Four Ways to Reduce Your Malpractice Risks


Providing excellent clinical care can reduce the likelihood of a lawsuit, but the clinical side is not the only area to focus on. Source: Physicians Practice

As a physician, the fear of a malpractice lawsuit will always be present. But knowing you are doing all you can to prevent one from occurring can help set your mind at ease. Providing excellent clinical care can, of course, reduce the likelihood of an error that leads to a lawsuit, but the clinical side is not the only area to focus on.

For more insight into the non-clinical risk-management strategies every practice and physician should follow, we asked experts to weigh in. Here are four ways you can decrease your risk of a lawsuit.

PRIORITIZE PHYSICIAN COMMUNICATION
Great communication between physicians and patients can reduce malpractice risks in many ways, says Jeffrey D. Brunken, president of physician insurer MGIS. When you have a trusting rapport with patients, studies show that they are more likely to disclose all of their relevant medical information. Of course, that reduces the likelihood of a diagnostic error or misstep that could lead to a lawsuit.

Here are a few key communication strategies Brunken says physicians should employ when interacting with patients:
• Don't dismiss (or appear to dismiss) the patient's concerns.
• Listen carefully.
• Set realistic expectations.
• Provide clear answers.

"Those things are always to let the patient know, 'Hey, I'm listening to you. I'm hearing you. You can trust me. Tell me more,'" says Brunken.

Sue Larsen, president and director of education at Astute Doctor Education, Inc., which provides online education and resources specializing in physician interpersonal skills, says physicians should also be aware of, and actively avoid, four communication missteps that increase the likelihood of a lawsuit. She says avoid interactions that make the patient feel: devalued, misunderstood, deserted, or misinformed.

For tips on how to avoid each of these scenarios, see sidebar, "Interactions that Lead to Lawsuits."

ASK STAFF TO STEP UP

Perhaps even more important to risk management, great communication fosters a strong relationship with patients, which, also, according to several studies, reduces the likelihood a patient will sue if a problem arises, says Brunken. "Errors are always going to happen," he says. "Generally, reducing risk involves, 'How do you reduce the risk when bad things do happen?'

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ASK STAFF TO STEP UP
Just as physicians' interactions with patients are critical, so are staff members' interactions with them, says Larsen, noting that poor customer service leads to poor patient satisfaction, which increases the likelihood of a lawsuit. "It's highly important that every interaction provides an interaction that leads to patients feeling that they are going to somewhere that is highly competent and values their contribution," she says.

Here are four ways to ensure that your staff is not putting you at risk:

1. **Require excellent professional etiquette.** Staff members need to be cognizant that their conversations with other staff, such as discussions about kids, TV shows, and so on, may be overhead by patients, says Robin Diamond, an attorney and registered nurse who serves as the chief patient safety officer at malpractice insurer The Doctors Company. Those conversations, especially if inappropriate, can be very off-putting to some patients.

2. **Make sure staff members explain delays.** Long waits, with little or no explanation, are very frustrating to patients. To reduce the frustration, staff should explain delays to patients and share regular updates, says Larsen.

3. **Provide training on difficult patient encounters.** Angry or demanding patients may dish out their frustration on staff, so they play a big role in whether these situations are handled appropriately. Diamond recommends holding training sessions in which staff and physicians role play difficult patient encounters so that everyone is comfortable with and knowledgeable about how to handle these situations.

4. **Ask staff to serve as your eyes and ears.** Front-desk staff should observe patient reactions and emotions as they are leaving your practice. If patients leave upset, staff should inform the physicians and/or managers, who can then call the patient later to check in, says Brunken. That check-in call, he says, could be the difference between a damaged patient relationship, and a more positive one.

### HAVE STRONG POLICIES AND PROCEDURES

Policies and procedures can mitigate malpractice risks in two ways: one, if properly followed, they can prevent a problem from occurring that could lead to a lawsuit; and two, if you are sued, they can reduce the likelihood the lawsuit will be successful. "Demonstrating that you followed the procedure or the policy, regardless of what it is, shows good faith," says Brunken. "I think that that applies to several areas of the practice."

