COOPERATIVE OF AMERICAN PHYSICIANS

Wellness Development Group

Physician Adverse Event & Litigation Stress

Stressors and decreased satisfaction in medicine

- Physician Foundation's Physicians' Perspective Study of 2008[1]
  - 12,000 physicians
  - 49% planned to reduce patient load or stop practicing entirely in next 3 years
  - 60% would not recommend medicine as a career to their children
  - Two-thirds reported being "less than satisfied" or "unsatisfied" with practice
  - 5% reported being "very satisfied" with practice
  - Most unsatisfying aspects of medicine: reimbursement, managed care, and malpractice concerns and defensive medicine

Who is at risk for a suit?

- Anyone who practices or assists in the practice of medicine is at risk for a suit
- Medical Liability Claim Frequency: A 2007-2008 Snapshot of Physicians. Kane. 2010[2]
  - 61% of physicians by late career (≥ age 55) named in a suit
    - 89.8% of general surgeons
    - 77.1% of OBGYNs
- Malpractice Risk According to Physician Specialty. Jena. 2011[3]
  - Estimated by age 65, 75% in low-risk specialties, 99% in high-risk specialties will be named in suit
    - Top 5 "High-risk" specialties: Neurosurgery, Thoracic-Cardiovascular Surgery, General Surgery, Orthopedic Surgery, Plastic Surgery
    - Bottom 5 "Low-risk" specialties: Dermatology, Family General Practice, "Other Specialty," Pediatrics, Psychiatry
  - Each year during study period 7.4% of all physicians had a malpractice suit
    - 19.1% neurosurgery…2.6% psychiatry
  - Article, data does not indicate what percent were sued more than once or several times
- Physician Insurers Association of America. Trend Analysis 2010 Data[4]
  - ~64% resolve without payment
  - ~27% result in settlement (with mean payment of $320,647)
  - ~7% proceed to trial
    - ~6% result in defense verdict
    - ~1% result in plaintiff verdict (with mean payment of $567,623)

Factors that may increase the risk of a suit

- Medical specialty & geographic location of practice
- "Jousting" - a physician's comment to a patient about another physician's "poor" treatment
- Communication Gaffes: A Root Cause of Malpractice Claims. Huntington. 2003.[5]
  - Breakdown in patient-physician relationship, most often manifested as unsatisfactory communication
  - The 4 predominant reasons prompting patient to file a lawsuit:
    - A desire to prevent a similar (bad) incident from happening again;
    - A need for an explanation as to how and why an injury happened;
    - A desire for financial compensation to make up for actual losses, pain, and suffering or to provide future care for the injured patient; and
    - A desire to hold doctors accountable for their actions.
- Factors That Prompted Families to File Medical Malpractice Claims Following Perinatal Injuries. Hickson. 1992.[6]
  - Reasons for filing suit
    - Advised by knowledgeable acquaintances
    - Recognized, perceived a cover-up

        - Needed money
        - Recognized child would have no future
        - Needed information
        - Decided to seek revenge or protect others from harm
    - Indicated they were told by medical personnel that care provided had caused the injury
    - Dissatisfaction with communication
        - Believed physician would not listen
        - Believed physician would not talk openly
        - Believed physician attempted to mislead them
        - Believed physician did not warn about long-term neurodevelopmental problems
- Malpractice Claims Against family Physicians: Are the Best Doctors Sued More? Ely. 1999.[7]
    - Risk factors:
        - US or Canadian medical school graduate
        - Specialty board certification
        - AMA Physician Recognition Award
        - Alpha Omega Alpha Honor Society member

