

Litigation Stress: Causes and Remedies

Being named a defendant in a medical malpractice lawsuit can be a devastating experience. It is particularly painful for first-time defendants who experience the blow of having their professional competence questioned, along with a host of other emotions attendant to litigation, such as anger, fear, frustration, self-doubt and self-pity. Combined, these effects can create a high degree of psychological stress that can endanger the physician's mental, physical and emotional well-being.

Researchers who have studied the subject have coined the term "litigation stress syndrome" to describe the condition that in some way affects most medical professionals when they are sued for malpractice.¹ Failing to recognize this condition and take positive steps to treat it can cause professional and personal problems for the defendant physician and jeopardize the outcome of the lawsuit.

This article discusses reactions to being sued, the impact of litigation stress and strategies for handling this stress so that it does not result in serious harm.

Reactions to Being Sued

Initial Reactions

One study found that litigation is typically experienced as an assault on the physician's competence and integrity.² Sleep disturbances, feelings of suppressed anger, depression and anxiety are common. Physicians also report a loss of confidence in their ability to function professionally. Physicians often say that they play and replay the same "tape" in their minds. *Did I do everything I could have? Did I miss something? Did I fail the patient?* The malpractice allegations sometimes only serve to confirm a physician's sense of guilt that he or she failed professionally.

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NORCAL Plans Series of *Litigation Support Group* Meetings

One of the negative aspects of litigation is the sense of isolation from your colleagues and the feeling that you are "the only physician who has ever been sued." As a result, many of our policyholders have expressed interest in participating in a discussion group with other defendant physicians who have been involved, or are currently involved in litigation. NORCAL is responding to this by planning a series of *Litigation Support Group* meetings facilitated by a claims supervisor and malpractice defense attorney. The goal of this support group is not to discuss particular details of your case, which could potentially become discoverable, but to discuss the experience of being sued and to share helpful coping strategies.

On Saturday, September 23, 2000, NORCAL is sponsoring its first *Litigation Support Group* in our San Francisco office. This is offered twice in the same day, allowing participants to attend either a morning session (9:00 am - 12:00 noon) or an afternoon session (1:00 pm - 4:00 pm). Each session is limited to 10 physicians to encourage informal open discussion. If you would like to attend the *Litigation Support Group* or have questions, please call *Litigation Support Group* Coordinator Patricia West at 1-800-416-0791.

Depending on response, NORCAL plans to hold these meetings on a quarterly basis in our San Francisco, Pasadena and Rhode Island offices. As these are scheduled, they will be announced in forthcoming issues of *Claims Rx*. At this time, the program is open to NORCAL policyholders only and will not involve family members.

Loss of Time and Control

Litigation only increases the demands that are placed on a physician. In addition to personal and professional responsibilities, the lawsuit becomes yet another time-sapping, anxiety-inducing project. Many physicians feel there is even less justification for taking time to pursue leisure activities. Now the physician is also in a very different role and in an unfamiliar environment, as control has shifted even further away. Like a patient, the physician is subjected to unknown procedures by virtual strangers in unfamiliar surroundings. Experts are delivering critiques of his or her care and treatment. The deposition is taken by the plaintiff's attorney, who is in an adversarial position, and who may try to bait or intimidate the physician during deposition. If the case proceeds to trial, the defendant physician and the jury listen as the plaintiff, the plaintiff's attorney and the plaintiff's experts all explain what the physician did wrong or failed to do.

Reactions to Going to Trial

How physicians react to being sued, particularly the prospect of going to trial, can affect the outcome of a lawsuit. For example, some physicians may be comfortable with the care provided to the patient; however, the uncertainty that trial brings may be overwhelming for individual physicians. This uncertainty can lead to a desire to bring the suit to a speedy closure by offering the plaintiff a settlement, despite assurances by defense counsel that the care provided was acceptable to experts who reviewed the case. When cases are hastily settled, the stress of the lawsuit is often rekindled every time the physician is credentialed, recredentialed, applies to a new health care plan or applies for malpractice insurance because the settlement must be reported each time.

Other physicians may be more willing to accept the challenges that a trial brings, even though initially they may have felt the same uncertainty. Statistics show that this perseverance pays off in 81% of the medical malpractice lawsuits that go to trial.² When a defense verdict is reached, physicians generally feel an immediate sense of relief and resurgence of confidence.

