



Pediatricians and the Law

Beware the harbingers of a possible lawsuit

by **Robert A. Mendelson, M.D., FAAP**

One day you might receive a letter from an attorney requesting a copy of a patient's medical records. It hits you — a lawsuit may be in your future.

You are not alone. One in three pediatricians is sued over the course of his/her medical career. This article highlights early signs of possible litigation and mistakes to avoid.

Be on the lookout for 'incidents'

An incident is an event that suggests even the possibility of a medical liability lawsuit. How you handle the incident is of the utmost importance.

Your first reactions to an incident can be critical to the outcome of a potential or actual lawsuit. You need to know what obligations your professional liability policy places on you. Usually, you will be required to notify your carrier as soon as a claim is made or suspected. Early action affords your insurance company the opportunity to begin collecting facts and evaluating the case, which improves the chances of a successful defense should a claim develop.

Following are incidents that may signal a potential lawsuit:

Complication: An unexpected outcome during treatment.

Dissatisfaction: Complaints or expressions of dissatisfaction with an outcome or quality of care delivered. Instruct your staff to report patient complaints in a timely manner. Sometimes, reassurance that you care about the patient and have attended to his or her concerns may keep a misunderstanding or complaint from escalating into a claim.

Dissatisfaction with hospital staff also should be taken seriously. Listen carefully to the complaint, but don't compound the problem by adding your own criticisms. Such complaints should be reported to hospital administration. Often, litigation initiated against the hospital will include the attending physician.

Contact from an attorney: Be wary of a request from an attorney for information about a patient's treatment or for a private conversation with you about a patient.

Request for medical records: Written or verbal requests for medical records by an attorney or the patient's parent or legally authorized representative often are benign, but a request from someone who has voiced dissatisfaction can be a red flag to a potential lawsuit.

If you receive a request for medical records:

- Obtain written authorization from the patient (or the patient's legally authorized representative) before releasing any information.

- Send copies of the requested records and retain the originals for your files. Consider sending copies of the written authorization and the records to your insurer.
- Keep a list of all records provided, to whom they were sent and dates sent.

Failure to keep scheduled follow-up appointments: If a patient misses a follow-up appointment, document your efforts to contact the patient to reschedule the visit.

Financial issues: A patient who fails to pay a bill or unnecessarily delays payment could be dissatisfied and contemplating a lawsuit.

Medical error: Failure of a planned action to be completed as intended or use of a wrong plan to achieve an aim; or failure of an unplanned action that should have been completed.

Responding to an incident

When an incident occurs that could lead to a lawsuit, the following actions are recommended:

Some experts recommend that you honestly explain what happened to the patient and express empathy. Continue to provide appropriate

Reporting a claim

Q: Who should report a claim?

A: The insured physician whether involved directly or indirectly in the incident.

Q: What should be reported?

A: All facts related to the incident; be prepared with the patient's chart and any legal documents you have received.

Q: When should it be reported?

A: Immediately. Early intervention may prevent a claim from being pursued.

Q: How should it be reported?

A: Call the claims department of your professional liability insurer and state that you may have a problem. Prepare an outline describing the incident and have it in front of you along with the patient's chart when you call. Be candid and don't attempt to hide anything from the carrier. Allow ample time to explain the facts thoroughly and answer any questions.

care. Don't avoid contact with the patient or his or her family. You don't want to be perceived as having something to hide, and a patient who feels "abandoned" is more likely to sue. It also is wise to become aware of your state's "medical apology laws."

Notify your professional insurance carrier about an unexpected outcome or incident. This will give you a head start in the event of litigation.

Review the patient's records to become familiar with the details of the case. Do not alter or amend the record after the fact. Avoid expressing opinions that are not contained in the medical record. Don't express opinions about others involved in the care and treatment of the patient.

Keep your attorney informed. Any written or recorded information given to your professional liability insurance company is not privileged and is subject to discovery. Direct all communication related to the claim to your defense attorney once one has been assigned to your case.

RESOURCE

Jon Mark Fanaroff, M.D., J.D., FAAP, will lead a session titled, "I've Been Sued: Now What?" from 12:30-1:30 p.m. Oct. 18 at the 2011 AAP National Conference & Exhibition in Boston.

Information given to your attorney is protected by attorney-client privilege.

Use caution in communications. If a formal claim has been filed, you should not attempt to negotiate directly with patients or their attorney. It could prejudice your position should a lawsuit follow.

Unfortunately, lawsuits against physicians remain one of the costs of doing business. Being attuned to potential problems and working with

your professional liability insurer early in the process can help remedy a situation before a little problem becomes something bigger. It also can help set the stage for a solid defense.



Dr. Mendelson is a member of the AAP Committee on Medical Liability and Risk Management.