

**Litigation Literacy:
Gaining Perspective and
Control**

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What Today Is All About

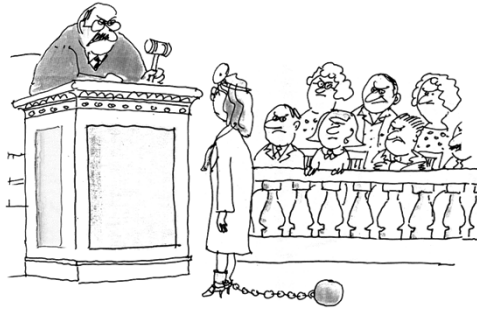


The cartoon depicts a doctor and a lawyer in a conversation. The doctor, on the left, is wearing a white coat and a stethoscope, and has a speech bubble that says, "I THOUGHT WE WERE GOING TO PLAY DOCTOR." The lawyer, on the right, is wearing a suit and glasses, and has a speech bubble that says, "WE ARE PLAYING DOCTOR! I'M A LAWYER AND I'M SUING YOU FOR MALPRACTICE." The cartoon is signed "C. H. H. H." at the bottom.

And Its Effect On A Particular Type Of Professional

- With a particular type of personality
- With a special type of relationship with the people they treat.
- Who work in a system with certain attitudes about making mistakes.
- Whose "private practice" can suddenly become a "public practice".
- Whose economic security can be severely threatened.
- Who will be pained every time the question is asked, "Have you ever been sued for malpractice?"

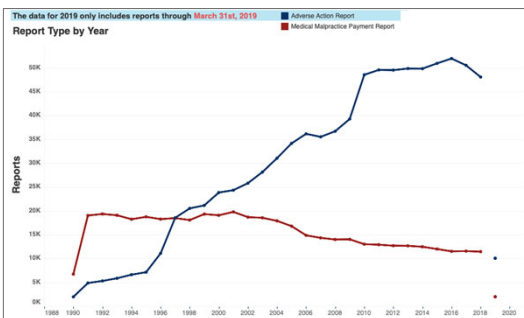
This Is About



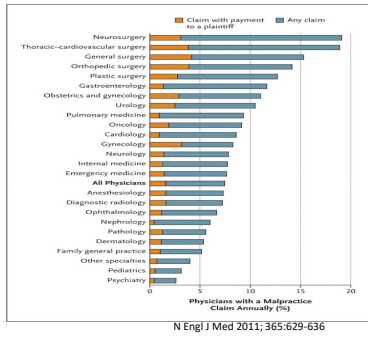
The SHAME of Malpractice

“It finally happened to me.”

NPDB Report – All Practitioners



Who's Getting Sued



• Litigation Stress (Distress)

- Why physicians are vulnerable?
- What is litigation stress?
- Why addressing litigation stress is important for the physician and the organization.
- How the physician and the organization can cope, get resolution, and move on.

• Why Physicians Are Vulnerable

The Qualities Of A Good Doctor:

- Intelligent
- Hard Working
- Driven
- Autonomous
- Dedicated
- Compulsive
- Conscientious
- Disciplined
- Generous with their time
- Feels responsible for outcomes
- Difficulty setting limits
- Private

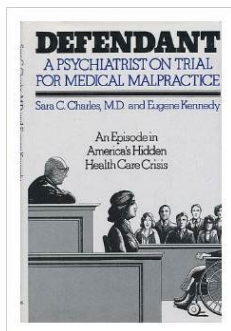
Why Physicians Are Vulnerable

- Little peer support
- Self doubt (art vs. science)
- High demand for perfection
- Guilty feelings
- Privacy highly valued
- "The Planet Litigation"

"Physicians Are A Plaintiff's Attorney's Dream"

- We feel guilty in the face of a bad result.
- We are highly self-critical.
- We always feel we could have or should have done more
- Competence is questioned
- Confidence is shaken

