

I'VE BEEN SUED!!! NOW WHAT???

*Bonnie Ellis, RN, Senior Risk
Management Consultant*

*Anne Huben-Kearney, RN, CPHQ,
CPHRM, VP, Risk Management*

*M. Karen Noble,
Principal,
DanaherLagnese, PC*



I'VE BEEN SUED, NOW WHAT?

STATEMENT OF OBJECTIVES

Purpose:

This educational activity is designed to help the physician develop a better understanding of what happens when you are sued and the potential impact on your professional and personal life.

Objectives:

1. The physician will implement two communication strategies to help mitigate risks within his/her practice.
2. The physician will adopt three strategies to assist him/her in the reporting and understanding of the claims process.

DISCLOSURE STATEMENT

- Bonnie Rae Ellis and Anne Huben-Kearney are employees of Coverys (formerly ProMutual Group) and have no relevant financial interests.
- M. Karen Nelson is a defense attorney and member of Danaher Lagnese law firm and has no relevant financial interests.

I'VE BEEN SUED!!!

NOW WHAT?

- It is estimated that 25% of all the doctors in the United States are sued on an annual basis. *
- It is also estimated that between 50% and 65% of all doctors in the United States are sued at least once in their career. *
- Let's demystify the process...

ARE MY PERSONAL ASSETS IN JEOPARDY?

Hypothetically, personal assets are exposed when a judgment against a healthcare provider exceeds his/her coverage

- What makes up a judgment
- Jury's verdict
- Court enters judgment based on verdict plus accumulated interest

ARE MY PERSONAL ASSETS IN JEOPARDY?

Do physicians lose their assets, homes, and property?

- Extremely rare instance
- Much more likely case resolves without personal payment

THE MALPRACTICE PROCESS STEP BY STEP

What you do:

- First step: Take a deep breath
- Second step: Who do you contact
- Third step: Notify your carrier



THE MALPRACTICE PROCESS

STEP BY STEP

What the Claim Staff does:

- Claim or Suit?
- Verify your coverage
- Set up files
- Assign Defense Counsel if in suit

THE MALPRACTICE PROCESS STEP BY STEP

- Contact with the insured followed by meeting
- Investigate the allegations by:
 - Interviewing involved parties
 - Obtaining medical records
 - Obtaining expert reviews
- Continued communication...**NO SURPRISES**
- Settle or Defend?

THE MALPRACTICE PROCESS

STEP BY STEP

Resolution: Multiple ways to resolve

- If a claim and if appropriate, deny the claim
- If in suit and is defensible, defend at Trial
- If the case cannot be defended and it is a claim, Claim Representative will negotiate.

THE MALPRACTICE PROCESS

STEP BY STEP

Resolution: Multiple ways to resolve

- If it cannot be defended and is in suit, the claim staff will try to settle prior to Trial via direct negotiations or through.....
 - **ADR** (Alternative Dispute Resolution)
 - **Mediation** -- A negotiation to resolve differences that is conducted by some impartial party

THE MALPRACTICE PROCESS STEP BY STEP

Resolution: Multiple ways to resolve

- **Arbitration:** Similar to a mini-trial, evidence is presented, witnesses and experts testify before the arbitrator who is a mutually agreed-upon decision maker.

SKELETON OF A LAWSUIT

Complaint

- Along with a Summons, starts a lawsuit
- Contains listing of allegations/claims of negligence
- **DO NOT BELIEVE STATEMENTS AS TRUE**

DISCOVERY

- Interrogatories
- Requests for production
- Depositions
 - Plaintiff/Patient
 - Defendants
 - YOU and co-defendants

DISCOVERY

- Experts

 - Retain/consult

 - Depositions

- Trial

WHAT YOU SHOULD DO

- Review the medical records/documentation
 - Assist claims and defense attorney
 - Identify documentation weaknesses
 - **MAKE NO CHANGES**
- **AVOID** preparing any written statements
 - About case, care rendered
 - **EXCEPT** documents to be given to attorney for legal advice

WHO CAN I TALK TO?

SPEAKING WITH OTHERS

- Talking to others about a pending case must be limited to your attorney, claim representative and spouse.
- Problem with speaking with others about a lawsuit:
 - Statements can be used against you
 - The person you speak to can be deposed
 - What you say can be misinterpreted

WHO CAN I TALK TO?

- Your attorney can coordinate communications safely
- Communications with the patient and family
- Communications after a complication
- Difference between an admission of fault and expression of sympathy
- Social Networking - **NEVER**

BOARD OF REGISTRATION...

WHAT HAPPENS

- When you receive a Board complaint, **always retain counsel**
- Filing a lawsuit in Superior Court is different than a complaint being filed before the Board of Registration
- Only Board complaints can potentially affect a license
- Response to the complaints needs to be done **within 30 days**
- Department of Public Health

WHAT ABOUT MY LICENSE?

- The filing of a lawsuit does not mean a physician will lose his or her license
- Only in extreme cases does a physician's license become suspended or lost (e.g.- substance abuse, sexual relationships with patients, fraud, care which potentially endangers the patient population)



NATIONAL PRACTITIONER DATA BANK

- In 1989 Congress created the National Practitioner Data Bank (NPDB) to mandate collection of information regarding practitioners
- What is reported?
 - Payments made by your carrier
- How does the reporting affect me?

PATIENT RELATIONS

Do patients leave my practice?

- Experience has not demonstrated that a lawsuit will prompt a significant number of patients to leave a physician's practice
- May find existing patients are actually supportive

PATIENT RELATIONS

How does my patient find out about my lawsuit?

- Media
- Board of Registration Website
- Court docket

What can I say?

THE EMOTIONAL ROLLER COASTER

- Overall stress of malpractice claim
- Expect emotional impact on professional and/or personal life

THERE IS SUPPORT FOR YOU

Depending on your professional medical liability carrier.

One on one support:

- Risk Management Telephone Consultation Service Line
 - Monday through Friday 8a.m. – 5 p.m.
 - Clinical staff (all reps are RNs)
 - Calls are confidential

THERE IS SUPPORT FOR YOU

Telephone Triage:

Common Issues

- Angry Patient
- Request for records from attorney
- Patient complaint to the Board of Registration in Medicine
- Bad outcomes (from minor to major)
- Death of a patient/infant
- Crossing professional boundaries

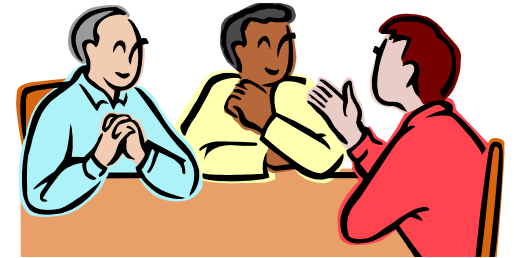
EMOTIONAL SUPPORT

- Emotional Support Program
 - Confidential
 - Never reported
 - Psychiatrists with extensive background
 - NO charge to the insureds

EMOTIONAL SUPPORT

Support groups:

➤ Group sessions of peers



➤ Safe environment to speak openly

➤ Never discuss the actual case

➤ Discuss what you are going through with others in the same situation

➤ **Private Counseling also available**

RISK MANAGEMENT STRATEGIES

- Communicate
- Educate
- Develop systems
- Document
 - **NEVER** alter records (additions, cross out, white out, etc)
- Disclose and apologize

SYSTEMS REVIEW

OFFICE APPRAISALS:

- Development of policies and procedures
- Development of good tracking and follow up practices
- Development of good documentation practices



AND WHAT ABOUT...?????

YOUR QUESTIONS??

DISCUSSION

