

Prevention Is The Best Way To Avoid Liability

You'd think avoiding a malpractice lawsuit would be simple—avoid injuring patients. But reviews of claims histories show that many patients who charge their practitioner with malpractice do so because they weren't happy with their care or their expectations weren't met. This is good news, since there's a lot you can do to keep patients satisfied with the care they receive from you, your employees and your practice.

According to the American Nurses Association (ANA) Code of Ethics, patients have the moral and legal right to be given accurate, complete and understandable information. This includes the benefits, risks and available options in their treatment.¹

You and your staff should always be ready to answer questions to properly prepare patients of any possible complications and offer reasonable alternatives to recommended treatments in the event the patient asks. This may include referrals to other healthcare providers.

Let's look at some other approaches you and your staff can take to help reduce the risk of malpractice in your practice. You may even consider establishing protocols based on these guidelines.

Good communication is key

Good communication is crucial to quality patient care. Studies have found that the better informed patients are, the more satisfied they'll be. And the more comfortable they feel with you, the more they'll trust you with their care. Make sure patients know that you understand their problems.

Listening is one of the best ways to show you care. Ask patients how their physical problems affect daily living at home, at work and in other aspects of their lives. Find out how important they consider specific abilities by asking them to rate activities on a five-point scale.² Don't forget to talk with patients about what they hope to gain through

therapy. If the end result is not what is expected, you may have a dissatisfied patient.

After conducting an interview and a physical exam, devise a plan for therapy and explain exactly what it involves. Be sure each patient truly comprehends what you're saying. "Problems tend to arise when a patient



doesn't understand the basis for his care," said D. Kathleen Lewis, PT, JD, an attorney from Wichita, KS. Patients who know

the reason for their treatment plan will be more likely to be compliant and less likely to pursue a malpractice claim later on.

Don't ignore complaints

Occasionally, even your best efforts fail to keep all patients happy, but an unhappy patient is likely to complain informally before filing a legal complaint or pursuing a lawsuit. You can often avoid a suit if you take all complaints seriously and acknowledge them quickly.

The Patients Association, a registered charity that offers patients an opportunity to share their experiences of health services, calls for clearly identified timeframes for handling complaints and improved procedures to ensure patients' expectations are met when complaints are filed.³ "Addressing a complaint within 24 to 48 hours significantly reduces the chance that a lawsuit will follow," Lewis advised.

If there seems to be little threat of litigation, review all the facts before you respond in more detail. With an objective picture of the situation, you can determine if the complaint is valid and what action to take. When you respond, remain objective,

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focus on the facts and address only the issue at hand.

For complaints that mention a lawsuit or seem serious enough to be headed that way, it's important to notify your malpractice insurance carrier and attorney right away. Make it clear to your staff that they must report this form of grievance to you right away, so you can handle the incident accordingly. Above all, always let your attorney guide the investigation.²

Document, document

Good documentation is often your best resource for showing that patients received good care. Always include patients' status before, during and after treatment. Note how receptive they were to patient education and your response to any voiced concerns. Always record patients' perceptions of their progress and how it relates to treatment goals. "For instance, if your patient talked to you about being happy with the improvement in his condition, include that conversation in his record," Lewis said. Keeping a detailed account will help ensure quality patient care and help you if you're named in a lawsuit.

Remember, a happy patient rarely sues. Make certain that your staff provides each patient with consideration through open, two-way communication. Advise them to show patients that your practice is working for their best interests. This can help ensure patient satisfaction and help keep you and your practice out of legal trouble.

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When and Why You Should Apologize To Patients

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As many of us can attest, it's hard to say you're sorry. The process is vastly more complicated for healthcare professionals who make important life decisions in a world where multimillion-dollar lawsuits are common. Despite the obvious risks, the movement toward full disclosure—and finding a way to enable practitioners to empathize with patients and apologize for unfortunate outcomes—is gaining momentum. Apologizing for errors even has been shown to reduce medical malpractice lawsuits.¹

In 1999, the Institute of Medicine released *To Err is Human*, a report showing that between 44,000 and 98,000 deaths result from medical mistakes each year in the U.S. The report forced the medical community to redouble its efforts to promote patient safety and reduce errors. It also launched a movement to dismantle what has historically been a deny-and-defend culture. The movement owes much of its momentum to at least three sources, said Sylvia Brown, RN, JD, vice president of risk management for Premier Insurance Management Services: the ethics of healthcare providers, numerous studies supporting the effectiveness of disclosure in reducing exposure to massive court awards, and pressure from regulatory agencies.

At least 17 states have implemented “apology legislation.”² Under most of these laws, a provider's apologetic expression of sympathy (“I'm sorry you had to go through this”) cannot be used against him or her in court. In a handful of states, the apology is inadmissible in court even when it includes an admission of fault (“I'm sorry I gave you the wrong medicine”).