Because only 10% of medical malpractice lawsuits actually go to trial,² few physicians experience the sense of relief that comes from being vindicated by a jury. Furthermore, few physicians suffer such high degrees of stress that they demand their cases be settled. However, most physicians facing malpractice lawsuits experience at least some unpleasant emotional or physical symptoms. For some, these symptoms can lead to serious problems for themselves, their families, work associates and even their patients. As with any emotional or mental health disorder, the earlier the symptoms are recognized and treated, the better the outcome will be.

Symptoms of Stress

The symptoms of stress are numerous, and are seen in four major categories: physical, mental, emotional and behavioral.³ Physicians can easily list the physical manifestations of stress to their patients: fatigue, headache, insomnia, muscle aches and stiffness, heart palpitations and GI symptoms. Mental symptoms include inability to concentrate, compromised memory, indecisiveness and confusion. In addition, the mind may race or go blank. Frequently, one's sense of humor disappears or becomes sardonic. Emotional symptoms might include anxiety, nervousness, depression, anger, frustration, worry, fear, irritability and impatience.

Common behavioral manifestations include hyperkinesis; increased or decreased eating, smoking and drinking; yelling and screaming; and, sometimes, abusive behavior. Researchers have found that physicians will frequently respond to stress by becoming even more absorbed in their work, to the exclusion of exercise and social activities.⁴

Impact of Litigation Stress

Déjà Vu

Numerous studies have indicated that litigation stress can cause events to occur that can lead to subsequent malpractice lawsuits. A 1992 Michigan study⁵ demonstrated that, for physicians who had

been sued previously, one in three subsequent lawsuits occurred within six months, and nearly two of three occurred within a year. The study concluded that when a physician becomes involved in malpractice litigation, he or she “immediately become(s) high risk for a second claim-producing incident.” Although litigation stress decreases with time, studies show that physicians who have experienced a lawsuit still report intermediate levels of distress and attitude changes two years after the lawsuit has passed.⁶

Work Life

Litigation stress can affect work life in a number of ways. Some physicians increase professional activity to avoid thinking about the lawsuit. For others, lack of concentration due to preoccupation with the lawsuit can lead to errors that impact patient care. Small mistakes can be made that do no great harm but cause concern and doubt among co-workers about the physician’s competence. Feelings of anger about a lawsuit can trigger hostile behavior toward co-workers that can, in turn, impair vital communication among health care providers.

Anger and loss of confidence can also cause a physician to be short and irritable with patients, weakening the bonds of respect and confidence between the patient and physician. One physician noted that after being sued, his attitude toward patients changed:

*“Seeing patients, I sensed myself becoming suspicious and defensive. ‘Will you be the next to sue me?’ I caught myself thinking. I began to second guess routine decisions like calculating doses or ordering tests. I even doubted the very words I uttered when I reassured someone that ‘nothing is wrong.’ ”*⁷

Erosion of patient respect and confidence, topped by an adverse result, creates fertile ground for germinating a lawsuit. It is no wonder that physicians being sued are at short-term risk for becoming involved in another suit-generating incident.

Physician Vulnerability to Stress

Contributing to litigation stress is the stress of just being a physician. Perhaps more than any other profession, physicians are the most vulnerable to stress. This is due to the personality type drawn to medicine and to the high stress environment of medicine.

Personality Type Drawn to Medicine

Recent research has concluded that stress among physicians in the United States evolves in part from the specific personality type that is drawn to the practice of medicine. One study found that, as a group, physicians tend to have compulsive traits.⁸ Patients have often stated that they prefer a compulsive physician for their extreme sense of responsibility, attention to detail and high standards.

Unfortunately, these traits also have negative aspects — doubt, guilt and an exaggerated sense of responsibility — that contribute to the level of stress physicians experience.⁸ Physicians tend to develop high expectations of themselves such as the capability of ‘curing’ patients and snatching them from the jaws of death. The personality type tends to work through problems intellectually and independently. When faced with a lawsuit, the added burden of finding solutions, when there may be none, is yet another source of stress.

The High Stress Environment of Medicine Practicing Medicine — and Beyond

Physicians practicing today face many challenges. In the age of managed care, physicians are forced to spend less time with patients and more time on administrative tasks. Doctors have seen their autonomy diminished and their treatment decisions questioned. In addition, the reimbursement offered by most HMOs has caused physicians and their families to adjust to a different standard of living.

