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Difficult Patient-Physician Relationships and the Risk of Medical Malpractice Litigation

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The patient-physician relationship is the cornerstone of the medical profession. Encounters between patients and their physicians are based on trust and give rise to physicians' ethical obligations to place patients' welfare above their own [1]. Successful medical care requires ongoing collaboration between patients and physicians, a partnership in which both members take an active role in the healing process [2, 3].

A sound patient-physician relationship enhances trust and encourages continuity of care, both of which contribute to patient health and well-being. A weak relationship, on the other hand, can affect patient care negatively and has been shown to put a physician at higher risk of being sued for medical malpractice [4-7]. A physician's exposure to medical malpractice litigation correlates, in turn, with lower levels of job satisfaction and diminishing emotional well-being. A physician who works through or ends a difficult patient-physician relationship must do so carefully to avoid litigation for patient abandonment and ensure that the patient preserves continuity of care.

Exposure to Medical Malpractice Litigation

The current malpractice environment is fueled less by quality failures than by failure of the patient-physician relationship, particularly in effective communication [4]. The impact of poor communication skills increases the likelihood that patients with adverse outcomes will sue, whether or not an error has occurred [8]. As Gerald Hickson noted, "risk is predicted by the practitioner's inability to communicate effectively and establish and maintain rapport with patients, especially in the face of an adverse event" [8]. In discussing the patient-physician relationship and its complications for malpractice litigation, Roter quotes Verghese:

> Patients who like their doctors don't sue, no matter what their lawyer says. Our efforts in medical schools to turn out skilled yet empathetic physicians who communicate clearly and who can put themselves in their patients' shoes is [sic] critical to stemming the medical malpractice crisis. Patients sue when their feelings are ignored or when they are angered by lack of genuine concern for their welfare…Though it provides no guarantee, a sound physician-patient relationship is a powerful antidote to frivolous lawsuits [4].

Increasingly, doctors view patients as potential adversaries. One study reported that concerns about malpractice liability caused three-fourths of 824 specialists surveyed to view every patient as a potential litigant [9]. Moreover, physicians who had been sued and adopted the potential-litigant view of patients were more likely to practice defensive medicine, which further eroded their relationships with patients, regardless of the quality of clinical care. In this light, it is not surprising that a single malpractice lawsuit substantially increases the likelihood of future litigation [10]. Studies have shown that the practice styles of physicians who have and have not been sued do not typically differ in technical aspects of clinical care [10]. Rather, almost one-third of litigated complaints relate in some way to communication, such as inattentiveness, discourtesy and rudeness, a general breakdown in communication, and inadequate information [10].

Obstetrician Study. A study of sued and non-sued obstetricians found that patients who saw obstetricians with the most frequent number of prior lawsuits were significantly more likely to report spending less than 10 minutes with their physician during each visit; these individuals felt rushed or ignored, reported inadequate explanations for tests, and were more critical of the care they received [5, 10]. Researchers concluded that difficulty in communicating effectively increased vulnerability to lawsuits [5].

Satisfaction with Care Study. In another study, the degree of satisfaction a patient experienced with his or her physician was highly correlated with malpractice litigation [5, 6]. Not surprisingly, patients of physicians who had never been sued were the most satisfied [5, 6]. They were more likely to see their physicians as concerned, accessible, and willing to communicate [5, 6]. The most common complaints from patients whose physician had been sued were that physicians did not listen and physicians did not offer information [5]. Patients seen by physicians with a high frequency of litigation were most likely to be critical of the human aspects of care, such as interpersonal skills and communication [5, 6].

Litigation Studies. A study that examined deposition transcripts from malpractice litigation involving obstetrical care demonstrated that four types of communication problems were present in more than 70 percent of the depositions: (1) deserting the patient, (2) devaluing the patients' views, (3) delivering information poorly, and (4) failing to understand patients' perspectives [5, 7]. A similar study conducted interviews with unsolicited callers to law firms concerning medical malpractice complaints [11]. Researchers found that many factors affected patients' decisions to call, including poor relationships with providers before an injury (53 percent), television advertising by law firms (73 percent), and explicit recommendations by health care providers to seek legal counsel (27 percent) [11].

Both the litigation and the "satisfaction with care" studies showed that there was little or no objective evidence of malpractice in the cases reviewed, yet physicians were still sued [5]. Given that the primary sources of dissatisfaction had little to do

with clinical management, practitioners can reduce risk of litigation without a significant change in clinical practice [6].

Termination of the Patient-Physician Relationship

A patient-physician relationship may become so difficult that a physician deems it necessary to end the relationship—perhaps because the patient consistently refuses to follow orders, does not pay for services, or communication failures discussed above have caused the irreparable breakdown of the relationship. When this occurs, the physician must take steps to ensure continuity of care for the patient and avoid a legal action for abandonment.

There are some exceptions, however. A physician cannot be liable for abandonment if no treatment relationship existed between the parties during the course of the patient's illness. A specialist, for example, who has seen a patient for one illness is generally not obligated to continue to treat the patient once the treatment for that illness is completed [12]. Similarly, a physician who refers a patient to a specialist and tells him or her that the specialist is thereafter assuming the primary responsibility for the case has not abandoned the patient by refusing to accept responsibility for further care [12]. Finally, a physician has the right to limit his or her relationship with a patient so long as the limitations are made clear at the onset of the relationship [12].

A patient may terminate the patient-physician relationship at any time. In this case, a physician has a duty to warn the patient of his or her need to obtain further medical care. If the condition requires further medical care, the physician must provide the patient's succeeding physician with enough information to ensure continuity of medical treatment [12]. A prudent physician will send the patient a letter by registered mail confirming that he or she has been discharged and stating the need for continuing treatment [12].

A physician is also free to terminate the relationship, even without providing a specific reason for withdrawal. When doing so, the physician must give the patient sufficient time to find another physician or make some other arrangement for the provision of necessary medical services.

Given the rate of litigation stemming from poor communication and other nonclinical relationship failures, improving relationship skills is worth the effort. If a patient-physician relationship has deteriorated to the point where the physician feels it is necessary to terminate it, taking a few steps will ensure that effective communication, continuity of care, and the physician's emotional and professional well-being are protected.

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