

## MALPRACTICE STRESS

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Malpractice stress is one of only two well described work stress syndromes, the other being burnout; they are not mutually exclusive. It can be one of the most painful and overwhelming experiences a physician faces in their career. This article will review the characteristics of malpractice stress, and ways to conceptualize it and approaches to managing it.

Not every physician who is sued for malpractice experiences severe stress. During questions and answers after a lecture I gave on the subject, an audience member announced that he felt no stress when he was sued, and that people like me created the expectation of stress. In one study 95% of doctors reported significant emotional or physical reactions to being sued, and in fact, there is no data to suggest that anticipating stress causes stress. On the contrary, as has been demonstrated in the latest techniques of preparing military recruits for combat, information about the problems and development of tools to recognize and cope with the experience tends to reduce stress.

Most physicians and physician assistants (hereafter abbreviated to “physicians” or “doctors”) enter medicine with the expectation of and a deep commitment to helping patients. We develop an identity in which helping is integral, even as we learn through the realities of practice that many illnesses do not admit of cure and difficult to influence. As time constraints reduce our ability to do the things outside of work we used to do, our identity as physicians becomes more and more central to our identity as persons.

So, when we receive a request from an attorney for our records, or a process server hands us a document of notice of intent to sue, we can be shaken deeply. Among the stressful aspects of a malpractice suit is the unalterable and disturbing fact that one of our patients believes that we harmed them. Even in cases of a clear bad outcome, the physician may or may not have erred in providing treatment, but regardless of fault we usually feel guilty. If sued, we begin to receive documents that refer to us as “defendant” and list the harmful things that we are accused of doing or failing to do. Many doctors feel stricken to see their name associated with such accusations, even if they recognize the hyperbole and legal stylizing of the language. Our self-esteem may be painfully punctured.

Other factors play into why a suit can become so stressful. Many authors have written that physicians tend towards guilt and an exaggerated sense of responsibility, which creates fertile ground for feeling stress about a liability action. Even with a bad outcome, absent a suit, doctors tend to comb the chart and their memories of the case for any sign that they could have done something better, or somehow prevented that outcome. Doctors tend to feel responsible out of proportion to what is called for by the circumstances. Responsibility leads us to be appropriately compulsive, thoughtful, accurate, and to anticipate problems, all good things, but in the midst of a lawsuit, it can produce a gut wrenching and unnecessarily painful, negative self-evaluation.

Being a competent physician is central to our identity and injury to our integrity as physicians is a profound injury. Our professional integrity includes the expectations we have of ourselves and our patients—that we will try our best to help and that our patients will become partners in the endeavor. When we are sued for malpractice our professional integrity is shaken. We feel unsafe, and we may feel dread going to work. Without really understanding why, we may feel ashamed. Self-confidence may suffer, and regardless of the facts, we may question our competence and assume that our fellow professionals—doctors, nurses, office staff—will question it as well. We may feel betrayed and wonder if we can trust any patient.

Our mental workload rises dramatically with a malpractice suit. Mental workload in the work stress literature refers to the work load, responsibility and the pressure on our minds from work. For most of us most of the time, our mental workload is plenty, thank you! A lawsuit adds the unwanted burden of worrying about the patient in question, reviewing the treatment, wondering if we made a mistake or if others think we did, struggling with self-confidence, fearing the financial consequences, feeling concerned about the Board of Medical Examiners judgment, and communicating with the malpractice carrier’s claims manager and one’s attorney. At certain times, especially the beginning stages and episodi-

cally thereafter, through trial if it comes to that, the lawsuit can become the most central task of work.

In addition to all this pressure, the sued physician must still go to work and face patients and decisions. With a new sense of vulnerability it may appear that in every patient interaction there is a potential lawsuit. This often leads to defensive practice, ordering more tests, prescribing treatments more conservatively, investing more thought and worry into each action at work. Some physicians stop performing risky procedures in an attempt to reduce the stress that comes with feeling more vulnerable.

