

WHAT YOU NEED TO KNOW WHEN YOU'RE BEING SUED



By Jon Fanaroff, MD, JD, FAAP

When pediatricians are sued, it is devastating whether or not the allegations have merit. Lawyers say it's just the price of doing business, but they don't have the same personal relationship with their clients that pediatricians have with the patients and families in their care.

Even among the so-call "low risk" medical specialties, the odds of facing litigation are not inconsequential. A 2011 article in the *New England Journal of Medicine* reported that 36% of doctors in specialties considered "low-risk" for medical liability such as pediatrics have been subjected to a malpractice claim. It's 88% for physicians in "high-risk" specialties. By the age of 65, those numbers jump to 75% for low-risk and 99% for high-risk specialties. It is projected that the typical pediatrician spends 7% of his or her assumed 40-year career disputing a malpractice claim compared to 10.6% for all physicians.

These realities do little to soften the blow when you receive an "Intent to Sue" letter and the harsh language it contains which feels like an assault on your professional and personal identity. Even knowing that you are likely to emerge victorious in litigation does not protect you from being traumatized. One reason for this is that physicians are inherently likely to blame themselves for bad outcomes. Legal claims magnify feelings of self-reproach. Further exacerbating the situation is the inevitable concerns over the potential losses of livelihood, control, reputation, and assets.

But the "Intent to Sue" is just the beginning of a long and uniquely stressful life event and the toll it will take on your life. How long will it last? Unfortunately, pediatrics and obstetrics have the longest average time to resolve malpractice claims. It takes 24.5 months for the average pediatric case to conclude versus 13.5 months for nephrology, the specialty with the shortest claim period. There are several reasons for this. Negotiations between attorneys and insurers are protracted because injuries to infants and children tend to be associated with larger payouts. The economic costs (e.g., lost earnings and medical expenditures) are projected over a longer period. Pediatrics is among the specialties less likely to dismiss cases and more likely to litigate.

While the malpractice claim drags on many physicians experience a unique form of stress--medical malpractice stress syndrome or (MMSS). MMSS bears a striking similarity to post-traumatic stress disorder. It happens during the trauma of the malpractice action and long after it, if prompt treatment is not sought. MMSS manifests itself in both physical and psychological forms. You may experience either the development of a new medical illness or the exacerbation of a pre-existing medical condition, such as hypertension, coronary artery disease, or diabetes. You may have feelings of isolation, negative self-image, anxiety, depression, self-doubt, anger, and inability to concentrate. You may develop feelings of anger, bitterness, shock, dismay, guilt, shame, irritability, frustration, distrust, loneliness, and diminished self-esteem. You may even exhibit hyperactivity.

Physicians experiencing MMSS report distancing themselves emotionally from family, friends and colleagues and diminished interest in work, food, recreation, and sex. It is not uncommon to become insecure about your clinical skills, your ability to make decisions, and find yourself ordering unnecessary tests on patients, and double-checking your work. You may have thoughts about changing careers.

Treatment Options

While treatment of MMSS depends upon the severity of the symptoms, if you experience severe or prolonged anxiety or depression, especially thoughts of suicide, do not hesitate to seek psychiatric help. Once you're under the care of a psychiatrist or physicians, anti-anxiety and antidepressant medications may be helpful. Professional counseling is very important, as well. Some state medical societies and medical liability insurers have support groups and videos and other resources for members with MMSS.

Management and control of the MMSS symptoms under the care of a treating physician cannot be underestimated. Once you have renewed feelings of wellbeing, confidence, and control you will be able to think and act with greater objectivity and focus even when contemplating the malpractice case.

Survival Strategies

Understanding the litigation process can help you regain a semblance of control. You can also seek guidance from colleagues, attorneys, books, and websites on malpractice litigation--what happens at each stage, how to anticipate the next step, and how it may affect you. But remember you should NOT discuss anything about the particulars of your case with anyone unless it is protected by some form of privilege (e.g., attorney-client, physician-patient, spousal, etc.). You can talk about how the case is making you feel just not about the medical care at question or the pending litigation--no matter how tempting it might be.

Reframing how you view the event and the process can be helpful. It is important to remind yourself that being sued does not make you a bad doctor. Unfortunately, many good doctors will find themselves involved in a medical malpractice case. In many situations, it has more to do with a bad outcome than competency. A malpractice case is not the same thing as the findings from a root cause analysis. It may sound cynical, but litigation has more to do with patients seeking financial remedy than justice. Keep that in mind, when the plaintiff's attorney says and does things that you find outrageous, false or offensive.

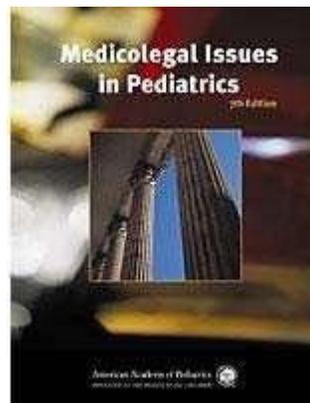
Take charge of your medical practice. Watch the hours you work. Don't work longer hours as a means of denying the litigation experience or proving you are still a good doctor. You are. The work will be there when the suit is over. Strive for balance in your life. You need it more than ever in your life right now.

Attend to your personal relationships. Take care of the people you love and let them take care of you. Spend time with them and talk to them. Let them know your true feelings and listen to theirs.

Take care of yourself. Get enough rest and exercise. Develop a meditative life. Take some quiet time. Explore spirituality. Develop a life outside of medicine. Enjoy running, fishing, golfing, poetry, biking, or playing the guitar.

Resources

- Physician Litigation Stress Resource Center <http://www.physicianlitigationstress.org/>
- Chapter 13 “Coping with Malpractice Litigation Stress” in ***Medicolegal Issues in Pediatrics, 7th Edition, 2012***
https://www.nfaap.org/aap/eWeb/DynamicPage.aspx?webcode=aapbks_product_detail&key=e3104d3c-5e5b-43c7-aff7-b84d1e875352



- ***Physicians Survival Guide to Litigation Stress. Understanding, Managing, and Transcending a Malpractice Crisis*** by John M. James, PhD, MA, MDiv and W. Edward Davis, MD, MBA, MMM, 269 pp. \$49.95, Lafayette, CA, Physician Health Publications, 2006.
www.physicianhealthpublications.com
- ***Adverse Events, Stress, and Litigation: A Physician's Guide*** by [Sara C. Charles Paul R. Frisch](#) 2005