

**AVOIDING MALPRACTICE:  
STEPS PHYSICIANS CAN TAKE TO  
PROTECT THEIR POCKETBOOKS AND REPUTATIONS**

Medical malpractice claims costs the health care industry billions every year. The spiraling costs of defending against these claims and of acquiring malpractice insurance have left many health care providers feeling like they're treading water in an ever-expanding ocean of attorneys' fees and premium payments.

Besides throwing more and more money at insurance, are there steps health care providers can take to reduce their exposure to malpractice claims? The answer is a definitive yes! The following steps, however, will go a long way to *reducing* that exposure.

**1. Foster the Patient – Physician Relationship: Maintain Open Communication**

Some commentators attribute part of the rise in medical malpractice claims to the “de-personalization” of the patient-physician relationship. Our society has moved from the close-knit communities of yesteryear, with family physicians that knew more about you than your neighbors, to the fast-paced and impersonal realities of modern life. That transformation has undermined communication between patient and physician, a key to avoiding malpractice litigation.

Patient - physician communication is key, not only to personalizing the physician, but also to *informing* the patient and their families of the risks that certain procedures entail. Patients will view their physician as arrogant or distant when they don't make an effort to speak to them or their families. Patients who feel this way about their physician are far more likely to be dissatisfied with their treatment and file a claim against their (former) physician.

**2. Obtain Informed Consent**

A corollary to open communication is obtaining informed consent before treating the patient. Make a note in the charts of the conversation with the patient. A common practice today is obtaining a signed agreement. This is a great idea. In the words of Dr. Vicente Franklin Colon, “the patient's signature goes a long way toward mitigating the legal problems of the doctor.” The key is to make sure that the consent was *informed*. That means advising the patient of risks, informing them of their freedom of choice, and, where possible, discussing alternatives.

**3. Maintain Quality Documentation and Records**

A court might allow a jury to infer negligence from an absence of documentation. Good documentation can transform a case from hopeless to defensible, if not at least limiting the damages to an amicable settlement. Conversely, poor documentation can doom even the most competent of care and expose you to truly frivolous claims. Medical records need to reflect a logical progression of diagnosis and treatment. The information contained within them belong the patient and must be kept confidential. Make sure there are no significant time gaps or omissions from the charts. Further, use only standard abbreviations. The importance of clear, concise, and specific documentation can go a long way toward reducing your exposure to malpractice.

**4. Avoid Conclusions – Examine the Patient Carefully**

Although this may seem obvious, its importance cannot be overstated. Consider the following testimonial from Vicente Franklin Colon, MD:

“I have been involved in several cases associated with rectal and vaginal bleeding in which no physical exam was done. The patient was reassured that it was nothing serious. In each case there was something seriously wrong and a lawsuit was filed.”<sup>i</sup>

If nothing is found after a carefully directed examination, you have demonstrated reasonable and prudent care.

## **5. Seek Consultation or Referral for Matters Outside the Normal Scope of your Practice.**

The health care industry is a universe of specialties. If a patient presents you with a medical problem outside the normal scope of your practice, seek consultation with a qualified expert – and note that you did so in the chart. If something more than consultation is needed, make the appropriate referral. Failure to get help when you are in over your head can be the basis for a malpractice suit.

## **6. Be Aware of Your Jurisdiction's Laws**

In addition to the universal scheme enacted in federal law, many states have their own unique twists to regulating health care providers. It is important to stay abreast of applicable rules and regulations. Malpractice suits are brought in state court under state laws. Knowing the rules and regulations of your jurisdiction is critical.

## **7. Make Sure Your Staff is Following Written Procedures *In Practice***

You can write down the most patient-friendly, proactive and precautionary set of policies for your practice, but these are worthless unless you and your staff put these policies into practice. Avoiding malpractice starts with good leadership and an administrative commitment to formulating and enforcing prudent policies. Examples of areas these policies should touch include physician certification and credentials, approval of new procedures, and creating a mechanism empowering *everyone* on the staff to report and stop practices that should not be happening. Your policy manuals and bylaws will be used against you if not actually followed.

## **8. Have a Trusted Lawyer on Retainer**

Lawyers are your friends! In fact, the majority of malpractice claims are first suggested not by a plaintiff's attorney, but by reviewing physicians examining a patient after a bad outcome.<sup>ii</sup> A personal lawyer with knowledge of malpractice law can stop frivolous claims in their tracks and help health care providers protect confidential information and retain their reputation in the community. Although this entails a cost, the consequences of attempting to wade through malpractice claims without the sound advice of counsel can be devastating.

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<sup>i</sup> V. Franklin Colon, MD, *10 Ways to Reduce Medical Malpractice Exposure – Doctors, Lawyers, and Lawsuits*, March 2002, [http://findarticles.com/p/articles/mi\\_m0843/is\\_2\\_28/ai\\_84236558/print?tag=art Body;col1](http://findarticles.com/p/articles/mi_m0843/is_2_28/ai_84236558/print?tag=art Body;col1).

<sup>ii</sup> Wilke, William S., MD, Highlights from Medical Grand Rounds, *Cleveland Clinic Journal of Medicine*, Volume 62, Number 2, pg. 84.