In the work stress literature, mental work load is potentially offset by decision latitude, the amount of control we have over our work or workplace. For instance, seeing a lot of patients one day is more tolerable if we made the decision to do so rather than another party having done so. We have little control over a malpractice suit. It's not a medical matter at all. It is in the hands of our attorney, and involves an adversarial legal system with which we may have little experience and less trust. Malpractice stress could not have a worse profile: extremely high mental workload and almost no decision latitude.

The suit leaves us preoccupied and distractible, which turns potential antidotes to stress—good patient relationships, completed records, strong office support, the support of family and friends, the pleasure of hobbies and recreation, and the nourishment of spiritual experience—into sources of stress that can be compromised by preoccupation and distraction.

Many physicians feel shame, fear of humiliation, irritability, reduced confidence, and social withdrawal when sued. These reactions, combined with the advice of attorneys not to talk about the case, make it difficult for sued doctors to talk about what they are going through. They may feel reluctant to lean on friends or trusted colleagues. Some doctors feel guilty about causing worry at home, fearing that it will add to the burden for their spouse or children. Isolation from colleagues and family adds to stress.

Another toxic element of a malpractice suit is that it usually lasts for months or years, even if it is dismissed. It is a marathon: discovery, with its interrogatories and depositions, the staking out of positions and experts, negotiations which stop and stall, setting and resetting trial dates, and trial itself. Fortunately, the stress is episodic. Some doctors will choose to settle the case in order to cut their emotional losses or to protect them from feared consequences of going to trial, even against the recommendations of their malpractice carrier. Even a “victory” in court, in which the doctor prevails, usually does not lead to putting all the stress away. It takes time to recover: returning to normal usually takes months, often longer.

It is not surprising that the significant rise in stress gives rise to a variety of problems. Those who have studied doctors who have been sued for malpractice note the frequent appearance of depressive feelings, symptoms of anxiety, tension, anger and irritability. These doctors can develop insomnia, reduced appetite, indecisiveness, feelings of worthlessness, feeling defeated, anhedonia with or without a loss of sexual interest, and social withdrawal.<sup>1,2</sup> Post-traumatic-like phenomena are common, like intrusive thoughts about the clinical case or aspects of the suit, emotional numbing, avoidance of reminders of the case or suit, and symptoms of increased arousal—anger, hypervigilance, exaggerated startle response. Sometimes these evolve into illness such as major depression, generalized anxiety, etc. Physical symptoms such as fatigue, headaches, and gastrointestinal complaints are also common. Newly diagnosed physical illness and exacerbation of existing illness is also reported.

In summary, malpractice stress is a common reaction to being sued and can lead physicians to feel “devastated.” Studies reveal that fewer sued physicians recommend medicine as a profession to their children and others; they think about retiring at an earlier age.<sup>2</sup> About a quarter of those sued report that the experience was the most stressful of their lives.

In looking to see what might help physicians undergoing litigation, it is worthwhile to study those who seem to have less trouble. Some of these doctors have experienced other major stresses or tragedies, which may offer perspective or prepare them in some way for stress.<sup>3</sup> Keeping a malpractice suit in perspective can certainly be helpful. Dealing with a lawsuit can be seen as just one of many unpleasant professional responsibilities, like attending to excessive paperwork, hiring and

firing of staff, dealing with patient complaints, addressing adverse peer review, and so forth. Malpractice suits go with the territory. Dealing with a suit is as much a professional duty as seeing patients and completing medical records. We can be as compulsive, careful, thoughtful, and dutiful in working on the lawsuit as we are in patient care. It is important to recognize we have knowledge and skills to help our attorneys defend us.

The benefits of being active in helping one's attorney cannot be overstated. Helping an attorney understand the medical background and the circumstances of the case, and assisting the attorney in digesting and understanding the opinions of consultants or experts is essential and provides a semblance of decision latitude (in the sense discussed above). It is also helpful to ask the attorney how best to assist the case. Worries should be aired with the attorney. Physicians must schedule time to conduct the business of a lawsuit. This might require cutting back on patients or other aspects of work, which may intensify feelings of frustration and unfairness. A malpractice suit is expensive in every way. There is no way around it.