In a study of male and female physicians, researchers found that the number one stressor of all physicians was the amount of time required by their profession.⁹ Women physicians feel especially stressed by family demands, which must be balanced against their busy professional lives.⁹ Most physicians find that their professional duties extend beyond their own practices, to include committee work within their groups, clinics or hospitals. While such work is expected or often required, it is a further challenge to physicians who not only feel overworked, but that less and less of their time is spent actually treating patients.

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Personal and Home Life

The physician often considers himself the least deserving of care and attention when involved in a lawsuit. Obligations to the practice are paramount, followed by the lawsuit and then the family. Many physicians do not consciously consider their own needs in this hierarchy.

The various manifestations of litigation stress experienced by the physician also affect friends and family. Even the most conscientious physician occasionally succumbs to sarcasm, lack of interest or impatience as a result of stress. The physician has learned to bear a certain amount of stress by virtue of professional demands. Similarly, spouses and children of physicians adapt to the lifestyle ascribed to them. However, when litigation stress is intensified and/or prolonged both the physician and his family suffer in new ways.

In response to litigation, some physicians spend virtually all of their free time working on the lawsuit. The admonition that physicians speak to no one about the lawsuit can promote feelings of isolation. This intense focus and distancing can lead to feelings of alienation and resentment in family members. Couples typically depend on each other for support in stressful times and the lack of that support will increase the physician's stress level. A lawsuit affects the entire family, and most spouses know when something is wrong. The longer the situation persists, the more strained relationships become, and the more difficult the repair. Consequently, the physician often takes on a new level of guilt regarding his lack of attention to and involvement with his family.

Strategies for Handling Litigation Stress

Recognize the Symptoms of Stress

The first and most important step toward dealing with litigation stress is to recognize and accept the stress as a normal reaction to a devastating situation (*see box on page 2*).

Seek Outside Help if Necessary

If your stress symptoms become serious and do not improve with time, consider getting professional help. Check with your local or state medical society or your professional liability carrier for information about support programs

that may be available for physicians undergoing litigation stress.

Manage Stress Positively

Managing stress in a positive way helps to prevent potential damage to a person's health, home life or work life and re-focus attention on present needs. Intellectually, physicians know that it behooves them to be physically and mentally healthy as a defense against the demands of the litigation. The challenge is to transform the intellectual knowledge into positive, stress-reducing behaviors, such as those recommended below:

Take Care of Yourself

Now, more than ever, is the time to stick to healthful lifestyle habits such as eating well, getting plenty of exercise, finding time to relax and avoiding unhealthy habits such as alcohol or drugs. Take time to do things you enjoy. Reward yourself after particularly stressful events in the litigation process by doing something that is enjoyable for you; see a play, attend a concert or a sporting event, visit an art museum. Do the things you ordinarily do to unwind and relieve stress.

Talk to Close Friends and Family About How You Are Feeling

Most people who have experienced a traumatic event know that recovery is facilitated by talking about the event with family, close friends or outside professionals. With litigation stress, it is difficult to employ this stress management technique because a physician is not to discuss the case with anyone other than the defense attorney or insurance claims representative. While it is important to follow this advice for the success of the lawsuit, it should be noted that the advice generally applies solely to the details of the medical incident that generated the lawsuit. Physicians can comply with the advice and still relieve some stress by limiting their discussions to the impact of the lawsuit on their emotional well-being.

Avoid Focusing on the Facts of the Lawsuit while Working

Pay close attention to the details of whatever work activity you are engaged in at any given time. If you are having difficulty concentrating and keeping your focus, try scaling back your

hours or asking an associate to help you. Work on improving those skills that may have been called into question as a result of the incident, such as record-keeping or obtaining informed consent from patients. Pay close attention to interpersonal skills when interacting with patients and co-workers.

Get Involved in the Case and Learn About the Legal Process

Accept that you are being sued and do what you can to help achieve the best possible outcome. Under the direction of your defense attorney, do whatever you can to assist in your own defense. Educate your attorney about the medical aspects of the case, and educate yourself about the litigation process so that you know what to expect each step of the way. Indulge your wish to talk about the case by talking with your attorney and your claims representative; vent your frustrations to them.

Be Patient; Accept that the Litigation Process is a Slow One

There will be times when the best thing to do is to put the case out of your mind altogether. Read the NORCAL publication *The Physician as Defendant*. Face the possibility of having to settle the case or losing at trial, and remind yourself that you will survive and that life will go on.

