

Physician Stress Test

The Emotional Trials Of Being Sued For Malpractice

Part 1 in a series of articles on the impact of medical malpractice litigation on physicians' lives

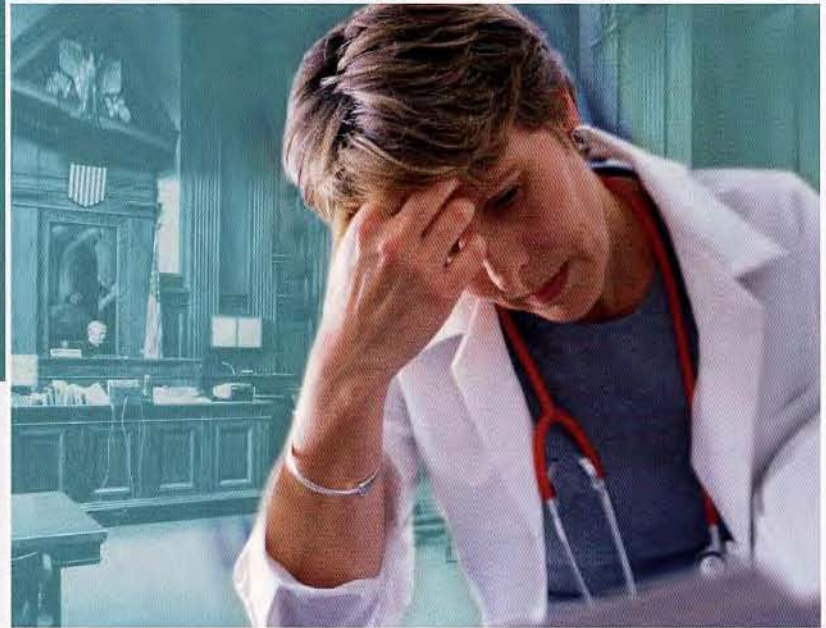
By Lenny Giteck

Being sued is a difficult experience for anyone, but for physicians who become involved in medical malpractice lawsuits, it can be particularly grueling.

In our highly litigious society, fully half of all medical doctors will be forced to deal with the experience during their careers. Today's healthcare consumers have become much more aware that doctors—once put on pedestals as virtual gods—are fallible human beings who make mistakes. People expect to be compensated for those errors.

Of course, some patients sue their physician for a very simple reason: money. They incur enormous medical bills and their health insurance covers only a portion of the debt. "So they haul the doctor into court even though he or she may have provided exemplary care," says Margaret McComb, SCPIE Senior Vice President and head of its Claims department.

But there is no denying that many medical lawsuits are the result of real missteps on the part of physicians that cause real damage to patients, a fact of life that puts many doctors on an emotional roller-coaster ride.



Shame, Blame and Guilt

Although doctors react to being sued in a variety of ways, many experience painful feelings of shock, embarrassment, anger, anxiety, guilt and depression. Especially when one of their long-term patients sues them, they can suffer a gut-wrenching sense of betrayal.

"The first response we often see in our policyholders is anger," notes McComb. "They're upset that a patient would file a legal action against them, when they believe the care they provided was good. And if you look at the records, the doctors are right nine out of 10 times."

A feeling of shame can make it extremely difficult for physicians to admit to colleagues, friends and relatives that they're being sued, according to Bryan Reid, a partner in the Southern California law firm of Elliot, Snyder & Reid.

Reid is in a good position to know: He specializes in medical malpractice cases and has defended hundreds of physicians.

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"Some doctors are so embarrassed, they instruct us to only call their personal phone number, or to send all correspondence to their home address rather than to the office," Reid says. "They want to keep the whole thing as quiet as possible."

Shame—coupled with the wise advice of attorneys and medical insurance claims representatives not to discuss the particulars of a case with anyone—can also leave physicians who are being sued feeling isolated and lonely, a good prescription for depression.

