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The stress OF MALPRACTICE LITIGATION

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The following is Part 2 of a two-part series on the stress experienced by physicians from malpractice litigation. In our last issue, Part 1 reviewed the sources and results of stress associated with malpractice litigation.

Malpractice litigation is often compared to an infectious disease—the menace is always there, but some physicians are never infected, and some, despite the fact they did nothing wrong, become infected but not harmed (Ramo, 1997). Taking that analogy a step further, some become infected and experience temporary harm, and some become infected and never quite recover. The purpose of this article is to explore successful recovery from the stress of malpractice litigation.

Accusations of medical malpractice arise in many physicians' professional careers. Any physician can be sued regardless of the presence or absence of negligence. One of every four physicians is sued for malpractice each year; six of ten practicing physicians have already been sued. (These estimates are, of course, influenced by physician specialty and practice location.) Malpractice litigation is a frequent occurrence and is undeniably and understandingly stressful. There is a name for the feelings experienced by many physicians who are sued for malpractice—Malpractice Stress Syndrome or MSS (Koltonow, 1998).

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The stress OF MALPRACTICE LITIGATION

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I’m going to practice
the best I can. I can’t do
better than my best.”*



Unhealthy Reactions

“I aged 10 years in two weeks.”

“For two or three months I didn’t go out socially.”

“Mere mention of a lawsuit would bring on attacks of angina.”

“My wife had an intractable headache for a month.”

“Good medicine is no longer as important to me as ‘playing-it-safe’ medicine.”

These comments illustrate how strongly some physicians are impacted by malpractice litigation. Upon learning they’re involved in litigation, physicians often experience feelings of guilt and shame, as well as grave doubts about their competence. Too often—as a result of those feelings—physicians isolate themselves from friends, family, and colleagues, fearing they will experience criticism and disapproval.

Isolation is probably the most detrimental reaction. Not only can isolation negatively affect a physician’s ability to function professionally, it can also impede his or her ability to effectively assist in defense of the lawsuit during the legal process. Moreover, isolation can put spouse and family relationships in jeopardy. For example, the families of physicians involved in malpractice litigation report feelings of loss, marital isolation, financial vulnerability, and fear of social isolation (Atkinson, 1998).

Physicians experiencing stress from malpractice litigation should talk with their spouses and families so they can receive support and understanding. You can find more information on isolation and discussing malpractice litigation with others on page 3.

MSS can persist for years; however, physicians who have previously won a malpractice lawsuit experience less and shorter-lived symptoms.

Healthy Reactions

“I’m still a physician. I’m going to practice the best I can. I can’t do better than my best.”

“I re-framed the whole experience from a personal attack on me to a business transaction for the attorneys and plaintiffs. I realized my self-esteem cannot become all wrapped up in the process.”

“I actually grew up a lot. I was naïve. I realize now that bad results can happen, and I’ll take my lumps.”

“I was deeply affected by the lawsuit because my identity was tied to being a competent physician. With professional help, I re-framed the experience by realizing that being a physician is what I do, not who I am. It’s not, ‘I am a surgeon whose name is Bill.’ Instead, it’s ‘I’m Bill, who happens to do surgery.’”

Physicians who cope successfully with the stress of malpractice litigation are able to intellectually distance themselves from the suit and not perceive it as a personal attack.

Optimally, a physician involved in malpractice litigation will:

- Recognize it is normal to experience psychological repercussions when accused of malpractice;
- Recognize many other physicians have been sued and you are not alone in the experience;
- Come to see the malpractice litigation more as an inherent risk of the profession, and less as a measure of personal competence or clinical ability; and
- Remember that only two percent of patients file claims and only about twenty-five percent of claims result in payment to the patient.

Discussing the lawsuit

There are two common physician reactions to a notice of being sued. Some physicians have an overwhelming urge to talk to anyone and everyone in an attempt to validate their actions in the situation. Others withdraw and pursue the “head in the sand” method, hoping if they ignore it, the lawsuit will go away. Neither reaction works.

Isolation can be harmful. It can mean a loss of perspective about the litigation, as well as excess guilt hampering your ability to practice. It is a good idea to discuss being sued with others; however, you do not want to discuss the case specifics with someone who could be questioned about that discussion. In order to avoid that situation, you should discuss the specifics of the litigation only under the protection of legal privilege. Legal privilege is determined on a state by state basis, but often applies to discussions with your spouse, personal physician, psychotherapist, clergyman, attorney, and professional liability insurance claims adjuster.

Pursuing the “head-in-the-sand” method is understandable, but ineffective. And, it could leave you without coverage. Most professional liability policies have guidelines about reporting incidents that might turn into litigation. ProAssurance companies’ policies say:

“When an insured becomes aware of any claim or suit to which this policy applies, or any incident which is likely to result in such a claim or suit, such insured or his or her representative must report such incident, claim or suit as soon as practicable.”