A middle ground

The Sorry Works! Coalition, a national group of patients, practitioners, hospital administrators, insurers and others, is working to find “a middle ground solution to the medical malpractice crisis.”¹ The group advocates sincerely apologizing for a clinical error, along with offering prompt and fair compensation.

In 1987, the Veterans Affairs (VA) Medical Center in Lexington, KY, implemented a full-disclosure/apology program. Any patient harmed by a medical error is immediately informed of what happened and is offered an apology by facility officials. If the risk management team determines that the hospital or a staff member is at fault, the VA offers a fair settlement. Within 10 years, the hospital slashed annual claims payments from some \$1.5 million to about \$180,000. Other hospitals have implemented similar disclosure policies.

Despite these initiatives, apologizing remains controversial, said Geri Amori, PhD, director of the Risk Management Patient Safety Institute in Lansing, MI. An apology must be sincere and the offender should try to make amends. In healthcare, where cause-and-effect are not always clear, that can be challenging.

Other issues: When is an apology due? What if a mistake did not result in harm? In addition, apologizing forces a clinician to confront his or her fears of; being sued, embarrassed, uncomfortable or perceived as unprofessional.

Fundamental guidelines

Experts agree on a few basic guidelines for apologizing. First, clinicians must be familiar with their organization's approach to disclosure, said Brown. Practitioners who find themselves in situations with unanticipated outcomes should immediately file honest, objective incident reports and contact the facility's risk manager, said Melanie Balestra, PNP, JD, past president of the American College of Nurse Practitioners. Clinicians should avoid making off-hand remarks, guessing about the cause of the problem, or assigning blame.

Apologizing can deepen your relationship with the patient and family, safeguard the patient, and actually reduce the likelihood of a lawsuit. The key lies in knowing how to be ethical and honest, while steering clear of legal risk.

Some healthcare providers and their attorneys do not promote apologizing to patients for clinical errors. For this reason, HPSO can neither support nor reject the argument for apologizing presented here. We are making this information available so our readers are aware of this new trend and can better make their own decisions with the help of their risk manager and/or attorney.

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End-of-Life Care: Responsibilities and Risks

Most patients who die in hospitals spend time in an ICU receiving aggressive, costly care. As the widely acclaimed SUPPORT study of some 9,000 hospitalized patients found, however, these final days of life are often filled with unnecessary suffering.¹ The alternative to this is palliative care, often in a home health setting, which concentrates on providing supportive care that promotes patients' comfort and dignity, not on prolonging life.

Nurses can make a major contribution in easing the transition from aggressive treatment to palliative care. To do so, they must be prepared to make ethical and humane decisions and at the same time consider ways to avoid liability for your practice.

Who receives palliative care?

The World Health Organization defines palliative care as the “active, total care of patients whose disease no longer responds to curative treatment... (It) affirms life and regards dying as a normal process... neither hastens nor postpones death... (and) provides relief from pain and other distressing symptoms.”²

If a patient is receiving palliative care, you and your employees may be central players in the healthcare team. The makeup of the team varies, but may include a social worker, chaplain, pharmacist, dietitian, physical and occupational therapists and other allied health workers.

Besides the standard tasks of assessing for pain, providing evidence-based interventions to alleviate them, and, preventing initiation of interventions that may not improve comfort and quality of life, you and your staff may also work with family members. The commitment to family members should continue after the patient's death, with support and referral for counseling, if indicated.

Making choices

End-of-life care is full of choices. According to the precepts of palliative care, the patient should be at the center of these choices. But what happens if the patient is unconscious, unable to speak or senile and cannot make these choices? That's where the Terri Schiavo case becomes relevant. To many observers, the lesson of this case is that decisions would have been vastly easier if an advanced directive was in place. Yet even when such documents are executed and in the medical record, they don't always guarantee that the patient's wishes will be carried out.

Advanced Care Planning (ACP), a type of anticipatory guidance introduced early in the patient's illness developed by Sally Okun, RN, an experienced hospice nurse, involves both the family members and the patient. “If we can improve communication and lifecare planning earlier in the lifespan [of the patient], each one of us will become more experienced with balancing important health-related decisions, including those near the end of life,” Okun believes. In what she calls “lifecare conversations,” the team works together to define the patient's goals and choose the best means to attain them. Writing an advanced directive, which should be

reevaluated periodically, is often a part of this comprehensive process.³

But don't forget to remind your employees that even when a patient has an advanced directive CPR is mandatory for respiratory or cardiac arrest—unless the chart contains a PCP's DNR order. It's vital for your practice to help patients and families understand this and prepare for it.

Risks and ethical dilemmas

End-of-life care often involves choices that are ethically difficult and give rise to fears of potential liability. Withdrawal of life-sustaining treatment such as dialysis or a feeding tube and the need for large or escalating doses of opioids (which can lead to serious adverse effects or even be lethal) or sedatives are particularly troubling issues.