Another important tactic is to normalize the distress one feels. Any strategies that one can use to combat the natural tendency to feel shame and a loss of self-esteem are useful to reduce stress. Some malpractice carriers allow the sued physician to meet with someone in the same specialty to review the case, which may provide feedback. Physicians are a compulsive lot, apt to hold ourselves to unrealistic expectations, such as always being successful or never making a mistake. If we have erred, it is vital to be as realistic as possible about this. If we have not, it is vital to hold on to that knowledge, even if the other side, or even a jury, disagrees.

During a malpractice suit, your attorney should be one of your primary sources of social support. Attorneys can provide information about the process of the lawsuit and explain anything and everything you don't understand. They can provide direction and help when fears or frustrations are high. Your malpractice carrier will likely refer you to an attorney who has a track record of working well with physicians. If things are not going well in your relationship, consider it a critical matter. I have seen a couple of very unfortunate cases in which an attorney failed to provide appropriate and skilled counsel, or the needed interpersonal support, when meeting with the sued doctor. The sued physician then lost trust in the attorney, wondered if the attorney respected him and his work, and became more uncertain about whether he was getting appropriate legal advice and representation. This is a frightening and lonely place to be. If you are having trouble of this sort, discuss it with your attorney immediately, and if things do not resolve discuss it with your malpractice carrier.

It is also useful to become a student of the legal process by not only asking questions of your attorney, but by speaking to other doctors who have been through a lawsuit, reading and using all of the resources available through your malpractice carrier. Check with your national professional organization; online support may be available.

Never are the things in life which provide meaning, gratification, and balance, more important to maintain than during the stress of a lawsuit. Spending time with loved ones is essential. Paying attention to one's other roles in life—parent, child, community volunteer, amateur artist is critical to finding balance. Spending time alone allows refueling and obtaining spiritual sustenance. Ensuring sufficient time to sleep, eat, exercise, and attend to any health problem is essential.

A lawsuit may also offer the impetus to reexamine the way you have arranged your work life—is your call schedule workable, are you delegating enough work, and is financial remuneration at your current level important to maintain? The key is to do what is most important and meaningful to you.

Your family will be upset about the lawsuit and concerned about how you are handling it. This is normal. It is not necessary to act as if you are not troubled, and silence can be bad for your family. Children, especially, can misconstrue what is at stake in a malpractice suit and may fear that the physician could go to jail or otherwise be lost to the family. Talking about it makes quick work of these worries. Being at least somewhat open, especially with one's spouse or older children, allows them an opening to express their love and support, and to feel that they are part of the process of helping and healing.

Being stressed by a malpractice suit, or depressed or anxious, are reasons to seek help, perspective, and outside support. To this end CPHP can be helpful. Sometimes formal treatment is also a good idea. CPHP can help you decide if this is necessary.

Finally, it is important to remember that physicians survive malpractice suits. The goal is to do so with the least damage, and with the most helpful lessons learned.

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#### NOTES

1. S.C. Charles, J.R. Wilbert and E.C. Kennedy.  
“Physicians’ Self-Reports of Reactions to Malpractice Litigation.”  
American Journal of Psychiatry. 141: 4 (April 1984), pp. 563-565
2. S.C. Charles, J.R. Wilbert and K.J. Franke.  
“Sued and Non-Sued Physicians’ Self-Reported Reactions to Malpractice Litigation.”  
American Journal of Psychiatry. 142: 4 (April 1985), pp. 437-440
3. S.C. Charles, R.B. Warnecke, A. Nelson and C.E. Pyskoty.  
“Appraisal of the Event as a Factor in Coping with Malpractice Litigation.”  
Behavioral Medicine. 14: 4 (Winter 1988), pp.148-55.