

Now that You Are Sued, How Well Will You Cope?

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This column has presented cases that the doctor in the field either identifies with or says, "that can never happen to me." But right, wrong or indifferent, a malpractice suit can happen to anyone, at any time, for any reason. Your emotional responses to a malpractice suit will most likely follow a very predictable pattern from beginning to end. Being sued for malpractice is a lot like being told you have a life-threatening disease. In fact, chiropractic defendants go through the same psychological processes that terminal patients experience.

Few chiropractors who have not been sued for malpractice realize what it's like to be a defendant in a malpractice suit. Having the opportunity to be involved in the defense of many malpractice suits, and becoming involved at different stages of the proceedings, the defendants seem to go through the same, well-defined, recognizable states as many terminal patients confronting death.

These stages have been identified by Elizabeth Kubler-Ross in her book, *Death and Dying*. She outlines five stages: denial, outrage, guilt, fear, and finally acceptance.

The damage the suit can do to a chiropractor's self-esteem was made very clear to me at a seminar when a former defendant from the audience asked me if he could explain what it was like to go through a malpractice suit that he had encountered some four years earlier. The suit involved allegations that the chiropractor was negligent, causing a vertebral artery embarrassment or stroke. He stated that the case was scheduled quickly and favorably in his behalf. Despite that, four years later when talking to this group of his peers he began to shake, perspire, and re-experience all the fear, frustration, and anger he endured. He stated that every time he thought or talked about it, it still was just as real as it was four years prior.

Stage 1: Denial

After receiving a summons and complaint, many doctors deny that they could be responsible, and find it easier not to think about the case. They do exactly the opposite of what their defense counsel requires of them, which is to analyze the facts and participate in the development of information for their defense.

Stage 2: Anger or Outrage

After denial comes anger, outrage, and frustration. Many times I have been told by defendants' attorneys that doctors at their own depositions ignore the directions of their defense attorney and verbally abuse the opposing counsel. One attorney told me of an instance when he had to physically restrain a chiropractor from attacking the patient's lawyer.

Stage 3: Fear

Chiropractors as defendants fear loss of prestige in their communities. More importantly, they worry that a jury may render a verdict far in excess of their insurance policy limits. They fear personal bankruptcy and humiliation.

Stage 4: Guilt

Somewhere between the above phases comes the feeling of guilt -- maybe I did do it. Maybe I should have done something different, or maybe I should do something different now. When you start second-guessing yourself you lose your objectivity, rationale, grip, direction, purpose, or whatever word you use that makes you a professional. As an integral part of the health care industry, we must be part of the solution, not part of the problem for our patients. Do the rest of your patients justice; let the guilt go and get back to work. There are a lot of sick people out there who need you.

Stage 5: Acceptance

Finally, acceptance comes. The physician begins to believe that being sued is simply "part of doing business" and finally is resigned to that fact. This attitude represents an acknowledgment, a regaining of control, if only over prevention of similar future lawsuits. To accept the principles of risk management is to accept the fear of litigation.

Anxiety about malpractice is normal and can be converted to constructive energy. In talking to doctors who have been accused of malpractice, we have tried to explain to them to use their anxiety as motivation and the importance of preparing thoroughly for every aspect of the case. This way, the chiropractor can assist his counsel in developing theories of defense. What constitutes good malpractice suit defense also is the essence of good risk management.

Prevention

Approach each patient as if he were a potential juror. A juror would want to know if the doctor was giving a reasonable standard of care. In defense, as in daily practice, the chiropractor must logically explain his rationale for procedures to his patient as well as to himself. We feel this is the basis for a good doctor/patient relationship. From a very simplistic standpoint, treat each patient as if they were your own mother, father, brother or sister -- would I perform these procedures on them and would they understand them?

Standard of Business Attire

In my 19 years in practice, I have seen too many practitioners go to their offices not dressed as professionals but more like a spectator going to a baseball game. Patients and jurors are universally influenced by appearances. Your attire should reflect the standard of dress of the business community in your area. Overdressing or dressing "flashy" can also create the wrong professional image. Your mode of dress can go a long way toward establishing a good doctor/patient relationship in an office or in a hospital setting. And, of course, if you must go to a

deposition or to court, conservative business attire is essential; your attorney should advise you accordingly.

Risk management is an extensive topic. Ultimately, however, all its principles boil down to common sense: build good patient relationships; keep thorough records; and present yourself professionally. If you are involved in a malpractice case, beware of the physiological pitfalls you face, and be ready to channel your energies to assist your attorney in your behalf.

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