

## Physicians Aren't Alone: Understanding & Dealing With Malpractice Litigation Stress **Featured**

Written by By Michael J. Sacopulos, JD, partner with Sacopulos, Johnson & Sacopulos in Terre Haute, Ind. | March 16, 2012

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St. Pauli Girl Beer famously advertises that "You never forget your first girl." While I am not sure about that, I am sure that you never forget your first lawsuit. The lawsuit arrives like a modern day version of the "Black Spot" out of the Robert Louis Stevenson's "Treasure Island." The anger, stress, and self-doubt come on strong and are slow to dissipate, leaving defendant physicians forever changed.

Robert A. Linden, MD, FACP, remembers the first time he was sued, like it was yesterday, when in fact it happened more than 30 years ago. He says he was caught between Yale and the patient. Dr. Linden was named in the lawsuit for missing the patient's diagnosis of a rare disease. Yale wanted to settle out of court but Dr. Linden wanted to fight until the end because he knew he was right. Eventually his lawyer convinced him to settle for \$15,000 which was the equivalent of court costs three decades ago. This experience got him interested in learning more about how medical malpractice lawsuits work.

"If you believe you did not deviate from standards of care, then you have to stand your ground, which is very hard," Dr. Linden said.

Dr. Linden says there is a lot of pressure from insurance companies and lawyers for physicians to settle. On top of that, physicians are ordering every test, crossing every "T" and dotting every "I" in fear of another lawsuit.

"If you get sued every decision is painful because you have become over cautious," Dr. Linden said.

### **Litigation stress**

Is the fear of malpractice litigation justified in the medical community? I think so. The New England Journal of Medicine reports 19.1 percent of neurosurgeons and 18.9 percent of thoracic-cardio vascular surgeons face a claim in any given year. Six out of 10 physicians 55 and older have been sued according to a 2010 American Medical Association study. This all adds up to a lot of medical malpractice litigation.

Not surprisingly, this litigation and the fear of it, impact physicians' daily lives. A recent survey of orthopedic surgeons found that more than 95 percent said they have ordered unnecessary tests, referrals and hospitalizations simply to protect themselves from being sued. The costs of defensive medicine are tremendous; some estimate \$55.6 billion annually. The stress physicians feel from medical malpractice litigation is real, justified and impacts how they practice medicine.

"Medicine is different than other fields. You get involved in it too deeply that it is really an invasion of your life style. Most people view their jobs as 40-hour work weeks. For many physicians this is not a vocation, this is their life and being sued is an invasion of their life," Dr.

Linden said.

## **Workshops to manage stress**

Unfortunately, the evidentiary rules used in most courts are not, helpful to relieving stress. Comments made by defendant physicians to anyone other than his/her counsel can be repeated at trial. Because of this fact, lawyers instruct their clients "not to speak to anyone about the case." This furthers the physician's feelings of professional isolation and stress.

"One of the major ways people relieve stress is to talk to their friends about what they are going through. When you tell a physician you can't talk to your friends or peers who can understand a case, they are really left alone. That is where a lot of depression and anxiety really builds up," Dr. Linden said.

Dr. Linden headed up a Physician Litigation Workshop as part of his role when he worked for the Connecticut Medical Insurance Company (CMIC). The workshops were held two to four times a year for about eight years. Dr. Linden says many medical malpractice insurance companies were scared off by the concept; fearing discussion at the sessions may be admissible in court. Dr. Linden says he did make it clear at the outset of every workshop that participants could not discuss the medical facts in any of the cases. Fortunately, in their eight year run none of the attendees were ever subpoenaed.

The concept to get physicians and their significant others together to talk about their feelings was a bit intimidating for some. The sessions were led by an attorney by the company's legal group, a psychiatrist, a CMIC administrator from their Risk Management Committee and moderated by Dr. Linden himself.

"The attendees that came loved the evening and gave it glowing feedback," said Dr. Linden.

## **Effect on family**

The stress of a malpractice suit for a physician is bad enough; now throw into the mix family. Since, anything physicians say to their spouse could be admissible in court, they may keep all the extra tension bottled up.

"There are pressures at home and their families can't understand what has happen to them when they act out," Dr. Linden said.

Dr. Linden always instructed physicians in the Physician Litigation Workshop to let their spouses know they were being sued. Physicians who use their spouse as a crutch to get through the proceedings can help remove some of the stress.

"In one instance, the wife of a physician pulled me aside and asked what the session was all about and why the couple had been invited. Her husband had internalized his problem and kept his lawsuit a secret for two years! He had never told her or anybody else about the situation," said Dr. Linden.

Unfortunately, the workshops were eventually terminated; the main reason was because attendance was frequently poor. CMIC had about 3,500 to 4,000 physicians, yet typically only six to 12 physicians signed up for the workshop. Dr. Linden says usually three-quarters of the

attendees brought their spouse.

"I still to this day, think the concept was a good one, helping comfort doctors at their time of true need and letting them know they as individuals were not the only ones going through what can be an ugly process. We answered many legal and a few psychological questions, and I hope we ultimately achieved some decrease in stress levels from those who attended," Dr. Linden said.

## **Take Away Message from a psychologist**

Dora Calott Wang, MD, is the author of *The Kitchen Shrink: A Psychiatrist's Reflections on Healing in a Changing World* who is a specialist in anxiety disorders and stress management. Dr. Wang offers the following words of advice for physicians who find themselves facing a malpractice suit:

1. It may help to think of the lawsuit as a reflection of our times, more than your competence as a physician.
2. Remember — being sued doesn't necessarily reflect your competence. The most ethical and compassionate physicians are sued. This is because they won't shy from caring for the most medically complex patients, or the most emotionally troubled patients.
3. Many lawsuits are simply frivolous. One of my most competent trainees was sued four times during her residency alone. In a lawsuit, patients will name every doctor possibly involved. My resident was sued for simply being in the room. In addition to being competent, she was gorgeous. So she was noticed.
4. It will help to focus on what's in your control — such as continuing to practice, and doing your best for patients. Obsessing about things not in your control causes anxiety. It's not constructive. For example, the ultimate decision of the judge or jury isn't in your control. But it is in your control to gather evidence as directed by your attorney, and do everything your attorney requests. It will be more productive, in terms of your well-being, and in terms of the outcome of the lawsuit, if you focus on what's in your control.
5. Know that the lawsuit will pass. Someday you'll see it as a brief blip in your long medical career.

Based off of statistics, we know that a medical malpractice action will be visited upon most physicians or their close colleagues at some point in their career. Physicians facing a medical malpractice case should take a deep breath and try to follow Dr. Wang's advice listed above. The litigation will pass. Finally, try to focus upon why you got into medicine in the first place. All the human improvement and relief you provide should not be marred by some litigious miscreants.

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