

AVOIDING A LAWSUIT

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Medical malpractice is professional negligence by act or omission by a health care provider in which care provided deviates from accepted standards of practice in the medical community and causes injury or death to the patient.

- Wikipedia: Medical Malpractice

A person who alleges negligent medical malpractice must prove four elements: (1) a duty of care was owed by the physician; (2) the physician violated the applicable standard of care; (3) the person suffered a compensable injury; and (4) the injury was caused in fact and proximately by the substandard conduct. The burden of proving these elements is on the plaintiff in a malpractice lawsuit.

Law Encyclopedia: Medical Malpractice

It is a Friday afternoon and you are seeing your second-last patient before a welcomed weekend absorbs you. Your receptionist brings you a large envelope sent Special Delivery-Registered Mail with a law-firm return address on it. Your life is about to get downright miserable. You can be the best-trained, most scrupulous, honest podiatric physician, yet despite your best efforts the chances of you being served a lawsuit in your career is pretty much 100%. With a little forethought and some extra effort topped with a defensive strategy on your part, most lawsuits will fail to materialize. Those that survive can be won or forced to be withdrawn. Here are 10 ideas on how you can be on the winning side when it comes to lawsuits.

TEN TIPS TO AVOID A LAWSUIT

Accept the Likelihood That At Some Point An Unhappy Patient Will Seek To File A Complaint Against You

None of us are perfect. We are human beings with faults and failings alongside our gifts and skills. Do not think you are invincible, like the young men who volunteer for military service thinking "it will never happen to me." Practice every day and on every patient as if you will get sued even if you think you are doing everything right. Be compassionate to your patients, listen to their complaints and concerns, and try to treat them the way you would like to be treated. When a patient comes in with a hammertoe and associated metatarsalgia, do not jump to surgery as your first choice of treatment even though the pathology is practically shouting

at you that a simple surgery could give them a world of relief. Give them or at the very least inform them of conservative care alternatives.

Keep Your Chart Records Complete And Well-Organized

Take the time to establish a standardized organization for your charts so that every piece of information is found in the same section every time. For example, start with patient information at the beginning, followed by history, and then physical examination findings, then your progress notes with the most recent entry first. Subsequent sections might be for copies of medical records from other sources, clinical laboratory results, diagnostic test reports, copies of prescriptions, consent forms, operative reports, and consultation reports or correspondence from other physicians. When there is no report of a very important consultation you obtained, such as from an infection disease specialist, the assumption is you did not get one.

Make chart entries in such a manner that you believe that a plaintiff's attorney will be the first to read them

Many potential lawsuits are never filed once the plaintiff's attorney or the expert witness he or she has retained reads a well-organized chart with well-substantiated notes and reports that they document not just the findings and treatments but the reasoning behind any actions taken on behalf of the patient. Details such as the reason(s) for using a specific antibiotic or for recommending a surgical alternative can derail a litigious plan.

If You Use An Electronic Medical Records System, Make Sure It Is Unique To Each Patient And Each Entry

Do not use boiler-plate notes that are obviously repeats of identical information from one visit to the next without making certain that they accurately reflect the clinical situation. For example, saying that the radiographic findings are unchanged for 5 visits in a row when x-rays were only taken once is opening the door to an accusation of negligent practice.

Do Not Be Lazy With Your Charting

Take the time to note a good history, your findings, supportive diagnostic data, and your diagnosis, including your

differential diagnosis. Clearly delineate your plan and reasoning for such as well as a rationale for narrowing the diagnostic possibilities. There are many good reasons and proven methodology for using a standard H&P protocol or SOAP note. Try to not make yourself the exception to these time-honored standards. If you must subsequently deviate from your planned treatment or surgery, make sure you document the reasons why. Failure to state reasons why you did a distal chevron osteotomy instead of a base wedge first metatarsal bone cut leaves you exposed to speculative motives that can be twisted against you by the plaintiff's counsel.

Be Honest In Everything You Do In Your Practice

Consider applying the Rotary 4-Way Test to all your decisions: 1) Is it the truth? 2) Is it fair to all concerned? 3) Will it build goodwill and better friendships? 4) Will it be beneficial to all concerned? Why? Your patient (and staff) will recognize your honesty, appreciate that you are doing your best for them and will stay on your side. Your chart will reflect your integrity, jurors notice this. Your honesty and integrity during any deposition, and especially when reflected in your notes, are fundamental to success when confronted with unhappy patients and eager plaintiff attorneys. Charting that the patient is experiencing no postoperative complications when the data is demonstrating otherwise is difficult if not impossible to defend.

Do Not Be Afraid To Admit To Your Patient That There Is A Problem

The sooner you not only identify a problem but inform your patient of it and your plan for dealing with it the more of their confidence you will retain. In fact, the law in most states even allows you to apologize to the patient for problems or complications without incriminating liability. Continuing to tell your patient that her hallux valgus surgery is progressing well postoperatively and charting "no complications" as she is observing a worsening iatrogenic hallux varus deformity will eventually undermine any defense for you.

Get Help (A Second Opinion Or A Consultation)

When you even sense trouble such as a potential adverse outcome or worsening complication reach out to your colleagues for assistance, even if you think you do not need it. Your patient appreciates it, their primary care doctor

respects you for it (they usually get a copy of the report) and the plaintiff's attorney loses round one. Taking it one step further, make sure you act on the recommendations or suggestions or document your reasons for not doing so. Do not leave the report hanging. Even a comment such as "I appreciate the consultation from the infectious disease specialist and will proceed with recommendations" speaks volumes for your meeting the standard of care. Not taking the time to note the consultation in your notes or failing to follow up on the suggestions implies that you ignored it, powerful ammunition for the plaintiff counsel.

Once You Recognize A Problem Identify It, Order Further Diagnostic Tests, Treat It Aggressively And Make A Plan To Get Help

Chart your findings, your concerns, a differential diagnosis and your plan. Above all, share your concern and your intentions with your patient without minimizing the problem. Do not make a note that you are considering a consultation or second opinion for the excessive pain you think might be early Complex Regional Pain Syndrome without following up on it. If you decide not to, note why. If you observe signs of infection or ischemic changes, identify them and follow a protocol to deal with these relatively high-risk problems. Do not ignore them.

NEVER Alter A Chart Record

Follow the recommended protocol for correcting a charting error: draw one line through the entry and write a replacement. Then date and initial it. You do not always know who else has been given a copy of the patient's chart, including the patient. Other possibilities include the health insurance entity, another provider, a hospital, a surgical center or even an attorney. Nothing will put a bigger smile on the face of a plaintiff's attorney than proof of an altered chart. It shoots a big hole in your integrity and alienates the jurors.

No one expects you to be perfect in every aspect of your practice. That vulnerability is part of your essence as a human being. However, making every effort to follow these 10 suggestions goes a long way toward building your integrity and demonstrating that you are doing your best and acting in your patient's best interests, which is a much simpler way of demonstrating your commitment to the standard of care than through a legalistic definition. It also lets you go home to many relaxing weekends to replenish your reserves and enjoy your family in peace.