Furthermore, shame can cause doctors to be too quick to accept blame and take on guilt—which, in turn, can prompt them to rush to settle cases that might be highly defensible. "It's easy for doctors to lose sight of the fact that a negative event or bad outcome doesn't necessarily mean that malpractice took place," says Barbara Worsley, SCPIE Vice President, Risk Management.

Panic Attack or Emotional Denial

When faced with a lawsuit, some physicians react by panicking, according to McComb. "They are afraid of having to deal with the rigors of litigation, which in most cases is completely unfamiliar territory for them."

Panic can lead physicians to do foolish things—most notably, altering medical records after the fact. Tampering with medical records can transform a case that might have been defended successfully into one that is indefensible, or at least extremely difficult to defend.

According to Reid, doctors who alter medical records usually do so before a defense attorney is brought into the case. "It tends to happen when the initial formal record request comes in from the patient's lawyer. That may be the doctor's first indication of possible legal action."

Altering records is never a good idea, Reid

emphasizes. "For one thing, copies of the original record often have already been sent to a consulting physician or a hospital—which means any changes are likely to be obvious. Juries definitely see after-the-fact alterations as indicating the doctor has something to hide."

"...sticking your head in the sand won't make a case go away."

—Attorney Bryan Reid

Occasionally, physicians who are stressed out about being sued turn to drugs or alcohol. "We've had doctors show up at trial under the influence because they're so traumatized by having to testify," McComb relates. "One of the most important keys to our navigating a successful resolution of a case is our ability to calm down the doctor and help him or her be a good witness."

But if some physicians panic when faced with litigation, others go into what might be described as a semicomatose state: They pretend the lawsuit doesn't exist. As a result of being in denial, they resist cooperating with their attorney in formulating a defense and balk at assisting with the discovery process.

Says Reid: "Their attitude is, 'This case is ridiculous and is not worth my time. I should *not* have to go through this.' Others are so terrified they'll be humiliated in public or lose their practice, they become immobilized. Whatever the reason, sticking your head in the sand won't make a case go away. In fact, it will make it much harder to defend."

Impact on the Office

The stress of being sued can be exacerbated when the legal process disrupts a physician's normal work schedule. Depositions, tracking down relevant documents and identifying witnesses can divert physicians' attention from their medical practice, consume their time and sap their energy.

Reid and his law partners instruct their clients to be in court every minute of the trial so the jury can see how seriously they take the case. But while faithful court attendance may be wise, it can also complicate the physician's life.

"One orthopedic surgeon we represented was seeing patients in his office from 6 to 8 in the morning and during lunch breaks in the trial," Reid recalls. "Then he performed surgery after court. The problem with keeping up that kind of schedule is, it can eventually lead to *more* malpractice claims."

Tensions can be further heightened when members of a physician's staff have to take time off for legal matters related to the case. Nurses, office managers and receptionists are sometimes called upon to give depositions.

If one of those staff members plays an essential role in the smooth and safe operation of the medical office, the physician may have to replace that person or shut down the office altogether, at least temporarily.

"Being subpoenaed to give a deposition is as stressful for a nurse or receptionist as it is for a doctor," Reid says. "And if the doctor and, say, the nurse have differing versions of what happened with regard to a patient, an adversarial relationship can be set up between two people who may have worked together for years."

Lawsuits can drag on and on, and physicians can be worn down by simple attrition. "At the beginning," says McComb, "doctors are eager to

send their records to us to establish that they didn't do anything wrong. Later, when plaintiffs' attorneys come up with their own medical experts and some vague and often outlandish theories of liability, many physicians become disenchanted with the entire process."

For physicians, perhaps the most damaging aspect of being sued for medical malpractice is a tendency to begin second-guessing themselves. Says Worsley: "They don't just question what happened in the one case; they second-guess their entire ability to make good clinical decisions. That can lead to a real crisis of self-confidence." ■

In upcoming issues of Medigram:

- The story of one physician—in his own words—who suffered great emotional distress because of being sued.
- Positive strategies physicians can employ to cope with the stress of a lawsuit.
- Why learning the basics of the legal system and mastering techniques for being a good witness are so important for physicians.

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