

## LAW &amp; MEDICINE

## Patient Dissatisfaction and Malpractice

**Question:** Which one of the following patient groups is *least* likely to file a malpractice lawsuit?

- A. Patients who are critical of others.
- B. Poor patients on welfare.
- C. Educated patients who surf the Internet.
- D. Doctor-shoppers.
- E. Angry patients.

**Answer: B.** Most patients do not sue their health care providers, even when a negligent act or omission has taken place. Demanding and well-educated patients are more likely to sue, as are those who are already familiar with the legal system and with lawsuits. And watch out for the hypercritical patient. Low-income and poorly educated patients, on the other hand, are less likely to sue if only because they lack the medical sophistication to recognize substandard treatment and the know-how to seek legal redress.

#### Doctor-Patient Rapport

What do you call an angry patient? A plaintiff. (Some of the following materials have been adapted from "Seven Secrets of Avoiding Medmal Suits," videotape, 1996, Frew Consulting Group Ltd.) This saying is a familiar refrain of malpractice attorneys and risk managers,

and should serve as a warning to doctors. Financial gain is not the usual reason for a malpractice lawsuit, whereas anger lies at the root of all malpractice claims, either because of the adverse result itself or a perceived lack of caring.

The patient or family may consider the provider to be cold, indifferent, or arrogant. There may have been an offhand remark or a poor choice of words, or the doctor has not returned calls or is refusing to meet with the aggrieved. Patients view these actions as showing a lack of concern and compassion. After experiencing increasing dissatisfaction, exasperation, and anger, the injured party may then seek legal redress. And jurors who have had similar bad experiences are apt to return a runaway verdict.

Plaintiff attorneys tell us that the majority of their calls come from would-be litigants with poor doctor-patient rapport. Patients may not even have a serious injury or a meritorious claim, but they are so frustrated with their physician or the hospital that they contact an attorney to vent their anger.

Consider the following observations of an attorney: "In over 25 years of representing both physicians and patients, it became apparent that a large percentage

of patient dissatisfaction was generated by physician attitude and denial, rather than the negligence itself. In fact, my experience has been that close to half of malpractice cases could have been avoided through disclosure or apology but instead were relegated to litigation. What the majority of patients really wanted was simply an honest explanation of what happened and, if appropriate, an apology. Unfortunately, when they were not only offered neither, but were rejected as well, they felt doubly wronged and then sought legal counsel" (Ann. Int. Med. 1999;131:970-2).

#### Poor Service

At Disney theme parks, everyone is a guest. Similarly, most hotels feature workers with smiling faces and a can-do, positive attitude. Guest comfort comes first, and customer service is everyone's job. Hospitals and clinics, on the other hand, sometimes hire relatively unskilled personnel with little or no training before being put on the job. Those on the front lines, such as the phone operators and information desk clerks, should be the most accommodating, but unfortunately some lack people skills and do not go the extra mile. Experts say there are two typical problems in a hospital or clinic setting: overworked employees who treat patients as burdens rather than as clients, and employees who are not empowered to promptly address patient complaints.

#### Disparaging Remarks or Attitudes

Some lawsuits are filed because of suspicion raised in the patient's mind by disparaging remarks made by one practitioner about another. An example (doctor or nurse pointing to a large abdominal surgical scar): "Who did that to you?" Without having all the facts, one should avoid making critical comments about a colleague's work. Seek clarification before passing judgment. Worse yet, unthinking health care providers sometimes enter disparaging remarks into the medical records. Statements like "physician refused to respond" should be replaced by "no response yet, will try again." Disagreements between doctor and nurse clearly require proper channels for resolution, and the medical record is not one of them. In the event a staff member makes a mistake, the physician should remain calm and professional and avoid voicing direct criticism in front of the patient or family.

The staff can also be the cause of a lawsuit. Staff members are typically the first people in contact with the patient and family. They must make a good im-

pression, be active listeners, and strive to make others feel important. Staff should be as well trained in customer service as in quality care. A bad attitude is just as unacceptable as incompetence.

#### Money Disputes

Out-of-pocket costs for medical care are skyrocketing. With the increasingly impersonal nature of the medical encounter and the commercialization of health care, patients are more apt to become dissatisfied and be less tolerant of errors. Recall that medical school taught us to first elicit the patient's chief medical complaint. Nowadays, too often the first question is: "Do you have insurance?" Or "what kind of coverage do you have?" In such a practice environment, more injured patients can be expected to retaliate, especially if they feel unjustifiably overcharged.

Inform the patient at the outset regarding cost estimates for consultations, procedures, and so on. Such discussions may be relegated to an experienced and professional staff member, and the doctor himself or herself need not be directly involved. However, this should be done before the service is provided. Ambiguities, followed by an unpleasant surprise concerning money matters, will likely upset patients, especially those with an adverse medical outcome. Great tact and sensitivity is necessary to avoid turning such a situation into a malpractice claim. This is not to say that only good clinical results deserve to be paid for. However, a bill that is perceived as being unreasonably large may just get an injured patient angry enough to file suit.

In addition, when patients don't pay their bills, many of us resort to a debt collection agency without first speaking directly to the patient. If possible, physicians should first try to resolve the issue, for example, by offering a generous installment payment plan. The funds owed may not amount to much in an individual case, and aggressive pursuit may prove counterproductive. Consider adopting a policy of writing off unpaid bills in the name of public service, although this may be impractical for some institutions or when large sums are owed. ■

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A Web site designed to encourage consumers to ask appropriate questions of their doctor or other clinicians has been launched by the Agency for Healthcare Research and Quality, with the Advertising Council and actress Fran Drescher.

The site features tips for patients and has a Question Builder tool that allows patients to create a list of questions they can take with them to medical appointments. Visit the Web site at [www.ahrq.gov/questionsaretheanswer](http://www.ahrq.gov/questionsaretheanswer). ■