Litigation Stress Syndrome -1985



What The Data Shows

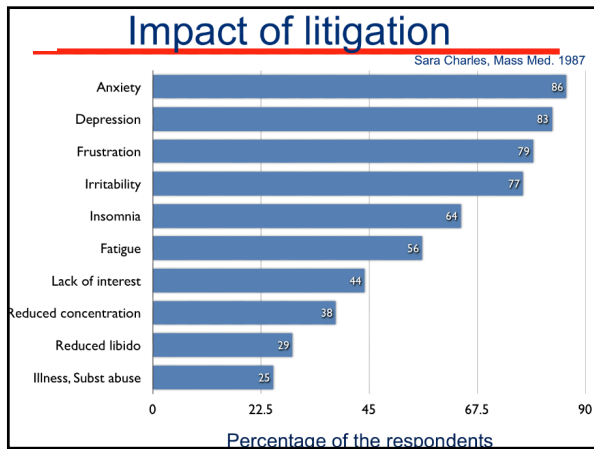
Symptom	Sued	Nonsued
Anger	85.6%	46.1%
Inner Tension	83.0%	56.6%
Depressed Mood	79.4%	50.7%
Frustration	76.8%	48.0%
Irritability	64.4%	48.0%
Insomnia	55.7%	42.8%

(Charles, et al)

What The Data Shows

Symptom	Sued	Nonsued
Fatigue	43.8%	40.1%
Difficulty Concentrating	36.1%	35.5%
Headache	20.1%	17.8%
Exacerbation of Illness	9.8%	8.6%
Excessive Alcohol Use	10.8%	3.9%
Suicide Ideation	6.7%	2.6%

(Charles, et al)



Some Try To Fix Everything Themselves

- Ignore it
- Work harder
- Exercise more
- Hate life, medicine, patients
- Deny needs
- Bully the plaintiff's attorney
- Try the case all over to everyone
- Withdraw
- Isolate oneself professionally
- Alcohol or drugs
- Burnout; quit
- Suicide



Suicide Ideation

- 7905 Surgeons
- 6.4% suicidal ideations in last 12 months
- 26% sought psychiatric help

Arch Surg. 2011;146(1):54-62.



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The Stress is Chronic

- The event: "Litigation stress is the severe endpoint to the second victim phenomenon."
- The request for records
- The summons
- The initial meetings and introduction to the process
- Letters from insurance companies and attorneys
- The depositions (physicians, plaintiff and defense experts)
- Settlement conferences, mediation
- The trial
- Applications for reappointment, hospital privileges

Themes For Coping

- Preparation...for the eventuality of a suit
- Education...about the legal process
- Reframing....about what it really means
- Support...from important others
- Active contribution....make sure you win
- Moving on....continue making a contribution

Coping: Before the Need

- Set up systems within each organization (even if it is small) to assist physicians involved in litigation.
- Teach risk management skills to physicians to increase leverage against suits with adverse outcomes.
- Train a core of experts as experts in litigation stress (peers, medical director, psychiatrists) to do the work.

Include in any program:

- Every sued practitioner.
- Require initial contact
- Have trained support available.

• Meet ***Early*** With ***Every*** Sued Physician

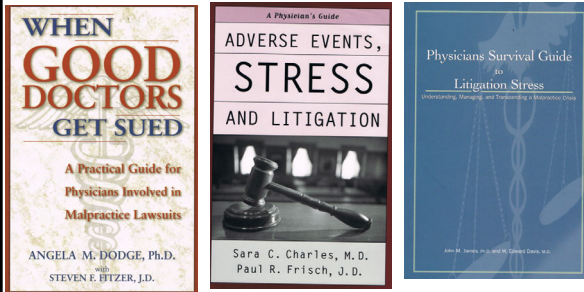
- “Its routine”
- Legal process
- Normal reactions
- Vulnerabilities
- Key allies
- Healthy diversions
- Unhealthy behaviors
- Anger management
- Defense team
- Your availability
- Routine follow-up
- Reframing the suit

• Coping Strategies

- Learn the process and prepare to manage the stress with each step: “the planet litigation”
- Maintain control of one’s hours
- Make increased use of formal and informal second opinions
- Focus on personal relationships and people skills
- Maintain balance of work, rest, recreation, worship
- Monitor consumption of controlled and uncontrolled substances

