“Medical Liability Issues: Where Malpractice Claims Come From and How to Survive Them”

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Case Study

- 47 y.o. man, high school teacher, smoker
- Referred to you for hoarseness 6 weeks
- IDL shows vocal cord nodule RT, TVC, erythema
- You refer for Speech Therapy with Dx “vocal abuse”
- Returns 2 months later, about the same
• You insist on d.c. smoking, talk less
• Returns 2 months later, sl. worse
• You begin Rx for GERD
• Returns 1 month later, worse
  DL/Bx “severe dysplasia”
• Returns 2 months later, worse
  DL/Bx “SCCa”, T2N0
• Fails RT → TL and ND for salvage
You get sued for failure to diagnose cancer in a timely manner.
Patient can no longer work and is severely depressed.
Plaintiff’s attorney offers to settle for $1M prior to trial.
You are sure you have done nothing wrong and urge “let’s go to court.”
Expert witnesses are very critical of your management.
Plaintiff’s attorney is very dramatic. Jury is very sympathetic. Verdict is for the plaintiff. Award is $1.85 M
Renewal notices for medical liability policies have become a NIGHTMARE!
Physicians in high risk areas and high risk specialties often are not renewed.
Premiums this year are up by 25-70% in Texas.
Physicians who are dropped may have never been sued.
Physicians are being driven away from high-risk areas and high-risk treatments – public access to care is being limited.
Recruiting new physicians to high risk areas in Texas is becoming very difficult.
“Day of Awareness” across South Texas

1. Shows every public official that the problems are REAL.
2. Highlights the broad economic impact on entire business community
3. Sends a message to the legislators
The number of claims is escalating and the size of the awards is growing.
Average indemnity paid

1998 $153,000
2001 $211,000
Average cost of defending each claim

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>$40,000</td>
</tr>
<tr>
<td>2000</td>
<td>$55,000</td>
</tr>
</tbody>
</table>
Median jury award when plaintiff wins

1999 $ 700,000
2000 $1,000,000

Jury Verdict Research
Horsham, PA
Median settlement amount in 2000 was $500,000 nationally.
## Claims closed without payment (Texas)

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>70%</td>
</tr>
<tr>
<td>2000</td>
<td>86%</td>
</tr>
</tbody>
</table>
Some factors

- The IOM Report – 98,000 deaths each year in U.S. from medical errors
- Public suspicion of managed care
- News reports of TSBME leniency in punishing sub-standard physicians
In the U.T. System

- 15% decrease in number of cases pending
- 17% decrease in liability payments
- 15% decrease in number of new claims and lawsuits
Claims by specialty

- Ob/Gyn (15%)
- Internal Medicine (12%)
- Family Medicine (11%)
- Peds, Ortho, Gen Surg, Neurosurgery, Emergency
Number of Claims and Lawsuits Opened
Fiscal Year 2001

- Urology: 2
- Thoracic and Cardiovascular Rehabilitation Medicine: 1
- Radiology: 1
- Psychiatry: 1
- Plastic Surgery: 2
- Pediatrics: 1
- Pathology: 1
- Otolaryngology: 3
- Orthopedic Surgery: 1
- Oral Surgery: 2
- Ophthalmology: 5
- Ob/Gyn: 3
- Neurosurgery: 2
- Neurology: 1
- Internal Medicine: 3
- General Surgery: 1
- Gastroenterology: 1
- Family Practice: 1
- Emergency Medicine: 3
- Dermatology: 4
- Cardiology: 1
- Anesthesiology: 16

Counts:
- 10
- 16
- 26
- 30
<table>
<thead>
<tr>
<th>Type</th>
<th>Number (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improperly performed procedure or procedure not performed</td>
<td>127 (65.1)</td>
</tr>
<tr>
<td>Error in diagnosis or failure to diagnose</td>
<td>37 (19.0)</td>
</tr>
<tr>
<td>Failure to instruct or communicate information</td>
<td>12 (6.2)</td>
</tr>
<tr>
<td>Medication error</td>
<td>10 (5.1)</td>
</tr>
<tr>
<td>Performed when not indicated or contraindicated</td>
<td>8 (4.1)</td>
</tr>
<tr>
<td>Wrong patient or wrong body part</td>
<td>1 (0.5)</td>
</tr>
<tr>
<td>Total</td>
<td>195</td>
</tr>
</tbody>
</table>

Ten cases did not have an allegation that could be coded.

RAPPORT – showing that you really care.
Take the time to do it right, and document it.
TSBME – All Claims Reported

- Part 1 -- When claim or lawsuit filed
- Part 2 -- When there is disposition
U.T. Office of General Counsel reports to:

- Hospital credentialing committees
- Managed care organizations
- TSBME

regarding incidents, claims and lawsuits
TSBME Reported Claims
Closed Claims With No Indemnity Paid
MEDICAL LIABILITY
LIVING IN FEAR
Physicians face mounting liability insurance crisis
"Because of the soaring costs of medical malpractice insurance, we don't have any doctors left. However, rest assured we have the best lawyers operating on you today..."
Coping with the Stress of Malpractice Litigation
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
Physician Reaction

96% of physicians who are sued suffer physically and emotionally regardless of the outcome in court.
Impact of Litigation Stress

- Anger
- Denial
- Guilt
- Shame
- Loss of Self-Esteem

- Depression
- Frustration
- Onset of Physical Illness
- Isolation
- Feelings of Betrayal
Difference in Perception

A retrospective study of sued and non-sued physicians, as well as suing patients, perceive the litigation process from a very different perspective.

The most frequent reasons given:
Difference in Perception

- **Patient**
  - Perceives the physician to be negligent (97%)

- **Sued Physician**
  - Patient’s desire for financial compensation (83%)

- **Non-Sued Physician**
  - Continues to have high expectations of medical technology and of the physician (95%)
Immediate Impact Physician’s Perception of Self

Intense negative emotional response in the days and first weeks following receipt of the complaint.

- Feelings of guilt
- Questioning of themselves
- Questioning their functioning as a doctor
Immediate Impact
Physician’s Practice of Medicine

Reduction in ability to consult with speed and confidence and becoming less tolerant of the uncertainties that characterize much of medical practice.
Immediate Impact

Relationships

- Spouse
- Family
- Colleagues
Physicians CAN Successfully Cope with Malpractice Litigation
Coping

• Acknowledge that litigation is stressful and is likely to occur
• Assume a problem-solving focus rather than an emotional response
• Recognize that litigation is a grief process
• Expect to go through the stages of grief
Coping
(continued)

• Avoid isolation
• Learn more about the legal system
• Accept that the litigation process may take years to resolve
• Take time for leisure
• Spend time with your family
Physicians who cope successfully with litigation are able to distance themselves from the suit and not perceive it as a personal attack.
96% of physicians believe claims are brought because of adverse outcomes, not medical errors.
83% of physicians said they do not trust the justice system to achieve a reasonable outcome.
79% of physicians order more tests and 41% prescribe unnecessary meds – for fear of malpractice claims
78% of patients fear \( \downarrow \) access and

71% of patients feel \( \uparrow \) costs

– due to \( \uparrow \) medical liability costs