The impact of a suit on a provider

- Potentially pervasive and encompassing
    - Emotional
        - Loss of sense of safety, justice
        - Loss of professional confidence, personal self-worth, self-esteem
        - Shame
    - Physical
        - New, or exacerbation of existing, illness
        - Alcohol & substance use
    - Cognitive
        - Distraction, preoccupation, intrusive thought, vivid recollection, re-experiencing
    - Interpersonal
        - With peers, family: withdrawal, avoidance, isolation
        - Within intimate relationships: withdrawal, isolation, less communicative
    - Practice & enjoyment of medicine
        - Question professional role (devotion, advocacy)
        - Loss of communication, rapport, intrinsic reward
        - Perceive betrayal, mistrust, hostility
        - Risk perception, avoidance, defensive medicine
        - Second guess, question clinical abilities
        - Burnout (see expanded detail below)
- Common reactions[8]
    - Anger 86%
    - Anxiety 83%
    - Depression 79%
        - 30-40% meet diagnostic criteria for Major Depressive Disorder
    - Frustration 77%
    - Irritability 64%
    - Insomnia 56%
    - Fatigue 44%
    - Decreased Interests 38%
    - Decreased Concentration 36%
    - Decreased Libido 29%
    - Illness 25%

  - Alcohol & Drug 8-14%
- Burnout
  - Defined as:
    - Emotional exhaustion,
    - Depersonalization (perceiving, treating patients, coworkers as objects), and
    - Low sense of accomplishment
  - Correlated to:
    - Poorer quality of care,
    - Decreased clinical rapport and empathy
    - Patient dissatisfaction
    - Medical errors
    - Lawsuits
  - Also:
    - Substance abuse,
    - Automobile accidents,
    - Health problems, and
    - Marital and family discord
- Suicide

The impact of a suit on intimate relations, family

- The family can be considered the forgotten defendants
- Stressors are similar to physicians' stressors
  - Anger, loss, fear, isolation
- Experience absence, other changes in physician, potential for misinterpretation
- Mutual loss of support between physician and significant other, spouse, family

Why physicians react to a suit?

- Litigation Process:
  - Unfamiliarity with the litigation process
    - The rules of law
    - The adversarial process is counter to interaction and qualities of medicine
    - Duration and unpredictability of the scheduling of the process can make for a chronic stressor
    - Legal advice to not discuss can reinforce isolation, shame
    - Lawsuits and associated allegations are public record, may be in media
    - Fear of an excess verdict, effect on reputation, practice, financial security
  - Education on, and engagement in, the process helps allay apprehensions, bolsters physician confidence, aptitude, improves outcome, coping, and provision of patient care moving forward
- Physician Personality[9, 10]
  - Hallmark of physician personality
    - Heightened sense of responsibility
    - Heightened sense of doubt
    - Heightened practice of self-critique
  - Clinically valuable
    - Moral, ethical conduct; clinical, professional accomplishment
    - Diagnostic rigor
    - Dedication, sacrifice, accountability
  - Personally expensive
    - Assume, accept culpability for things beyond one's control
    - Source of torment, lack of confidence
    - Sense of guilt for subjective sense of not meeting own expectations
      - Depression

        - Avoidant measures such as alcohol, substances, suicide
    - Use of passive defense mechanisms such as avoidance, denial are detrimental in litigation process
        - Isolation, more susceptible to shame, negative self-perception
        - Absence of necessary preparation
        - Enables litigation to become a potentially traumatizing experience, process
- Medical education, training, and culture
    - Lack of litigation education
        - Training does not provide education on suit frequency, commonality of response
        - Predisposes to shame, isolation, negative self-perception
            - Reinforced by the adversarial process, allegation of negligence
    - Implicitly sets unrealistic expectations
        - That by being a "good provider" one can:
            - Overcome medical uncertainty
            - Know the unknowable
            - Control the uncontrollable
    - Inadequate or absent support from professional facilities, organizations, societies, peers

The impact of medical training on the physician

- Hard work is rewarded
- The demands of medicine engenders single focus on profession
- Training programs tend to reinforce, "harden," intrinsic physician's personality traits
- Perfectionism and Type A behavior are encouraged and rewarded
- Physical and emotional exhaustion are common
- Excessive time demands and role stretch
- Denial is used as a means of "coping"
- Ignoring self-care, emotional, physical needs are engrained
- A healthy life balance is not modeled or developed
- The physician trusts the patient, and the suit disrupts the trust
- The time line of litigation is slow: 1-4 years not uncommon

