

Managing Malpractice Allegations and Litigation Threats

Question

How can healthcare professionals manage the risks associated with patients alleging malpractice, and what should they do if a patient threatens to sue?

Answer

Nearly one-third of physicians in the United States will be sued at least one time.¹ The risk of being sued grows the more years that physicians are in practice, and it differs greatly by gender, age, and specialty — with obstetrics/gynecology and general surgery being the highest risk specialties.²

Providers can protect themselves by discerning which patients may put them at risk. Some examples of patients who may sue their providers include those who:

- Have chronic health or behavioral health issues
- Have been involved in previous lawsuits
- Have seen many other providers for the same condition
- Need a lot of attention but do not attend appointments and are nonadherent to care advice
- Are disrespectful, disgruntled, make excessive requests, and criticize other providers
- Ask to record their appointments.³

Several factors contribute to the possibility of getting sued, including a provider's specialty, caring for patients within the scope of a provider's competency, documentation or the failure to do so, and communication between providers and patients/families.⁴

Preventing allegations of malpractice or threats of lawsuits is, of course, the foremost goal. Strategies to maintain a healthy relationship between a healthcare provider and their patient and to avoid litigation include the following:

- Document all actions and conversations with a patient. Ask patients to share their concerns and ask questions. Thoroughly explain the risks and benefits of any treatment during informed consent discussions, and be sure to ask the patient to repeat their understanding in their own words to ensure comprehension.
- Allow patients to be part of the decision-making process by being open about what is documented in their electronic health record (EHR). In certain situations, consider sharing documentation with patients to further engage them.
- Assess workflow processes and staffing situations to identify any breakdowns in communication, including patients not receiving test results, referrals not being followed up on, or insufficient documentation being provided to a consulting provider.
- Be open and honest with patients if you can't answer their questions or are unable to provide appropriate treatment. Refer patients to specialists that can provide the necessary care and treatment.
- If a patient requests their health records so they can take them to another provider, consider sending a note with the records to the patient to let them know that you care about their health and are always available.
- If a patient is confused about information regarding their care, try to determine the obstacle to understanding (e.g., poor health literacy, a language barriers, etc.). Having a family member present (with patient consent) can be very helpful in these situations.
- For patients with chronic conditions, consider asking them to prepare questions before coming to appointments so you can spend time answering them. Offer unbiased health information to better inform patients and support shared decision-making.
- Be transparent with patients, show them empathy, and [treat them with dignity](#).⁵

Despite best intentions, healthcare professionals may still find themselves facing malpractice allegations or lawsuits. If a patient alleges malpractice or threatens to sue, the practitioner should consult with their professional liability insurance company prior to making any comments, providing a

written reply, or further communicating with the patient or the patient's family. Prompt reporting will help the risk management and claims teams provide tailored guidance for how the provider should (or should not) respond depending on the circumstances.

Endnotes

¹ Baum, N. (2023, September). Identifying the litigious patient: Watch for these red flags. *Physicians Practice*. Retrieved from www.physicianspractice.com/view/identifying-the-litigious-patient-watch-for-these-red-flags

² American Medical Association. (2026, June 24). *Physician practice benchmark survey*. American Medical Association. Retrieved from www.ama-assn.org/about/ama-research/physician-practice-benchmark-survey

³ Baum, N., Identifying the litigious patient: Watch for these red flags.

⁴ Ibid.

⁵ Seegert, L. (2016, November 10). 5 strategies to reduce malpractice lawsuit threats. *Medical Economics*. Retrieved from www.medicaleconomics.com/view/5-strategies-reduce-malpractice-lawsuit-threats; Baum, N., Identifying the litigious patient: Watch for these red flags.

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