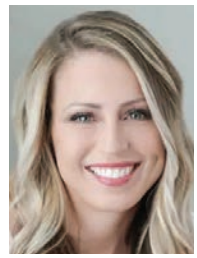
Steps to A.V.O.I.D. Medical Malpractice Lawsuits

This acronym serves as "an ounce of prevention".

BY MARK TERRY

According to the American Medical Association, 31% of physicians have been sued at some point in their careers. According to the National Practitioner Data Bank (to access, scan QR code at left) from 2012 to 2022, there were 2,457 podiatrist malpractice payment reports, just a fraction of those by MDs (85,346) and DOs (7,962). Of course, there are about 15,000 podiatrists in the U.S., while there are about 1,109,460 MD/DOs in the U.S., according to Statista. That suggests podiatric physicians are twice as likely to be sued than MDs and Dos.

"A number of factors go into the risk of getting sued," says Jennifer Wiggins, CPCU, RPLU, CEO/Founder, Aegis Malpractice Solutions (Fort Wayne, Indiana), "but the reality is, for most physicians, there's a one-third chance they're going to have a lawsuit at least some time in their career. That's not to say there has been negligence or actual malpractice. But if a patient is dissatisfied with an outcome for any variety of reasons, a doctor can get named in a suit even if it's a nuisance case."



Dr. Wiggins

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The odds of getting sued for medical malpractice at some time during your career are reasonably high. There are steps podiatric physicians can take to minimize the risk of a lawsuit. Developed by Laura Fortner, MD, an OB/GYN and Medical Malpractice Coach, here's a look at A-V-O-I-D.

A. Attitude. Another version of "attitude" is "bedside manner," and this may be the most overlooked. "But it's fundamental in terms of how patients experience their healthcare," Wiggins says.

This can broadly relate to how the patient feels about the physician, the practice, and the patient's care. It includes things such as making eye contact, calling the patient by name, and active listening. In many ways, it refers to having good communication skills.

Wiggins notes, "We've also seen statistics that say doctors who, when they enter the patient's room, if they can sit in a nearby chair and be at eye level with the patient, they are perceived as being more understanding

Continued on page 44

Lawsuits (from page 43)

and not being as quick to get through the appointment."

V. Value the patient's perspective. This could also be called "empathy." Wiggins describes a case with a primary care physician who was terrible at recordkeeping and may even have had some negligence issues but was never sued, ever. "It all came down to the fact those patients just loved him. He was a kind man and took care of his patients and may have made a mistake or two along the way, but that patient relationship, that bedside manner, overcomes a lot."

Dr. Guiliana

"When patients feel the doctor is compassionate about them and truly invested in their well-being, they're more likely to communicate with them and less likely to sue them if they have concerns about the treatment plan or if they want to go in a different direction," says Wiggins.

This is a point that John Guiliana, DPM, MBA, Medical Director—Podiatry, Modernizing Medicine, emphasizes. "The foundation of avoiding medical malpractice cases is, ironically, not avoiding doing something wrong. Everybody makes mistakes. We're all human. The foundation of avoiding a medical malpractice lawsuit is building patient rapport. Showing empathy, communication skills, and listening skills. There's a well-known proverb that says patients typically do not sue doctors that they like, no matter what."

O. Operating systems. This can refer to automation, but it also refers to having protocols, SOPs, and efficient and effective workflows in place. Over and over again, in the pages of *Podiatry Management*, the importance of having protocols in place has been emphasized.

For example, in "How to See More Patients Without Working More Hours," Peter Wishnie, DPM (Piscataway, NJ) (to access, scan QR code at right) said at the time that protocols merely meant the podiatrist had thought about his or her processes and how they wanted the practice to run. "What happens when a patient comes to your office? How do you expedite their stay, from coming into the office, into the treatment room, out of the treatment room, and checking out? You want to re-engineer your processes and work backward to see where any bottlenecks exist."

"Having an efficient system and process is important for minimizing errors and ensuring you're consistent in how you take care of your patients."—Wiggins

Wiggins says, "Having an efficient system and process is important for minimizing errors and ensuring you're consistent in how you take care of your patients. So standard operating procedures should really be adhered to in the practice and the entire team should be very clear on them: this happens, then that happens, then that happens, and this happens, etc."

She emphasizes in practices and in clinics, being organized and having a streamlined workflow is often associated with excellent communication, between physician and staff, and between physician, staff, and patients.

I. Initiate self-care. Physician burnout is very real. On the positive side, in July 2024, the American Medical Association survey (to access, scan QR code art right) suggested that doctor burnout had dropped below 50%

Continued on page 46

Where Podiatric Surgery Malpractice Happens

In 2020, researchers published a study *Orthopedic Review* examining podiatry malpractice with a focus on surgery errors. [Harnett DA, et al. Malpractice claims associated with foot surgery. Orthop Rev (Pavia). 2020;12(1):8439. (To access study, scan QR code at right.)

