



AVOIDING MEDICAL MALPRACTICE LAWSUITS

OUTLINE

A. Introduction

B. The Lawsuit Equation

1. 4 Elements

C. Element #1 – A Bad Outcome

1. Etiology does not matter

2. Does not need to be caused by a medical error

3. Informed Consent is irrelevant

4. Frequency and Predictability do not matter

D. All Lawsuits Begin With a Bad Outcome

1. The Emergency Room

2. "High Risk" Clinic

3. Re-do Procedures

4. Noncompliant Patients

E. Element #2 – A Patient Who has a Reason to Sue

1. Patient Motives for Suing

- a. Finding Answers
- b. Poor Bedside Manner
- c. Money

F. Element #3 – A Willingness to Engage in Conflict

1. Felstiner Law and Society Review (1975, 1981) - Most patients are conflict averse and cannot sue

2. Recognizing patients who are capable of suing

3. Managing patients who are capable of suing

G. Element #4 – An Attorney Who is Willing to File the Lawsuit

1. Plaintiff Attorneys work on contingency
2. They take cases based on the severity of the injury and the appearance of the medical record.

H. Categories of Malpractice Lawsuits

- 40% - Improper Procedure
- 35% - Delay in Diagnosis
- 25% - Medication Error

I. Procedures

1. Rodgers, Surgery (2006)
 - a. 14% - Inadequate training
 - b. 9% - Inadequate supervision
 - c. 75% Errors during the course of the procedure
 - i. Dictating the Operative Note
 - ii. Dictating Complications

J. Delay in Diagnosis

1. Ghandi, Annals of Internal Medicine (2006)

- a. 55% - Failure to order a test
- b. 45% - Failure to create a follow up plan
- c. 42% - Inadequate history and physical

K. Failure to Order a Test

- 1. Ordering versus Not Ordering a test
- 2. Guidelines
 - a. Cancer/Cardiovascular
- 3. Three Visit Rule
 - a. The Value of Consultation

L. Failure to create a follow-up plan

- 1. Managing Test Results
- 2. Involving the patient

M. Inadequate History and Physical

- 1. Constructing a Differential
- 2. Eliminating Loose Ends

N. Medication

1. Coumadin

O. Critical Remarks

Beckman, Archives of Internal Medicine (1994)

1. More than 50% of plaintiffs were motivated to sue by a physician's criticism of prior care

2. 70% of the time, the person was a consultant who saw the patient after a bad outcome occurred

P. Managing the Consultant-Patient Interaction

1. When things were done properly

2. When things were done improperly