The ANA takes this approach on opioids: “Nurses must use effective doses of medications prescribed for symptom control and have a moral obligation to advocate on behalf of the patient when prescribed medication is insufficiently managing pain and other distressing symptoms. The increasing titration of medication to achieve adequate symptom control is ethically justified.”⁴ The Hospice and Palliative Nursing Association takes a similar position regarding the use of potentially lethal sedatives—a practice sometimes called terminal sedation: “For imminently dying patients... whose suffering is unrelenting and unendurable,” its position statement says, “. . . medications intended to induce varying degrees of unconsciousness but not death... may offer relief.”⁵

Actions based on these principles are not the same as euthanasia or assisted suicide, which are not sanctioned by nursing codes of conduct and are illegal in almost every state. As a business owner, you will need to consider your employees' ability to work with this group of patients.

To avoid liability, it is essential that you set up policies and procedures on how to deal with end-of-life care, and that you make sure your employees follow your practice's guidelines, as well as your state's law. If you or your staff are ever in a position where a patient's desire to end life-sustaining interventions conflicts with established policies, you may want to consider his or her care be transferred to another healthcare provider. As always, make sure that you and all staff members thoroughly document any conversations had with the patient, family or other professionals about end-of-life decisions to protect you and your practice against potential liability.

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Dealing with an Angry Patient

In the highly charged atmosphere of a healthcare practice, anything from a delayed response to a request for help to news of a poor prognosis can trigger an outburst from a patient. No matter what is making the patient angry, it's best to recognize and respond to signs of distress before the anger escalates. Training your employees to do so can help maintain everyone's safety.

Look for clues of agitation. Evaluate the mood of a patient who is unfamiliar to you by approaching slowly and cautiously rather than rushing up to the bedside or exam table. Stay more than an arm's length away until you are sure an explosion isn't imminent. Be aware of signs of an impending outburst, such as incessant complaining, pounding a fist or pacing rapidly. A history of physical violence or verbal threats should also raise a red flag.

Encourage communication. Don't ignore a patient who is upset. Instead, take time to listen without passing judgment. If the patient complains about unmet expectations or needs, express empathy, validate his or her feelings and offer to help find a solution. Do not contradict the patient's perception, make excuses for or try to explain the perceived lapse or place blame.

Stay calm. Avoid being confrontational or defensive with a patient who is upset. Use non-threatening body language: Face the patient at an angle rather than head on, and do not point a finger or fold your arms. At the same time, protect yourself by staying at least two feet away and never turn your back on a patient who's visibly upset.



Get help. Even if you have done everything you can, managing an agitated patient on your own may not be possible. If a patient's agitation or frustration seems to be escalating to a frightening level, page security, summon nearby co-workers or activate your facility's emergency call button. Don't delay or second guess yourself. Having another person present is always beneficial, especially in a case like this.

Protect others. Warn your colleagues about agitated patients so they can take appropriate precautions. Document aggressive behavior precisely. For example, note that "patient slammed fist on the table" rather than "patient was furious."

You can improve everyone's ability to manage angry patients by getting additional training for you and your staff. Seek out inservice training and techniques for resolving conflicts or restraining patients to avoid injury when necessary. You should also establish written policies and procedures on dealing with an angry patient for your employee handbook. This should include when it's necessary to summon the police and a list of emergency numbers.

Cultural barriers must not compromise patient care

A patient who has a different cultural background or speaks a language different from your own can present a real challenge to a healthcare provider. Such differences can complicate patient care and create significant legal risk for you, your staff and your practice. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the American Hospital Association (AHA) require that practices meet patients' communication needs as a condition of accreditation. And as a healthcare business owner, you, too, have a legal responsibility to make sure that non-English speaking patients receive proper care.

Ideally, your practice will have professional translators on staff. When a translator is not available, consider using telephone translation lines. Language Line Services (www.language-line.com) and Language Service Associates (www.lsaweb.com), among others, offer 24-hour access to interpreters of more than 100 languages. It may be tempting to use a family member as an interpreter, but this should be a last resort because it could compromise patients' confidentiality. Both state and federal laws dictate when a hospital or office practice must supply an interpreter (including sign language) at its own expense. Be sure you know and understand how those laws apply to your practice.

With an interpreter at your side, speak directly to the patient. Talk slowly and pause frequently, using simple words and avoiding slang. These techniques will help the translator to repeat your words exactly as you've said them. Always note the name of the translator in the patient's chart. This directive should be included in your policies and procedures manual so your employees follow the same guidelines.

You may also have to overcome cultural differences by learning about the social customs and health beliefs of the patients you and your employees treat. Their feelings about eye contact, touching and the proper ways to show respect may not be the same as yours. For example, while a lack of eye contact is viewed as embarrassment or passivity in Western society, it is a sign of deference in many Asian cultures. Maintaining eye contact is considered ill-mannered and disrespectful. So if your facility treats many Asian patients, you need to be aware of this difference.

To reduce any chances of miscommunication, learn all you can about the cultural variety in the community in which you establish your practice. It will show sensitivity to cultural preferences, and it will promote safe patient care within your practice. Ultimately, that translates into good risk management.