Report potential litigation promptly. Let your claims adjusters help you from the beginning. You don’t have to “go it” alone.


Working with Attorneys

Experienced, successful attorneys are appointed by ProAssurance companies to work with physicians throughout the litigation process. To optimize your relationship with your attorney, we suggest you:

- Participate actively in your own defense, educating the attorney about the medicine involved in the case. Work with your attorney (e.g., identifying expert witnesses and relevant literature), to reduce the sense of helplessness.
- Become informed about the legal process.
- Ask that your attorney keep you advised of all aspects of the litigation process. When not actively involved helping the attorney, try to put the suit out of your mind. Let the attorney do his/her work.
- Prepare mentally for either outcome. Remember that a plaintiff verdict does not necessarily mean negligence, and a dismissal doesn’t necessarily remove the stress of being sued.

Long Term Coping

Both physicians who have been sued and physicians who have not been sued may find it helpful to look ahead to the future by:

- Seeking financial guidance so you plan for your retirement and children’s future in a way that minimizes the potential impact of lawsuits.
- Working with medical and specialty societies for changes in the tort system that may reduce the number and severity of malpractice suits. Physicians can influence lawmakers. 

The following are tips for coping with MSS taken from research or offered by physicians who have experienced malpractice litigation.

- Maintain your physical and mental health by eating right, actively pursuing leisure-time distractions and exercising regularly. The idea is to maintain balance in work, rest, recreation, and—if you choose—worship.
- Pay attention to interactions with patients. Don’t let the stress or anger from the suit have a negative impact on relationships with patients.
- Learn from the lawsuit. Does it indicate you should change the way you document or participate more in continuing medical education?
- Modify aspects of your practice to make another suit less likely (and to reduce feelings of vulnerability).
- Continue to participate in your profession as you did before the litigation, e.g., working with hospital committees or specialty societies. This helps regain a sense of belonging and self-worth.
- Control working hours. Sued physicians often work harder, double-checking everything they do, or “keeping busy” so as not to think about the lawsuit.
- Monitor consumption of controlled and uncontrolled substances. Don’t let the stress of a lawsuit lead to addiction.
- Recognize when you are not handling the stress well and seek professional help. This is the kind of advice physicians often give to patients. It’s good advice that will benefit physicians themselves.

References:

- Atkinson, L. and McBride, D. (1998). Being sued: The loneliest feeling in the world. *Iowa Medicine, Jan./Feb.*, 16-18.
- Bredfeldt, R. et al (1987). Emotional response to malpractice suits: Should residents be prepared? *Family Medicine (19-6)*, 465-467.
- Charles, S. et al (1998). Appraisal of the event as a factor in coping with malpractice litigation. *Behavioral Medicine (14-4)*, 148-154.
- Hearn, W. (2000). Medicine’s stress buster. *Between Rounds (1-1)*, 1-4.
- Koltonow, S. (1998). Physician well-being. In *Psychosocial Disorders, Section 23*, 1943-1948.
- Martin, C. et al (1991). Physicians’ psychologic reactions to malpractice litigation. *Southern Medical Journal (84-11)*, 1300-1304.
- Ramo, B. (1997). Medical malpractice lawsuits: When bad things happen to good doctors. *Paper delivered to New Mexico Heart Institute.*
- Samkoff, J. and Gable, G. (1991). Coping with the stress of litigation. *Pennsylvania Medicine, March, 1991*, 18-20.

Responding to Drug & Product Recalls and Warnings

Upon Merck's voluntary withdrawal of Vioxx from the market in the fall of 2004, ProAssurance received numerous telephone calls from physician practices, requesting risk management advice on patient notification. Subsequently, in December 2004, the Food and Drug Administration issued warnings to users of over-the-counter naproxen, Celebrex, and Bextra, due to the increased risk of cardiovascular problems.

While there have been a rash of recalls and warnings in the past year for COX-2 inhibitors, such recalls and warnings are not unique. Remember Baycol, Rezulin, and Phen-Fen? And recalls for medical devices have increased significantly, from less than 50 a year in the mid-1990s, to over 100 a year since 2001.

While pharmaceutical companies and product manufacturers may notify physicians of recalls, they are not required to notify patients. Unless patients learn of warnings and recalls through happenstance or through their own research, oftentimes the treating physician is the only means of patient notification.

