Coping with litigation stress

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As a direct result of the negligent acts of the defendant, plaintiff suffered permanent personal injuries, incurred and will continue to incur profound physical pain and suffering and permanent physical disabilities, some of which may yet be diagnosed.
—A malpractice complaint

When words to this effect are contained in a complaint alleging medical malpractice, it is often the beginning of a long, disruptive and painful life experience. The events that led to the suit—an unexpected complication, a patient injury—are often the source of emotional pain and concern for the physician. But to be sued for malpractice and accused of negligence is an experience physicians frequently describe as devastating.

According to a survey conducted by Medical Economics, 60 percent of physicians interviewed said they have been sued at least once. Although insurance data show that less than 10 percent of lawsuits are actually tried to conclusion and 81 percent of those cases result in a defense verdict, these statistics do not lessen the tremendous strain a malpractice suit places on a physician. Litigation is generally experienced as an assault on a physician’s competence and integrity. While they can’t choose whether to be sued, physicians can choose how to respond to a malpractice complaint. There are steps physicians can take to prepare for the pending suit and better cope with the problem.

The Legal System: Perception vs. Reality
For many physicians, the legal system is uncharted territory. They have not dealt extensively with the legal process and therefore do not have an in-depth knowledge of the way the system works. When facing a suit, knowing the nature of the game, its rules and strategies can help a physician avoid attaching his or her professional confidence and self-esteem to the litigation process and its outcome. Understanding two main points may be helpful.

A malpractice suit is just business to many lawyers and judges. To a judge with 70 cases on the docket or to an attorney who has been defending malpractice cases for 10 years, a case is simply part of their jobs. Physicians can minimize frustration during the litigation process by understanding why others (e.g., attorney, judge, etc.) do not share their intense emotions about the case.

The litigation process is a legal analysis, not a medical work-up. The medical mind works on a different premise than the legal one. It emphasizes independent judgment, the "correct" answer, and scientific evidence which establishes the "truth." In contrast, the legal mind focuses on what is in dispute, either legally or factually. Generally, there is no correct answer or established truth, only disputed facts and differing legal interpretations. The judge interprets the law; the jury interprets the facts; and the jury determines what is "true."

Rev. Edward Reading of the New Jersey Physicians' Health Programs offers a useful way of viewing the process of malpractice litigation. He says, "Imagine that your in-laws, whom you strongly dislike, have just moved into your home for a five-year stay. Five years is the average duration of malpractice proceedings. You must learn to adjust to the unwelcome guests (lawyers, judges, plaintiff's medical experts, etc.) because there is no way to avoid them. Physicians need to remember that they do not have to take on the battle alone." Look to staff of the liability insurance company and defense attorneys for guidance through this foreign territory.
Physicians’ Reactions to Suits

Chicago psychiatrist Sara Charles, M.D., has been systematically studying the impact of medical liability litigation on physicians since the early 1980s. She reports that physicians often experience suppressed anger, depression, anxiety, insomnia and an increase paranoia directed at their patients. Common to many is a loss of confidence and pride.

Besides psychological reactions, physicians may also react to a suit by changing the way they practice medicine, Charles says. For example, they may interact with patients in a more defensive manner, order more tests and consultations, eliminate or avoid performing high-risk procedures, contemplate early retirement, and generally derive less satisfaction from their work. These changes, coupled with a feeling on the physician’s part that he or she may be viewed as less competent, often lead to distancing behaviors that may have long-term effects on motivation and commitment.

Often, a physician’s identity is tightly bound to his or her work. Thus, a malpractice complaint is experienced as an assault on one’s integrity. Many traits that make good physicians make them poor litigants. For example, successful physicians frequently suppress anxiety, detach from emotion, need to feel in control and tend to be compulsive. These coping mechanisms often fail under the stress of malpractice litigation.