Physicians, other caregivers are also impacted by adverse events and medical errors, independent of malpractice suit

- The Emotional Impact of Medical Errors on Practicing Physicians in the U.S. and Canada. Waterman. 2007[11]
    - Adverse events occur more often than previously considered
        - 92% of the surveyed physicians had been involved with a near miss, or a minor or serious error
    - Common reactions:
        - Increase in anxiety regarding future errors 61%
        - Loss of confidence 44%
        - Sleeping difficulties 42%
        - Reduced job satisfaction 42%
        - Concern for harm to their reputation 13%
    - Only 10% agree health care organizations adequately support them in coping with error-related stress
        - Impacted caregivers are considered the "second victims" of an adverse event
        - Caregivers are not adequately trained or prepared to deal with adverse events
        - Few caregivers have resources available within their institutions, organizations
- Increasingly, organizations are developing support programs to assist impacted caregivers
    - When adverse events occur, the needs of the patient, family and the involved caregivers should be addressed promptly
    - Observe for the following symptoms in caregivers involved in adverse event or malpractice suit
        - Denial
        - Burnout
        - Overwork

        - Depression
        - Anxiety
        - Cynicism
        - Withdrawal, separation from team functioning
        - Disruptive behavior: anger outburst, irritability
        - Opt-out or quit medicine

Parallels to Post-Traumatic Stress Disorder

- Risk factors
    - Trauma
        - Real or perceived threat
        - Loss of life or injury…loss of security, livelihood
    - Response
        - Fear, helplessness, horror, loss of control
    - Recurring or enduring trauma
    - Unpredictability
    - Limited support, passive coping mechanisms
- Symptoms
    - Re-experiencing
        - Flashbacks, intrusive thoughts, vivid recollection, repaying events, perseverative thoughts
    - Hyper-arousal
        - Hyper-vigilance for next possible or perceived risk event
        - Physiologic response
        - Confrontation anxiety, apprehension
    - Avoidant measures, behaviors

Healthy and successful coping strategies

- Dealing with the challenges of adverse events and litigation with adaptive coping strategies and adequate emotional resources lessens impact of adverse event or litigation, contributes to a healthier, more resilient defendant and physician
- Specific recommendations
    - Acknowledge the event, situation
        - Denial and avoidance prohibit healthy, adaptive coping
        - Assess for present reactions, symptoms, impairment
            - Check-in with your PCP
    - Identify and establish a support system
        - Spouse, family, peers of choice
        - Discuss response, reactions; how you're doing, feeling
        - Legal advice of not discussing details applies, is not contradictory advice
    - Change your perception, the meaning of the adverse event, suit and the litigation process
        - Rather than unfounded negative self-perception, shame, etc.
        - Facts: virtual inevitability, not a consequence of lack of competence, knowledge, or performance
        - "Mal-occurrence" not "malpractice"
    - Reflect, introspection
        - The meaning, goals, direction of work
        - Questioning of clinical competence?
            - Engage measures to solidify competence, confidence
        - Relationship with patients
            - Make changes to preserve or restore potential for intrinsic reward
    - Get involved

        - Education and engagement in the litigation process are essential
        - Acquisition of specific skills to prepare for the deposition and/or trial
        - Become familiar with defense strategy, the case and your own relative strengths, weaknesses
        - Acknowledge unpredictability, limited degree of control in scheduling, phases of litigation
    - Trust and invest in defense team
        - Defense attorney
        - Malpractice insurance claims representative
        - Expert witnesses
        - Litigation consultant, or support consultant
        - Your own personal support system
    - Opportunity for health and improvement
        - Remind and re-introduce balance between one's professional and personal investment, involvement
        - Reward short-term goals; less delay of gratification
        - Healthy self-advocacy, self-care
        - Relationships, hobbies, interests
        - Physical, mental, spiritual health
        - Time
    - Opportunity for practice improvement
        - Changes that allow efficiency, less stress, sense of control, intrinsic reward
        - Risk management tools
            - Competence, charting, communication, compassion

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