

Five Steps to Avoiding a Claim of Medical Malpractice

A practical approach to prevention.

BY TOM PANNULLO

As an ophthalmologist practicing in today's medical-legal climate, you are likely concerned about managing risk as it relates to preventing a claim of malpractice. Available statistics demonstrate the prudence of this concern. Although there is no "canned" solution, the practical approach this article lays out may form your best defense.

ASSESS AND IMPROVE THE SERVICE MODEL

While improving your service model makes good sense from a practice development standpoint, it will also benefit your risk management strategy. According to one study, physicians who ranked in the lowest one-third of the Press Ganey database were 110% more likely to have malpractice suits brought against them than those with top satisfaction survey ratings.¹ Establish measurable improvements in some critical service areas with your managerial team and pursue them. One common area that is often overlooked and can increase your risk of a lawsuit is how phone messages from patients are handled. Create a policy to ensure that messages reach you in a timely manner, train your staff on that policy, and then monitor the situation to ensure compliance. When properly established and designed, the entire process can be coordinated by a competent office manager or administrator.

SELECT PATIENTS FOR SURGERY AND OUTBOUND REFERRAL

The importance of properly selecting surgical candidates is well known, but perhaps you are not giving the

process sufficient attention owing to the pace of modern-day practice. With the benefit of hindsight, you may realize that you could have anticipated the end result of a disgruntled patient. In such cases, a technician or surgical coordinator might have noticed that the patient responded defensively, or even hostilely, to reasonable inquiries or that he or she referred to other current providers pejoratively. If something about a patient gives you pause, it may be wise to seek input from a trusted staff member or another doctor involved in the patient's care before deciding to operate or to continue the relationship. When your reason to pause is to consider whether to refer the patient out to a subspecialist, refer him or her to another ophthalmologist for assistance with postoperative care, or transition the patient out of your practice, make the decision early and communicate it as clearly as possible under the circumstances.

COMMUNICATE EFFECTIVELY

Clear communication factors into a patient's perception of service, but it is critical enough as it relates to the incidence of malpractice to be considered an area unto itself. In a study conducted to explore the relationship between communication and the incidence of malpractice claims over an adverse event, patients were less likely to sue a physician who displayed "positive communication behaviors."² Among the positives identified in the study that helped to build rapport were a personal interest in the patient, emotional support, clear communication on what to expect, and confirmation of the patient's understanding.

ESTABLISH QUALITY INFORMED CONSENT PROCESSES

Informed consent is the verbal discussion that occurs between you and the patient that provides a clear understanding of (1) the risk, benefits, alternatives, and likely outcomes associated with a proposed procedure and (2) the decision that the patient has made to proceed with the proposed procedure. Best practice in the documentation of informed consent is the use of brief but complete procedure-specific forms that, in plain English, memorialize the aforementioned; describe the condition being treated and the planned treatment; list the patient's preoperative, postoperative, and financial responsibilities; and is reviewed and signed in advance of surgery. Arbitration clauses have become more common in consent documents and are generally enforceable when properly drafted. Effective documentation of informed consent provides clear evidence of the understandings and expectations prior surgery. As such, it may dissuade plaintiff's counsel from bringing the marginal case and may afford additional defenses of assumption of risk and contributory negligence in the event of a claim.

ACKNOWLEDGE THE "BAD"

In the event of an unfavorable outcome, address the situation honestly and in a timely manner by alerting the patient to the problem or complication, jointly reviewing the options, reaching a mutual decision on the next steps, confirming your commitment to the patient, and making your best effort to remain fully communicative with, supportive of, and available to the patient and/or his or her family. No patient should ever feel abandoned. For consumer-based elective procedures, it may be prudent to develop a refund policy, which should be conditioned upon the patient's executing a general release against all claims. It is important that any acknowledgment of an unfavorable outcome—as well as any refund policy—be thoroughly reviewed with your malpractice carrier to ensure it does not confer risk to your professional liability coverage.

While no strategy can completely eliminate the risk of a malpractice claim, the steps outlined herein will function best if implemented together as part of a comprehensive risk management strategy. ■

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1. Stelfox HT, Gandhi TK, Orav EJ, Gustafson ML. The relation of patient satisfaction with complaints against physicians and malpractice lawsuits. *Am J Med.* 2005;118(10):1126-1133.
2. Moore PJ, Adler NE, Robertson PA. The effect of doctor-patient relations of medical patient perceptions and malpractice intentions. *West J Med.* 2000;173:244-250.