Coping Strategies

Two major factors leave physicians particularly vulnerable when faced with a lawsuit: lack of training in the legal aspects of medicine and a lack of training in how to deal with emotions. Many physicians have focused so intensely on their vocational identity that they have failed to develop important emotional coping skills.

Physicians who cope successfully with litigation seem to be able to distance themselves intellectually and do not view the suit as a personal attack. They have a well-developed
sense of self, apart from the physician role. They hold firm to the belief that litigation is simply a part of medicine today and not a commentary on their performance. Usually, these physicians have people with whom they can talk openly and receive support. They also maintain a full life and make sure their professional responsibilities do not infringe on their need for recreation and family activities.

Anticipation of litigation, an openness towards feelings, the development of a social support network and an "active" approach to the case itself can help a physician maintain a healthy self-respect and emotional equilibrium during the long litigation process. When advising physicians suffering from litigation stress, we often suggest these coping strategies.

Accept what has happened. There are no easy solutions. Suits are likely to happen, even though physicians do everything they can for the patient, maintain good patient relationships and keep up-to-date in their fields.

Learn more about the litigation process. Learn how the system works and why. Physicians who have a basic understanding of litigation procedures seem to feel better about the process. Physicians can channel some of the emotional energy and strong feelings about the suit by helping prepare their own defense.

Carefully review the case file early in the process and discuss the issues honestly with defense counsel. Many physicians who experience distress about a lawsuit feel a strong need to review the details of the case with a sympathetic listener. It is best to keep these detailed discussions of case-related information between the physician and his or her attorney. If the need exists for more discussion about specific facts of the case, a psychiatrist should be consulted after conferring with defense attorneys. Those discussions are protected from discovery because of the confidentiality in the doctor-patient relationship.

Share feelings with a confidant. Although attorneys advise physicians not to discuss the
details of the case with anyone, physicians seem to cope with stress more effectively if they verbalize their feelings and reactions about the suit to a trusted friend, spouse, parent, or colleague. It is helpful for the defendant physician to discuss the disruptive, emotional, interpersonal and social aspects of the litigation experience. Sharing these feelings is probably the single best coping strategy we recommend. Colleagues who have already weathered the storm of malpractice litigation can be valuable resources for defendant physicians. Physicians often find emotional support from hearing the experiences of a peer who faced similar circumstances and survived.

Gain a perspective on the various outcomes that could result from the suit. Physicians should explore their fears with someone who can help them look objectively at the possible and probable outcomes. By examining various case scenarios, they gain a more realistic perspective and can better prepare themselves emotionally for what may come.

Recognize that resolving the suit will be a slow process. Physicians must accept that the suit may be part of their lives for months or, more likely, years. Litigation is an emotional roller coaster for a physician. During the process, there are peak times of activity, often followed by months where nothing happens. Each time the case resurfaces, emotions related to the suit may come flooding back. It is important that the physician talk about these feelings at each stage of the litigation process. It takes too much energy to maintain suppressed feelings over the long haul.

Take time for leisure. Pursuit of leisure activities can be an effective stress reliever. It is important for physicians to take time out to do some focused, non-work activities. Develop and build on hobbies to provide relief from medicine and from everyday stresses.

Spend time with family. While litigation is directed at a physician's professional life, it most often affects personal relationships. Physicians should be sensitive to family
members' feelings about the suit and share their own feelings. Encourage frequent open discussions about the suit in which family members can express fears, discuss options and share their pain. Also, spending time together will help make home a safe harbor during the litigation battle.

Methods for coping with the stress of malpractice litigation can be as varied as the unique characteristics of the physician, his or her practice and family circumstances. When involved in legal proceedings, it is important for physicians to step back and reframe their perspective on themselves and their priorities in life. In doing so, they often see the suit in a new light. As one recently sued physician put it, "A lawsuit was something that I always feared and worried about. Then it happened and I found it was not such an awful thing. It made me realize that being a surgeon is something I do. It's not who I am. If that was taken away from me, which is the worst possible case scenario, I'd be okay. I'd still be who I am and would continue on."

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