

Pearls: Malpractice Prevention

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The following pearls, compiled from several authors, pertain to medical liability lawsuits:

- **Patient Time.** The time spent allowing the patient to fully explain his/her concern determines the physician's ability to show concern, empathy and likeability. The longer the time a physician spends with the patient, the less likely will that physician be sued.
- **Failure to Diagnose.** It is the common diagnoses that physicians get sued for, e.g. failure to diagnose a cancer or a heart attack. Failure to diagnose is the number one reason a physician gets sued for medical malpractice. Preventive awareness is paramount, and beware of telemedicine which may prevent a doctor from obtaining complete medical information about the patient.
- **Prescribing errors.** These errors can be prevented by developing office strategies that do not allow patients to fall through the cracks. Avoid handwriting prescriptions and utilize instead electronic medical recording with electronic prescribing.
- **Litigation Stress.** The medical malpractice stress syndrome is real. It is experienced to some degree by all physicians who are sued. **"Read all about it"**, and seek medical or psychiatric help when needed.
- **Defensive Medicine.** Avoid practicing "defensive" medicine. Price-Waterhouse-Coopers calculate that medical liability concerns increase annual health care spending by \$124 billion.
- **Blaming Others.** Refrain from blaming other health care providers for adverse outcomes. The latter can happen despite everyone providing reasonable care.
- **Apology.** When physicians are extremely honest about medical errors and apologize to the patient, the overall cost of medical malpractice is reduced in the end.
- **Tort Reform.** Physicians should advocate reforming the medical liability system at both the national and state levels, with respect to: improving patient safety; allowing the free expressions of sympathy (saying I'm sorry) without fear of admitting such

statements as evidence in future liability litigation; making expert medical witnesses accountable for their testimony in medical liability cases; capping non-economic damages in malpractice cases; raising public awareness of the malpractice crisis; eliminating joint and several liability; and minimizing third-party interference with the physician-patient relationship.

- **Going Bare.** Avoid it. Do not practice medicine without professional medical liability coverage. Self-insurance is allowed in some states.
- **Asset Protection.** It is vital to the survival of physicians to develop an asset protection plan, in addition to professional medical liability insurance. Not only does a malpractice lawsuit reduce the physician's ability to make a living in medicine, but also it can adversely impact or devastate both earned and invested assets.
- **Why Patients Sue Doctors.** Patients sue because of a feeling that they were not heard, that their needs were not attended to, and that nobody seemed to care, and as a result a bad outcome resulted due to a mistake or negligence.

“BATHE” COMMUNICATION

To help physicians communicate efficiently with their patients, the following “BATHE” simple, communication technique was developed by Joseph A. Lieberman III, MD, MPH, and Marian R. Stuart, PhD:

- **Background.** “Tell me what’s happening.”
- **Affect.** “How is it affecting you?”
- **Troubling.** “What troubles you the most?”
- **Handling.** “How are you handling the situation?”
- **Empathic.** Let the patients know you care about them and their suffering.

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