

Careless Words Can Lead to Litigation

BY B. CHASE KIBLER

Medical malpractice lawsuits can hit from where you least expect: your fellow physicians.

Recently, my law firm defended a local physician who was sued because his patient developed complications three months after surgery. The case was frivolous, because the complications were in no way related to his surgical technique, but it was still a traumatic experience for him. He was particularly upset because the lawsuit was filed because of a few careless comments another treating doctor had made in the presence of the patient. Because of these comments, the patient believed she had a legitimate case against my client. Although the case was eventually dismissed with prejudice, the emotional toll and expense could have been avoided if another physician had simply been more careful with his choice of words.

Sadly, this is not an isolated incident. Worse, it seems to be a growing trend. A significant percentage of the lawsuits my firm defends are directly traceable to another physician's indiscriminate comments. We are currently defending at least four lawsuits directly traceable to colleagues who needlessly impugned the actions of their fellow physicians. Some lawsuits are unavoidable, but these lawsuits should never have been filed.

I am not suggesting that phy-

sicians should not tell the truth. Doctors need to call a spade a spade. Most physicians I know have a refreshing candor that is essential to patient trust and effective diagnosis and treatment. And if a doctor really screws up, his or her colleagues should be free to criticize the care and treatment provided.

Yet there continues to be needless litigation caused by physicians who make diagnoses or observations best left to other specialists, or feel the need to build themselves up in the patient's eyes by denigrating the care provided by other physicians. Although no malice is involved, a careless entry in a medical chart or a few off-the-cuff comments to family members are sometimes all that is needed to turn a patient into a plaintiff. Physicians' words hold enormous power, and, as I've said in earlier columns, patients only remember what they want to remember.

Think of it from a legal perspective: a patient, upon hearing a physician speak ill of another physician, will repeat those comments (no matter how convoluted or misremembered they may be) to a plaintiff's lawyer, who may seize upon those comments as a basis for a lawsuit — because there is no more persuasive testimony than the criticism of another treating physician. Or, the plaintiff's lawyer, combing through medical records, may find a careless

entry that implicates another physician. If an ill-advised diagnosis or observation is right there in black and white, it will frequently serve as justification for the filing of a lawsuit. And it may take many years and thousands of dollars to undo the damage caused by one simple entry in a medical chart.

The East Tennessee medical community can work together to reduce the number of frivolous lawsuits. When dictating operative reports or speaking to patients, physicians should be especially cognizant of the impact words will have on other physicians involved in the care and treatment of a patient. There is no question that

the patient's best interests demand the complete truth, but when discussing the care and treatment provided by other physicians, discerning and discriminating words will reduce the chance of a frivolous lawsuit.

This article is intended to be a general overview of issues relating to health law and should not be construed as legal advice regarding a specific issue, claim or matter.



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