• <https://physicianlitigationstress.org>

More Resources



Why Insurance Companies Should Care: What The Data Shows

THE EFFECTS OF MEDICAL MALPRACTICE LITIGATION ON PHYSICIANS' SUBSEQUENT PROFESSIONAL LIABILITY CLAIMS EXPERIENCE

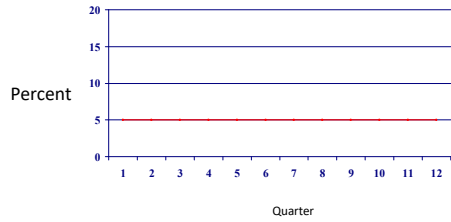
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Senior Clinical Risk Management Consultant
The Medical Protective Company

What The Data Shows

The average interval between the incurring of a loss and the reporting of a claim was 26 months.

On average, 21% of participating physicians reported a loss each year.

What The Data Shows



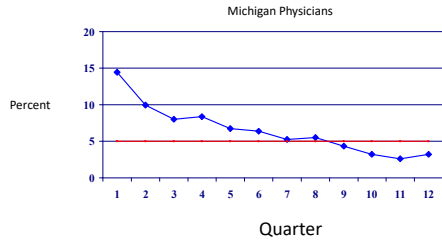
What The Data Shows

CLAIM #	LOSS	REPT	CLOSE	INDEM	EXP
William H. Taft					
00106301	05/11/79	11/28/79	01/07/82	85,000.00	2,891.00
00445901	04/13/81	05/03/83	11/26/84	0.00	5,599.37
00491401	12/04/81	04/02/84	05/01/85	0.00	5,564.55
00493501	05/21/82	04/11/84	11/14/85	5,000.00	4,440.52
00533701	08/03/82	11/30/82	12/22/86	0.00	7,799.72
00535301	11/08/82	12/13/84	10/11/85	0.00	4,979.43
00602901	10/03/83	01/31/86	09/21/87	0.00	7,862.48
James R. Buchanan					
00127701	01/17/79	01/09/81	05/03/84	125,000.00	11,104.93
00146801	02/28/79	04/06/81	01/05/82	0.00	600.00
00151101	12/01/79	05/05/81	04/25/83	100,000.00	6,983.65
00155601	05/24/80	06/22/81	10/16/84	6,000.00	6,812.52
00403701	11/01/80	08/10/81	10/02/84	37,500.00	13,055.45
00412101	02/02/81	04/27/82	08/22/83	0.00	4,440.45
00582301	07/13/82	07/31/85	05/03/88	0.00	4,061.75

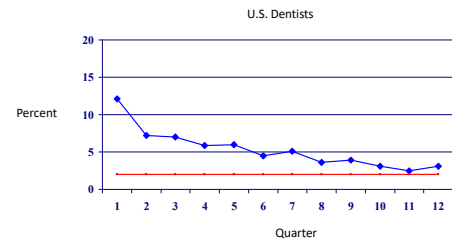
What The Data Shows

CLAIM #	LOSS	REPT	CLOSE
Betsy Ross			
00613601	05/02/84	11/30/85	09/03/91
00640301	10/03/83	03/31/86	01/28/87
00654101	11/02/84	05/31/86	11/30/88
00779101	07/21/82	07/31/87	01/11/88
John Q. Adams			
00578001	04/13/84	06/18/85	04/18/89
00726801	05/07/84	01/31/87	02/16/89
00727001	08/24/84	01/31/87	08/09/89
00805501	04/25/84	11/23/87	03/24/92