When Contacted by the Pharmaceutical Company

While physicians are not required by law to notify patients of drug and product recalls and warnings, from a risk management standpoint we encourage physicians to:

- Review medical charts to identify patients who may be affected by the recall or warning. Use of medication summary sheets in patients' charts and electronic medical records may assist in such reviews. (As an alternative, physicians may wish to send out a mailing to their entire patient base, advising them of the recent recall or warning, and requesting that patients call the practice if they have used the medication or the product.)
- Obtain and record careful, complete histories regarding patients' past use of medications and products.
- Consider posting a sign in the waiting room, requesting that patients notify the receptionist if they were prescribed the medication or received the product.
- Contact patients who were prescribed the medication or received the product. Offer all appropriate evaluations and/or treatments to such patients.
- Provide patients with authoritative, understandable information explaining medical implications of taking the medication or the use of the product.
- Document your attempts to contact patients, your discussions with patients, and any educational materials provided.
- Carefully preserve records of patients who were prescribed the medication or received the product. Assume that these records may be used in litigation.

When Contacted by the Pharmaceutical Company . . .

Some practices have reported being contacted by pharmaceutical companies in follow-up to drug recalls. Practices have received questionnaires from companies, asking specific questions about patients' medical care and requesting physicians' opinions regarding whether patients experienced side effects or injuries in response to use of medications. The questionnaires often make reference to the HIPAA Privacy Regulations which allow physicians to share such information with pharmaceutical companies.

While HIPAA may *allow* physicians to communicate such information to the pharmaceutical companies, it does not *require* physicians to share that information. Further, state statute may be more protective of patient confidentiality under such circumstances.

It is also important to point out that physicians could find themselves as co-defendants with pharmaceutical companies, if litigation ensues.

When contacted by pharmaceutical companies under these circumstances, we suggest that practices inform the companies that you are unable to complete the questionnaire. We further suggest that practices indicate that if the pharmaceutical company obtains a valid, signed authorization from the patient for the release of records, you will forward the records to them.



Reduce Your Exposure to Malpractice Claims

Since 1990, ProAssurance Group has offered risk management education for physicians. These highly regarded, informative programs have helped physicians keep up-to-date with the latest risk management concerns.



2005 Live Risk Management Seminar

The 2005 live physician seminar, **Let's Talk . . . Communicating the Good, the Bad, and the Apology** remains available to physicians at a number of locations. This seminar covers three fundamental topics: 1) the importance of effective communication among physicians, 2) patient education, and 3) discussions of unexpected outcomes with patients and their families. Throughout the seminar, we use detailed case examples taken from recent experiences of our insured physicians.

2005-2006 CD-ROM Risk Management Seminars

Physicians may also learn the latest risk management practices and procedures through the convenience of CD-ROM; it's the perfect solution for a physician's busy schedule. The CD-ROM seminars are presented as audio lectures with automatically advanced synchronized slides. Each CD-ROM—including the post-test—should take one hour to complete.

Physicians may choose from six one-hour CD-ROM seminar topics:



Documentation — Witness for the Defense

This seminar focuses on techniques for documenting patient care to assist the physician in the event of a malpractice claim. Effective documentation techniques may make your medical record a valuable witness for the defense. Actual examples from claims files are used to illustrate documentation techniques.



Effective Communication — A Skill, Not an Art

Communication problems account for a significant number of claims against physicians. In most cases communication is a skill that improves with knowledge, practice and effort, as opposed to a talent that some people are blessed with. This seminar reviews how communication problems occur, methods to prevent such problems from occurring, and techniques to improve communication skills.



Informed Consent — "If Only I Had Known!"

"If only I had known, I would never have agreed to this surgery!" We often hear this statement from patients who file lawsuits alleging lack of informed consent. Educating patients and obtaining informed consent is one of the most crucial aspects of the physician-patient relationship. By participating in this seminar, you will learn how to prevent such allegations and to defend yourself if they occur.

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2005 Risk Management Seminars *for Physicians*



Current Risk Management Issues in Obstetrics & Gynecology

ACOG's most recent Medical Liability Survey indicates that one in seven ACOG Fellows have left obstetrical practice due to the risk of medical malpractice claims. Recent events, however, such as the ACOG Report on neonatal encephalopathy and cerebral palsy, provide hope for defense of obstetrical claims. This seminar reviews detailed obstetrical case studies which help illustrate risk management techniques.



Misadventures in Anesthesiology — Costs, Causes & Prevention

This seminar reviews anesthesia malpractice claims data from the Physicians Insurers Association of America, and the ASA's Professional Liability Closed Claims Project. We review case studies involving the most common allegations against anesthesiologists and point out risk management techniques to avoid claims. The seminar concludes by reviewing emerging claims trends in anesthesiology.



Risk Management in Primary Care

This seminar analyzes malpractice claims unique to primary care practices. Topics include current trends in professional liability claims and a review of the unique risk management exposures that confront primary care physicians on a day-to-day basis. Several actual closed claims are used to illustrate important areas of risk.

ADDITIONAL INFORMATION AND REGISTRATION

For additional information on ProAssurance Group live and CD-ROM seminars, access our website at www.ProAssurance.com, or contact your local ProAssurance Group risk management department.

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