Clinical Practice and Medical Malpractice: Strategies to Reduce Liability

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Overview

- Factors leading to malpractice claims
- Communication
- Disclosure/apology
- Guidelines
- Informed consent
- Documentation
Incidence of Injury vs. Malpractice Claim

Only 1 out of 25 injuries from negligent care ➔ malpractice claim

• Even fewer claims from standard care

Studdert et al.: NEJM 2006; 354:2024-33
Localia et al.: NEJM 1991; 325:245-51
Why Patients Sue

- Communication issues 80%
- Physician attitudes 35%
- Failure in communication 35%
- Physician blame previous care 7%
- Unrealistic patient expectations 5%

Malpractice Claims after Adverse Outcome

Poor relationship between patient and physician

Expense/fee arrangements

Patient expectations for compensation
Physician Propensity for Lawsuits

- Risk groups
  - Low
  - Medium
  - High
- High risk group = 2-8% of physicians
- Accounted for >50% of claims

Sloan et al. JAMA 1989:262:3291-7
Malpractice Claims History and Quality of Obstetric Care

- Objective Errors
- Substandard Care

% of claims in each group

- No Claims
- High Frequency Claim

Entman S et al.: JAMA 1994; 272:1588-91
Malpractice Claims History and Patients’ Satisfaction With Care

Hickson G et al.: JAMA 1994; 272:1583-7
Malpractice Claims History and Patients’ Satisfaction With Care

% of respondents in each group

* p<0.05

- <10 min with Physician
- Communication Problems

Hickson G et al.: JAMA 1994; 272:1583-7
Malpractice Claims History and Patients’ Satisfaction With Care

% of respondents in each group

* p<0.05

- No Claims
- High Frequency Claim

Hickson G et al.: JAMA 1994; 272:1583-7
Physician-Patient Communication:
Fewer Malpractice Claims

- Greater use of facilitation
- More statements of orientation
- Physician laughs and uses humor
- Longer visit
- No difference in content

Levinson et al.: JAMA 1997; 277:553-9
Communication assumes special importance when things go wrong.
Cardiac Arrest During Hip Surgery

- 58 y.o. ASA 3 man
- Bupivacaine epidural
- Cardiac arrest-45 min
- O2 saturation 75-80%
- Fat embolism
Response After Adverse Event

- Rapid Response
- Process/Performance Improvement
- Investigation
- Open Communication
- Report
Non-verbal Communication

- Quiet room/ pager off
- Nonverbal communication
- Lean forward/maintain eye contact
- Don’t act impatient/uninterested
- Attention to subtle cues
Empathy vs. Apology

• **Empathy**: I’m sorry your husband had an cardiac arrest during surgery. We don’t know why and will investigate it.

• **Apology**: I’m sorry that I caused your husband’s cardiac arrest by giving a larger than recommended drug dose.
Type of Apology Laws by State

Key
- Blue: No apology law
- Yellow: Sympathy only
- Red: Admissions of fault

Full Disclosure Reduces Litigation Payments

- University of Michigan Health System
- “3Rs” program at COPIC-Colorado
- University Illinois, Chicago
- Veterans Affairs

- Disclosure
- Compensation
University of Illinois Data

• Medical Malpractice Premium data
• Overall premium reductions over past three years = $22 M
  • FY 11 - $4.7 M less than FY 10
  • FY 12 - $7.4 M less than FY 10
  • FY 13 - $10.1 M less than FY 10
• 2006 – SIP $45M underfunded
• 2012 – SIP $8 M in excess

McDonald et al. Quality and Safety in Health Care, Jan 2010
Failure Contributing to Injury

- No Failures
- Communication Failures 43%

n=914
Content of Communication Failures Associated with Injury

- Intraoperative events: 47%
- Preoperative information/medical history: 26%
- Postoperative care plan: 12%
- Patient status changes post-procedure: 11%
- Urgency of care needed: 3%
- Other: 1%

n=453 failures
Types of Communication Failure Related to Injury

- Verbal: 62%
- Written: 10%
- Pager: 2%
- Verbal+ Written: 22%
- Test Results: 2%

n=453 failures
Communication Failures: Injuries vs. Lawsuits

- Injury Only: 27%
- Injury + Lawsuit: 8%
- Lawsuit Only: 16%
- Insufficient Information: 3%
- No Failure: 45%

n=1,132
Communication Failures Related to Lawsuit

Percentage of claims for Finger Pointing.

n=325 failures
Communication Failures Related to Lawsuit

- Finger Pointing: 40%
- Informed Consent: 30%

n=325 failures
Communication Failures Related to Lawsuit

- Finger Pointing: 40%
- Informed Consent: 30%
- Poor Witness: 20%

n=325 failures
Communication Failures Related to Lawsuit

- Finger Pointing: 38% (n=325 failures)
- Informed Consent: 29% (n=325 failures)
- Poor Witness: 23% (n=325 failures)
- Inadequate Documents: 20% (n=325 failures)
- Falsified Records: 10% (n=325 failures)
Medicolegal Importance of Following Guidelines