Conclusion

Litigation stress manifests differently in each person who experiences it, and no single stress management technique will work for everyone. Each individual must decide what will work best in his or her personal situation. And while there will never be a magic pill that will make the condition disappear completely, following the strategies outlined in this article can minimize litigation stress and prevent the dire consequences that can occur when no attempt is made to control it.

Special thanks to Barbara Halliday and Linda Harrison of NORCAL's Claims Department for submitting this article. ■

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Better Informed Patients

High-tech innovations and the rapid advance of medical knowledge force physicians to devote considerable time to ongoing education. Physicians' patient populations have also changed in the high-tech age. Instead of quoting the latest health facts from popular magazines, patients now present to their physicians armed with information — accurate or inaccurate — downloaded from the Internet. Physicians who are not conversant in the latest advancements in their fields may lose their patients' confidence.

Inherent Stressors in Medical Practice

The process of delivering health care is inherently stressful. The physician is 'responsible' for life, and must answer to patients and their families when the prognosis is grim, or a bad outcome has occurred. Patients can be difficult. A delicate procedure is still a stressful event, even if one has performed it many times. ■

NORCAL Offers *Managing Litigation Stress* Seminar

NORCAL is responding to the needs expressed in the preceding article by sponsoring a half-day seminar at our first risk management conference. This seminar is designed to help physicians better understand the litigation process, develop methods to increase the likelihood of a successful defense of a lawsuit, and engage in positive behaviors to better cope with the inevitable pressure and stress of being sued. By better understanding the process, a physician can handle the most serious accusation in a practice: that negligence injured or killed a patient.

Who Should Attend This Seminar

This seminar is designed for physicians who have or are experiencing a lawsuit, as well as physicians who have yet to experience one.

Educational Objectives

Upon completion of this activity, you should be able to:

- Recognize the elements of a medical malpractice lawsuit.
- Develop strategies to anticipate and cope with the stress of being sued.
- Continue to function as a physician while a lawsuit is pending.
- Become an effective witness and assist in your own defense.
- Recognize the possible post-lawsuit ramifications of a malpractice action.

Faculty

John W. Carigg, M.D., board certified head and neck surgeon, Orinda, CA

Thomas J. Donnelly, Esq., Anderson, Galloway & Lucchese, Walnut Creek, CA

Gerry M. Lee, M.D., A.B.F.P., board certified family practice physician, Auburn, CA

Patricia West, Supervisor, Claims Department, NORCAL Mutual Insurance Company

Seminar Schedule

This seminar is offered twice in the same day, allowing participants to attend either a morning session or an afternoon session.

	Registration/Meal	Seminar
Morning	8:00 - 8:45 a.m.	8:45 - 11:45 a.m.
Afternoon	11:45 - 1:00 p.m.	1:00 - 4:00 p.m.

Once you register, a confirmation letter will be sent that includes directions to the seminar.

Fee*

NORCAL Policyholders: \$35; Non-policyholders with endorsing medical society membership: \$65; Non-policyholders: \$125.

*Fee includes conference materials. Morning session includes continental breakfast. Afternoon session includes lunch.

Policyholder Registration

NORCAL policyholders can register for this course by dialing 1-877-NORCAL-U (667-2258). This toll-free number will connect you directly to our telephone registration system. Once you hear the greeting, you will be asked to enter your social security number. To verify your social security number, you will be asked to enter the first three letters of your last name. Once this is verified, the Main Menu will begin.

To register for this activity using Call Registrar, you will need:

- your social security number; and
- the class code listed below.

Facility	Date	Class Code	
		Morning	Afternoon
Monterey Conference Center	9/9/00	1501	1502
Sacramento Convention Center	10/21/00	1503	1504
San Diego Convention Center	12/2/00	1505	1506

Continuing Medical Education Credit

NORCAL Mutual Insurance Company designates this continuing medical education activity for up to 2.5 hours in Category 1 credit toward the AMA Physician's Recognition Award. Each physician should claim only those hours of credit that he/she actually spent in the educational activity.

Accreditation Statement

NORCAL Mutual Insurance Company is accredited by the Accreditation Council for Continuing Medical Education to sponsor continuing medical education for physicians.

References

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Guidelines and/or recommendations contained in this publication are not intended to determine the standard of care, but are provided as risk management advice. Guidelines presented should not be considered inclusive of all proper methods of care or exclusive of other methods of care reasonably directed to obtain the same results. The ultimate judgment regarding the propriety of any specific procedure must be made by the physician in light of the individual circumstances presented by the patient.

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