THINGS THAT GET PODIATRISTS SUED

(AND SUGGESTIONS ON HOW TO AVOID THEM)

WSPMA ANNUAL CONFERENCE – 2017
YOUR SPEAKER
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FOCUS: 20 years representing physicians, hospitals, podiatrists, chiropractors, nurses, medical technicians, and product manufacturers in complex civil matters, primarily in the areas of:
  • Medical Malpractice
  • Professional Liability
  • Product Liability
FUN FACTS: Was certified as an EMT and whitewater rafting guide. He keeps busy chasing after his two sons, coaching flag football, traveling the world with his wife, and trying to correct an "overly athletic" golf swing.
MOST PODIATRISTS WILL BE SUED AT SOME POINT DURING THEIR CAREERS

True ☑ False ☐
7.4% of all physicians annually had a malpractice claim; 1.6% made a payment.
Almost all physicians will face a malpractice claim over a 30 year career.
PICA INSURES 9,000 PODIATRISTS IN 48 STATES

WASHINGTON STATE PODIATRIC MEDICAL ASSOCIATION (WSPMA) ANNUAL CONFERENCE 2017
GENESIS OF A LAWSUIT AGAINST A PODIATRIST

- Poor or unexpected medical outcome
- Patient unhappy enough to seek legal counsel
- Qualified expert reviews medical records and testifies that standard of care was not met
PRIMARY RISK ISSUES

- None: 99
- Surgery Related: 49
- Diagnosis Related: 35
- Infection Related: 68
- Medication Related: 13
- Treatment Related: 173
- Insufficient Data Available: 161
- Dissatisfaction: 41
- Complication/Poor Outcome: 219
- All Other: 58
11% OF CLAIMS CLOSED WITH INDEMNITY PAYMENT
COMPLICATIONS, POOR OUTCOMES & DISSATISFACTION CLAIMS ARE EXPENSIVE

Average Cost to Defend
$55,288

Average Indemnity Payment
$117,806

Average Case Open
24 months

Longest 9 years
Shortest 1 month

* Excludes $0 payments
DISPOSITION

- Summary Judgment for Defendant
- Settled Pre-suit
- Settled during Trial
- Settled during Mediation
- Settled before Trial
- Other
- Non-suit by Plaintiff
- Negotiated Withdrawal
- Judgment for Plaintiff by Jury
- Judgment for Defendant by Jury
- Judgment for Defendant by Court
- Insured Never Served
- Dismissed by Court
- Directed Verdict for Defendant
- Decision for Plaintiff by Arbitrator
SO WHAT DOES THIS MEAN?

A lot of time, effort, money, frustration & stress is spent on claims in which the medicine was good.
REASONS PODIATRISTS GET SUED

1

Difficult, Irrational, Angry, Litigious Patients
PEOPLE WHO...

...are desperate
...are angry
...are irresponsible
...blame problems on prior medical providers
...are addicted to drugs or alcohol
...are high maintenance
...complain about bills
HOW TO DEAL WITH PROBLEM PATIENTS?

A. End Doctor/Patient Relationship

B. Use Best Practices
   - Take extra time
   - Perfect documentation
   - Establish expectations
   - Practice defensive medicine
IF YOU WANT TO GET SUED...

• Wait a few days to dictate chart notes.
• Liberally use the cut and paste function on your electronic medical records.
• Keep it short—you know what you were thinking.
Patients Think You’re in a Hurry
Physicians who have been sued frequently are more often the objects of complaints about the interpersonal care they provide, even by their patients who do not sue.

Patients complained they...

...felt rushed

...never received explanations for tests

...were ignored
The overwhelming number of people who suffer an injury due to the negligence of a doctor never file a malpractice suit at all. Patients don’t file lawsuits because they’ve been harmed by shoddy medical care. Patients file lawsuits because they’ve been harmed by shoddy medical care—and something else happens to them.

What comes up again and again in malpractice cases is that patients say they were rushed or ignored or treated poorly.
WENDY LEVINSON’S 1997 STUDY FOUND THAT DOCTORS WHO HAD NEVER BEEN SUED...

...spent an average of three minutes longer with each patient than doctors who had been sued at least twice.

...were more likely to engage in active listening

“Tell me more about that.”