Here are five policies the experts say every practice should have in place:

1. **Policies related to employee expectations.** In addition to encouraging staff to practice great customer service, have a policy that addresses expectations regarding staff teamwork, attitude, etiquette, and so on, says Diamond.

2. **Policies related to EHR use.** These policies should cover initial and ongoing staff and physician training, rules regarding the migration of paper records to electronic, and so on, says Brunken. This will help reduce the risk of an error, and, if a lawsuit does occur, this will help you demonstrate good faith, he says.

3. **Policies related to scope of practice.** Document scope of practice for every type of clinician within your practice, says Diamond. This documentation should include tasks each individual can perform, the type of patients they can see, and the supervision required.

4. **Policies related to care protocols.** These policies should include protocols for follow-up on patient tests and referrals, for calling in new prescriptions and prescription renewals, for handling appointment cancellations and no-shows, for handling patient complaints, for ensuring patient privacy, and so on, says Brunken.

5. **Policies related to telephone triage.** These policies should cover who can answer what type of questions and how to document those questions and answers, says Diamond, adding that telephone care missteps often crop up in malpractice cases.

### A few more tips on policies and procedures:

Create "tip sheets" for staff so that they can quickly review the key elements of policies and procedures when necessary, says Diamond. Also, ask staff and physicians to review any changes or updates to policies and procedures, and require them to initial or sign that they have reviewed the changes, says Jonathan B. Stepanian, a healthcare litigation attorney at McQuaide Blasko, a Pennsylvania-based law firm.

### HAVE GREAT DOCUMENTATION

Similar to policies and procedures, great documentation (and policies regarding it) can help reduce the risk of lawsuit. Documentation can also help support a successful defense if a patient does sue you, says Stepanian. "In a legal setting ... the record is used to prove what did or didn't happen with regard to a patient's care," he says. "So when you think about the record in that kind of context ... I
think it alters your perspective on what exactly you're going to document and how much you're going to document." Stepanian says physicians should always try to document just as they would if they were teaching a first-year resident to do so.

Here are a few key documentation areas to consider:

• **Documentation of informed consent.** Familiarize yourself with your state's informed consent laws and adhere to them closely, says Stepanian, adding that you may want to take this a step further. "Our suggestion is that physicians [adhere to informed consent laws] not only for procedures that require informed consent, but even those procedures that don't," he says. "Tell patients about the risk of the procedure and the likely outcomes, and document that they reviewed those things."

• **Documentation of consideration of prior medical history.** Be sure to document that you have collected and evaluated the patient's prior medical history and prior medical visits, says Brunken. Also, note how you considered the prior medical history in the making of your diagnosis. "If you've got somebody that came in a year ago with some sort of complaint, it's important to document that you've got that in the system, and that the physician considered that during the current visit," he says.

• **Documentation of patient instructions.** In the patient's record, retain copies of all instructions for care that you provided, says Larsen. "... In a number of malpractice cases the doctor will say, 'Look, I know that I explained it to the patient,' but if there's no record of it, it's as if it didn't exist," she says. "It's really important that any information that is discussed with a patient is documented in the note, and also what the patient's response was to that."

Also, since the top claim in malpractice lawsuits is missed or delayed diagnosis, regularly conduct random samplings of patient charts to ensure that all tests, referrals, and so on, are followed-up on appropriately, says Diamond. If you have an EHR, you may be able to set the system to automatically send you notifications or triggers if follow-up care is not documented or completed, says Diamond. "... If the EHR is not tracking this itself, then someone has to do that and make sure that these follow-up appointments aren't falling through the cracks."

**IN SUMMARY**

A well-trained staff can reduce your malpractice risks. Here are six training sessions every practice should provide, according to risk management experts:

• What a malpractice case is, how the standard of care is proven, and how a case progresses
• "Soft skills," such as those related to customer service, communication, dealing with difficult patients, and professional etiquette
• Proper documentation
• How to handle cross-cultural communication, language barriers, and literacy issues
• All policies and procedures, and training on how noncompliance could raise malpractice risks
• Risk reduction strategies based on lessons learned from malpractice cases against physicians in similar practices

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