According to the study:

- 76.4% of podiatry surgery errors are committed by podiatric surgeons, with 15.3% committed by orthopedic surgeons and 8.3% made by general surgeons and emergency room surgeons.
- 94.5% of podiatric surgery mistakes happen during elective procedures (instead of medically necessary procedures).
- 41.8% of podiatric surgery mistakes caused persistent or long-term pain.
- 27.3% of podiatric surgery errors caused foot deformation that could potentially cause physical disabilities such as the need for walkers or other mobility assistance devices.
- Orthopedic surgeons who performed podiatric surgery in urgent cases were significantly more likely to make a mistake than podiatric surgeons in similar cases. **PM**

Lawsuits (from page 44)

for the first time since 2020. On the other hand, almost half of physicians experiencing burnout is in no way a positive thing. [For more about preventing physician burnout, see "Preventing, Identifying, and Responding to Physician Burnout" (to access, scan QR code at right).

Wiggins says, "This is not a new phenomenon by any means, but it's really important for physicians, especially when talking about the risk of malpractice. They're in a very demanding career and they have to prioritize self-care in terms of taking time off, doing things outside of the office, spending time with friends and family, refilling their cups so that they can then in turn fill their patients' cups and be a well-rested physician."

D. Document. One of the big issues that crops up negatively for physicians in lawsuits is poor charting. The more specific and better your notes are, the more likely they are to withstand scrutiny later—sometimes years later—when there's a legal dispute over what happened during the procedure in question.

Theoretically, electronic medical and electronic health records should force better record-keeping. However, leaning too heavily on these templates can result in inconsistencies or omissions. Your notes should be detailed, accurate, and completed as soon as possible after the procedures.

Wiggins says, "Documentation is arguably the most important thing when it comes to avoiding a medical malpractice lawsuit. Your documentation has to show the care that was given and why you chose to do what you did. So patient medical records should always be consistent, thorough, and timely."

She adds, "Providers have to make sure that they're clearly explaining their thought processes. Patient medical records are really gold in helping to make sure you're explaining why you did what you did."

A secondary aspect of documentation is informed consent.

John W. Leardi, healthcare attorney and partner at Buttaci Leardi & Werner (Princeton, NJ and Tarrytown, NY), says, "The biggest driver of malpractice cases is lack of informed consent. And what I mean by that is a patient doesn't know why you recommended what you recommended, why you did what you did. If there's no documentation of you laying out the risks and rewards and having something that affirmatively states that the patient understood what they were getting into and they made an affirmative choice to go forward regardless, that can be tough on you in a lawsuit."

Mea Culpa

If a procedure goes wrong, there's something of a debate on whether you should apologize. One argument against an apology is that it's admitting you made a mistake, which can be used against you in the lawsuit. In the last dozen years, so-called "I'm Sorry" laws have been instated in many states. These laws are evidentiary rules that saying you're sorry or expressing sympathy after an accident or error can't be used in civil court to prove liability.

Wiggins notes, "Where it becomes a slippery slope is, of course, when you don't want to admit guilt or you don't want to say you messed up. What a doctor can say to a patient is, 'I'm really sorry that this happened. We're going to do everything we can to work with you to move forward in a positive direction.' These I'm-Sorry laws have really gone a long way in allowing doctors to not seem robotic and to seem much more human, which in turn makes the patient feel more heard."

Working With Your Insurance Carrier

Wiggins notes that most insurance carriers offer specific risk-management training on a variety of topics. If you as a physician are not as comfortable as you'd like to be in different areas, such as dealing with a disgruntled family member, they may offer training programs.

"Make sure you are proactive and reaching out to your carrier to learn how to get better in those particular areas," Wiggins says. "Sometimes doctors are worried that if they reach out to their insurance carrier for help, it's going to flag their account or result in a higher rate at renewal because they think something went wrong. But doctors should be much more proactive in engaging with their carriers earlier to report when there's an issue and to take advantage of those educational tools and courses that can help them get ahead of cases and do what they can to give their patients the best care possible."

Guiliana agrees, saying, "Don't be afraid to pick up the phone and call your malpractice carrier because what you do moving forward is crucial. Your malpractice carrier typically has risk-management agents who can guide you through what to do moving forward in terms of documentation and your patient handling. Most doctors don't call their carriers until the actual serving of a lawsuit, even though they were pretty certain the lawsuit was coming."

Conclusion

The AVOID strategy won't eliminate the risk of medical malpractice lawsuits. Probably the only thing that would protect you completely would involve leaving the profession entirely. But as a straightforward, practical set of tactics, it can reduce the risk. By focusing on your bedside manner, empathizing with your patients, implementing effective systems, prioritizing self-care and practicing meticulous documentation, podiatric physicians can improve patient satisfaction, decrease medical errors, and reduce the risk of malpractice lawsuits. **PM**

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