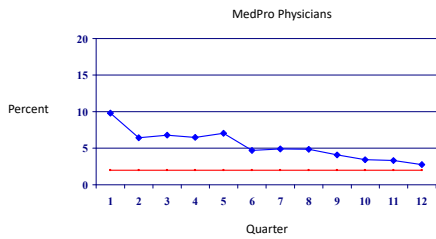
What The Data Shows

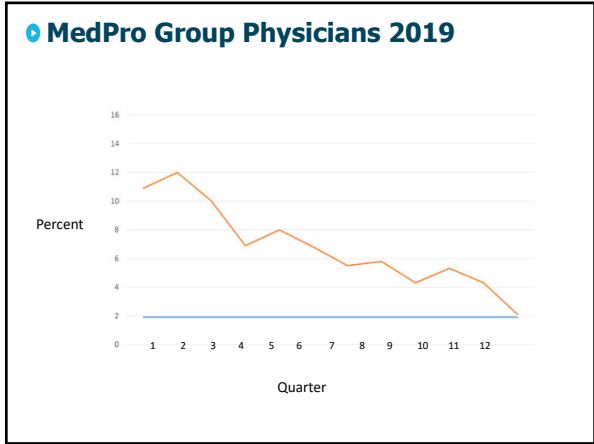


What The Data Shows



What The Data Shows





- ### Recommendations for the Recently Sued Physician
1. Keep control of hours.
 2. Make increased use of formal and informal second opinions and consultations.
 3. Emphasize people skills.
 4. Work on personal relationships.
 5. Maintain balance in work, rest, recreation, and if you so choose, worship.
 6. Monitor consumption of controlled and uncontrolled substances.

- ### Objectives of The Litigation Stress Intervention Program
- To educate the newly sued physician
 - To reduce fear and isolation
 - To emotionally stabilize the physician
 - To improve the physician's performance as a defendant
 - To reduce the risk of future losses
 - To show support and enhance the company-physician relationship
- ✓ ✓ ✓

• The Four Elements of a Professional Liability Lawsuit

- Duty
 - Professional duty
 - The standard of care
- Breach of Duty
- Causation
 - Factual
 - Proximate
- Damages
 - Special
 - General

✓ ✓ ✓

• The Normal Sequence of Events

- The adverse event
- A records request
- A latent period
- Service of process
- Counsel appointed
 - Initial meeting
 - The tripartite relationship

✓ ✓ ✓

• The Normal Sequence of Events

- Discovery
 - Interrogatories
 - Requests to admit
 - Depositions
 - Motion practice
- Mediation
- Trial
- Post-trial activity

✓ ✓ ✓

• The Normal Sequence of Events

- Expect 3-5 years
- The Kubler-Ross research



• How The Physician May be Affected

- Internal/external isolation
- Effect on personal relationships
- Practice changes
- Uncharacteristic behavior



• The Penumbral Effects

- This will be a “shared” experience
- Spouse/significant other
 - Fear/insecurity
 - Anger
 - Confusion
 - Desire to help



• The Penumbral Effects

- Coping strategies
 - Communicate
 - Present a united front
 - Seek and/or accept support
 - Help the kids

✓ ✓ ✓

• The Penumbral Effects

- Coping strategies
 - Strive for balance
 - Work
 - Rest
 - Recreation
 - If you so choose, worship

✓ ✓ ✓

• The Potential Impact of the Spouse

• Positive	• Negative
• Support/stabilization	• Destabilization
• Hope	• Catastrophize
• Diversion	• Worry
• Perspective	• Dwell

✓ ✓ ✓

• The Don'ts...

- Ignore it
- Work more
- Withdraw and isolate
 - Professionally
 - Socially
 - Family

✓ ✓ ✓

• The Don'ts...

- Deny your needs
- Resort to excessive ETOH and/or medication
- Hate...
 - Medicine
 - Life
 - Fill in the blank.....

✓ ✓ ✓

• When Does Litigation Support Work?

- When the company/organization supports it
- When the defendant physician trusts in that support
- Knowledge (of the process) is power

✓ ✓ ✓

What To Do For Yourself/Associate

- Look for:
 - Denial
 - Signs of decompensation ("My life has fallen apart")
 - Domestic issues:
 - Marital problems
 - Affairs
 - Separation/divorce
 - Issues with children



What To Do for Yourself/Associate

- Look for:
 - Depression/suicide ideation
 - Anxiety
 - Anger
 - Disability
 - Substance issues
 - Hospitalizations/serious medical issues



Questions?