...were more likely to make “orienting” comments

“First I will examine you, and then we will talk about your problem.”
PATIENT WHO DEVELOPED INFECTION AFTER BEING CASTED FOR FRACTURED FIBULA – ENDED UP WITH TRANSMETATARSAL AMPUTATION

“The ER doctor came in and looked at my foot. He asked me why I did not go back to the doctor who applied the cast. I told him that Dr. _____ would not return my calls.”
PATIENT WITH MULTIPLE COMORBIDITIES & CHRONIC FOOT ULCER/ABSCESS ADMITTED TO HOSPITAL. INSURED CONSULTED TO PERFORM I&D. PATIENT DIED 2 DAYS AFTER DISCHARGE FROM HOSPITAL

“Dr. ______ arrived only moments before the surgery was about to get started. He came in with a negative attitude and was reprimanding nurses for calling him on the phone prior to his arrival. I felt he was annoyed and he gave me little time to ask questions or have a better understanding of the procedure…”
PATIENT WHO DEVELOPED POST-OP COMPLICATIONS FOLLOWING BUNIONECTOMY

“Dr. ________ didn’t take much of an interest in my pain and suffering following the first surgery, he seemed busy or disinterested.”
WHAT DOES THIS TELL US?
WHAT DOES THIS TELL US?

The quality of care matters, but... HOW you provide the care matters as much or more.
Perform Lots of Surgery
Litigation Risk

Complications

= Patients with Serious Problems
TOP PROCEDURES INVOLVED IN CLAIMS
(STATISTICS FROM PICA)
1. Bunionectomy
2. Hammertoe Repair
3. Wound/Ulcer Care

CONSISTENT OVER LAST 10 YEARS
SURGEONS FACE THE MOST MALPRACTICE CLAIMS ANNUALLY

4
Sloppy with Informed Consent
(1) In order to obtain the informed consent of a patient, a physician or physician assistant shall explain the following:
   (a) In general terms the procedure or treatment to be undertaken;
   (b) That there may be alternative procedures or methods of treatment, if any; and
   (c) That there are risks, if any, to the procedure or treatment.

(2) After giving the explanation specified in subsection (1) of this section, the physician or physician assistant shall ask the patient if the patient wants a more detailed explanation.
ADVICE ON INFORMED CONSENT

- Informed consent is a conversation, not a piece of paper
- Use the best form possible to guide conversation
- Personalize the conversation
- Write on consent form, draw on diagram
- Make patient initial and sign sections
5

Fight about Money with Patients

REASONS
PODIATRISTS GET SUED

"I believe they're a debt collection agency."
REASONS
PODIATRISTS GET SUED

6

Treat a Diabetic Ulcer for a Long Time with No Significant Improvement
MEDICAL BOARD INVESTIGATIONS What to Expect
PHYSICIANS WITH BOARD ACTIONS - NATIONAL

INVESTIGATION TRIGGERS

- Patient complaint
- Complaint by others involved in patient’s care
- Filing of medical malpractice lawsuit
- Settlement of medical malpractice claim or lawsuit
- Anything else reportable to the NPDB
- Prescription Drug Monitoring Program data
- Self report
1

Inappropriate Prescribing Practices
2

Large Malpractice Settlement or Jury Verdict

REASONS TO BE INVESTIGATED
Boundary Issues
Bedside Manner
Personal Substance Abuse
WHAT TO EXPECT
MEDICAL BOARD INVESTIGATION

• Investigation of every report
• Process is different in every case
• Timeline can be very long
• Looking for violation(s) of the Medical Practice Act
INVESTIGATIVE TOOLS

MEDICAL BOARD INVESTIGATIONS

Subpoenas

Interviews

Prescription Drug Monitoring Programs (PDMP)

Public Information

Undercover or Unannounced Clinic Visits

Center for Personalized Education of Physicians (CPEP)
WHAT TO DO?
MEDICAL BOARD INVESTIGATIONS

- Insurance Company
- Attorney
- Consider Terminating Patient
- Cooperate
- Explore Resources

- Communicate with Patient
| OTHER ISSUES |
| MEDICAL BOARD INVESTIGATIONS |

- Credentialing
- National Practitioner Data Bank
- Commercial Payers
- Board Certification
- Personal
- Civil Lawsuit
HOW TO AVOID?
MEDICAL BOARD INVESTIGATIONS

Golden Rule

Trust Your Instincts

Be Aware of “Concerning” Areas

Get Advice
IT'S (PODIATRY IS) A SMALL WORLD, AFTER ALL.
QUESTIONS?

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