- 50 y.o. man lap chole
- RSI with Glidescope
- Multiple attempts- different blades/people
- Can’t intubate/ventilate
- Cardiac arrest: surgical airway
- Difficult airway guidelines not followed
- $1 million settlement
Following Guidelines Helps Defense

- 68 y.o. ASA 3 woman
- Mastectomy/implant
- Type 2 DM, HTN
- ECG-NSST, 4 mets
- Uncomplicated GA
- 10 hrs. p.o. MI
- Cardiac arrest/died
- Followed ACC/AHA preop guidelines
- Defense verdict by jury
Informed Consent

• Absence is damaging
• Describe common complications
• Describe significant risks
• Specific risks/patient consent in medical record
• Anesthesia consent form vs. handwritten note
# Informed Consent Issues in Complaints

<table>
<thead>
<tr>
<th>Category</th>
<th>n (% of 65)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risks</td>
<td>45 (69%)</td>
</tr>
<tr>
<td>Alternatives</td>
<td>16 (25%)</td>
</tr>
<tr>
<td>Seriousness of condition</td>
<td>12 (18%)</td>
</tr>
<tr>
<td>Nature of the treatment</td>
<td>11 (17%)</td>
</tr>
<tr>
<td>Uncertainties</td>
<td>7 (11%)</td>
</tr>
<tr>
<td>Recovery</td>
<td>6 (9%)</td>
</tr>
<tr>
<td>Benefits</td>
<td>4 (6%)</td>
</tr>
</tbody>
</table>

Informed Consent an Issue
Malpractice Claims

Anesthesia Claims (n=1041)
Surgical Claims (n=460)
Role of Informed Consent in Anesthesia Claims (n=1041)

- Consent issues more frequent in low severity claims
- More often judged as substandard
- Low severity claims - large burden
  - Half of claims in database
  - One third of defense costs since 2002
  - $218 million in indemnity payments (13%)
Epidural and Spinal Anesthesia

Decision aid

What are epidural anesthesia and spinal anesthesia?
Anesthesia blocks pain during your surgery or procedure.

Epidural anesthesia and spinal anesthesia numb large areas of your body. You may remain awake or receive a sedative during your surgery or procedure. You may remember parts or all of the surgery or procedure.

Both types of anesthesia involve your anesthesiologist injecting medication into your back near the spinal cord. This numbs regions of the body so you will not feel pain during the surgery or procedure.

You may have a general anesthetic in addition to epidural or spinal anesthesia for your procedure.

What are the possible benefits of epidural or spinal anesthesia?
Some possible benefits of epidural and spinal anesthesia are:

- You may remain awake during the surgery or procedure.
- Reduced nausea, vomiting, and drowsiness compared to general anesthesia.
- Possibly lower blood loss during surgery or procedure compared to general anesthesia.
- Reduced risk of infection and pneumonia after knee replacement compared to general anesthesia.
- Pain relief - can be used to reduce pain during and/or after surgery or a procedure (for example, after lung or abdominal surgery or in childbirth).
Patient Engagement Pre- & Post- Regional Anesthesia Decision Aids

*\( p<0.05 \)

- RA Mentioned
- Asked Questions
- Alternatives Mentioned
- Want Written Info

Posner et al. Anesthesiology 2015, A2211
Knowledge Test Scores Pre- & Post-Regional Anesthesia Decision Aids

Mean score within group

*p ≤ 0.001

Posner et al. Anesthesiology 2015, A2211
Cardiac Arrest During Hip Surgery

- 58 y.o. ASA 3 man
- Bupivacaine epidural
- Cardiac arrest-45 min
- O2 saturation 75-80%
- Fat embolism
- No BP recordings
- No notes re activities
- Times off in addendum vs. code records
Documentation Issues

- Treat medical records as evidence
- Lack of documentation is damaging
- Sloppy records ➞ sloppy care
- Sloppy care is substandard care
Alter the Records: Lose the Case!

- Addendums clearly identified and dated
- Never backdate an entry
- Make addition legible and obvious
- Specify why the information was omitted
- **NEVER ALTER RECORDS**
Electronic Medical Records

- 78 claims
- Role in 18 claims
- Beneficial in 2
- Harmful in 16
- Neutral in 60
- Early settlement

N=10,546
Domino’s Recommendations: How to Avoid Lawsuit

• Don’t be a jerk
• Good communication
• Error disclosure
• Follow guidelines
• Informed consent
• Thorough documentation