

The Top Ten Reasons- *Physicians are Sued for Malpractice*

While a majority of malpractice claims against physicians involve an adverse outcome, or the patient's perception of one, few patient injuries are the result of medical negligence or incompetence. Adverse outcomes can occur despite excellent medical care. Indeed, the majority of claims against physicians ultimately are closed with no payment to the claimant.

Analysis of closed claims and depositions gives insights into the reasons patients are angry enough to sue after they've experienced an adverse outcome—even one that is not their doctor's fault. Here are the top 10 reasons physicians are sued for malpractice:

1. Weak medical records

Attorneys may be encouraged to pursue an injury case if the medical record does not adequately explain what the doctor did or did not do. Records will undermine a defense if they lack documentation of the physician's rationale for critical decisions, as will factual errors, omissions, illegible entries, unresolved contradictions, or questionable alterations.

An altered record almost always guarantees even a medically-defensible case will be settled. A Texas case involving a filled prescription which was misread because of illegibility resulted in a \$450,000 verdict against a physician; jurors said they were angered that the patient died because of illegible handwriting and indicated their verdict would have been higher had the patient's attorney asked for more compensation.

2. Inadequate history-taking

Important medical information is not elicited, identified or documented, such as allergies, drug use, family history, prior medical problems, and names of other treating doctors.

Incomplete medical histories remain a major reason for delays in diagnosing breast, colon, lung and colorectal cancer, and heart disease.

3. Inattentive follow-up

Pending medical problems identified on one visit are not adequately followed up on subsequent visits, resulting in patient injury.

When a doctor elects to observe and monitor, rather than refer the patient to a specialist or for diagnostic studies: 1) document the reasons for deferring action, 2) revisit the problem when the patient is next seen; and 3) document a course of action, or note that the problem has been resolved.

4. Informed consent was not obtained

The risks of treatment and the elements informed consent discussion are not explained or properly documented.

Informed consent is what the patient gives to the doctor after the doctor has explained the purpose of treatment or tests; the risks, alternatives and their risks, and the expected outcome; and answers the patient's questions. The consent form patients sign is virtually worthless unless the doctor has personally obtained the patient's consent by following the steps described. A handwritten or dictated note about the consent discussion is often more helpful in defending the physician than a signed consent form.

5. Informed refusal was not obtained

The risks of refusal of care discussed with a patient are not documented.

Patients have the right to decline hospitalization, referral to other doctors, or any treatment. When the patient declines, the physician is obliged to explain the possible consequences of the patient's choice. Only after the patient has been given the information can it be said that the patient has given an "informed refusal," which should be documented by a confirming letter to the patient.

6. Overlooked lab studies

Diagnostic lab and imaging tests are not received in a timely manner or acted upon.

Utilize an effective diary system for keeping track of ordered tests and referrals. Assign a staff member to find out why an expected report was not received. To safeguard against overlooking significant test results or consultant's letters, physicians should prohibit filing such items *unless* the doctor has initialed them as evidence they have been reviewed. Claims in which filed, unreviewed reports resulted in a delayed diagnosis or treatment and contributed to a patient injury are rarely defensible—and always costly.

7. Communications problems

Miscommunication with co-treating, referring and consulting physicians results in overlooked or duplicate therapy, and delays in diagnosis or treatment.

Keep track of referrals; question delays in receiving reports; and document telephone conversations with colleagues and patients in which important information is given or received.

8. Medication problems

Prescriptions and refills are not adequately documented, causing or adding to patient injury.

Careless charting and incomplete documentation of prescriptions and refills are common factors in facilitating claims. Use a medication control record to easily track medications and reduce the risk of overlooking drug interactions or patient dosing errors.

9. Weak patient education

Patients are inadequately educated about their medical condition, treatment, and follow-up, which results in non-compliance, injury, misunderstanding, disappointment, and an inclination to litigate.

Oral education may be inadequate and easily forgotten by patients. Relying on a pharmacist to educate patients about drug use, side effects and interactions can be risky. Dispense *written* information about diseases or conditions, drugs prescribed, self-care and follow-up. Document that this information was dispensed.

10. Inattention to the importance of a sound doctor-patient relationship

Litigation often ensues when doctor-patient relationships are damaged by poor telephone etiquette; excessive or unexplained waiting time; rudeness by physicians or staff; inattention to the patient's concerns; and delays in reporting significant test results.

Make sure your staff understands they are your “patient relations department.” The way staff treats patients on the phone and in person reflects favorably or unfavorably on the doctor. Don't over-schedule. Apologize for delays; *everyone's* time is valuable. Treat patients respectfully. Plaintiff's attorneys say that most people who want to sue are more angry than injured.

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