing support, adopt practices that promote wellness and resiliency as well as good relationships with patients and other health care providers. As we remove the stigma associated with being involved in an adverse event, being sued and seeking help, we will become healthier, happier and better able to take care of ourselves and others. MM

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REFERENCES