



ISSUES AT RISK

TOP FIVE STRATEGIES FOR IMPROVING PATIENT ENGAGEMENT

by Sue Larsen

We all know the statistics. One percent of all hospital patients in the U.S. are harmed each year, yet only 3 percent go on to file a lawsuit. Each of these patients has a valid reason to sue their physician or medical institution, but only a handful do.

Close examination of closed cases indicate that the most common reasons a physician is sued relate to missed diagnosis and medical error, but this data only tells part of the story. If these patients had been asked about the root cause underlying their decision to litigate, most would report it was how the physician made them feel. Most patients are willing to forgive a medical error if they feel they've been treated with respect, but when a patient believes their views have been devalued, their perspective ignored or that they have been abandoned, anger—not injury—drives their decision to sue.

Most risk management education focuses on examining the clinical aspects of closed cases and preparing physicians for what to do once a claim has been made. However, perhaps the largest reduction of medical liability risk can come from improving the way physicians relate to their patients. Strong evidence supporting this view is apparent in analyses of patient experience surveys.

Recent research conducted at Massachusetts General Hospital showed a clear correlation between medical malpractice claims and patient satisfaction. As satisfaction increased, malpractice-related events decreased. Likewise, when patient satisfaction decreased, malpractice-related events increased.

Specifically, for every 1-point decrease in satisfaction, there was a 6-percent increase in complaints and a 5-percent increase in risk management events. These results were directly influenced by the quality of the patient interaction and relationship, and not by other patient experi-

ence measures.

Physicians who ranked in the middle tier for patient experience scores had a 26-percent higher malpractice lawsuit rate than those physicians in the top third. Physicians in the bottom third had a 110-percent higher lawsuit rate than those in the top third of the data set. This knowledge could prove invaluable to risk managers in identifying high-risk members for participation in risk prevention initiatives.

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is crucial to risk prevention, physicians should look at strategies that would help them better engage their patients. Following are five strategies for improving patient engagement:

1. Show your patients they are valued. This begins with how you start each encounter. A smile, eye contact, personal greeting and a general social comment will go a long way.

Be aware of the patient's medical history before walking into the exam room. Give them adequate time to explain why they are there. Avoid the temptation to look at your watch or talk to them while you have your hand on the door handle to leave.

2. Understand the patient's perspective of the illness. Ask them what they think the illness is and what their experience has been, along with how it is affect-

ing them and what they want from you, acknowledging their responses. This will give you insight into their values and belief systems.

When a patient feels they have important information to contribute to their diagnosis, but their contribution is ignored, they become predisposed to litigate should a missed or delayed diagnosis actually occur.

3. Include patients in the decision-making process. Provide patients with all the options, including a realistic presentation of pros and cons, and be prepared to answer their questions. Make sure you acknowledge their previously stated opinions, values and ideas when presenting treatment options. Physicians who are candid with patients, acknowledge their views and spend more time answering questions are less likely to be sued.

4. Explain information clearly and in a way that patients will accept, understand and remember. Nearly half of all U.S. adults report difficulty understanding what the doctor tells them about their condition and how to take their medicines.

Patients often say they didn't know they needed schedule a follow-up appointment, follow-up tests or what the out-of-pocket expenses would be, while doctors are adamant these conversations occurred. Clearly there's a breakdown in communication.

Remember that most patients don't spend everyday in a healthcare setting and can only process a limited amount of new information at one time. Deliver information in ways that patients will understand, accept and remember. Use diagrams, find multiple ways to say the same thing, use examples and relate to things you know the patient already understands.

Use time and location based anchors. For example, its far better to say, "take your tablet in the morning and the evening

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TENNESSEE JUDGE RULES CAP ON NONECONOMIC DAMAGES UNCONSTITUTIONAL

Last month, a Tennessee circuit court judge ruled that the state's \$750,000 cap on noneconomic damages is unconstitutional. The ruling was issued in a case involving the communications giant AT&T.

Judge W. Neil Thomas determined that the noneconomic damage cap—part of the Tennessee Civil Justice Act of 2011—violates

the state constitution, calling it “an affront to the diligent and hard-working jurors” and “a statement that they are not really needed.” Judge Thomas further noted that the statute deprives injured persons of their fundamental right to a trial by jury, “depriv[ing] society of a right to have justice dispensed in a manner on which it has traditionally relied and

which it has traditionally demanded.”

Elected governor in 2010, Bill Haslam campaigned on tort reform being central to his plan for attracting businesses to the state as well as keeping healthcare costs down.

The ruling is likely to be appealed to the Tennessee Court of Appeals and possibly the Tennessee Supreme Court.

MISSOURI SENATE VOTES TO REINSTATE NONECONOMIC DAMAGE CAP

Last month, the Missouri Senate passed a bill that would impose a cap on noneconomic damages for personal injury claims at \$400,000, and cap awards for noneconomic catastrophic personal injury and death at \$700,000. The caps would increase by 1.7 percent each year. The Missouri Supreme Court had ruled a previous noneconomic damage cap unconstitutional in 2012.

“By reinstating caps on noneconomic damages in medical malpractice lawsuits, we will reduce incentives for these frivolous lawsuits,” said Senate Leader Tom Dempsey. “Overall, it means more accessible healthcare

for all Missourians.”

In 2005, the General Assembly sought to reform the state's civil liability system by lowering the noneconomic damage caps in medical malpractice cases. In 2012, the Missouri Supreme Court struck down the legislation, removing the caps that had been put in place.

“We are now starting to see some of the effects on medical malpractice insurance premiums since the Supreme Court decision as they continue to rise,” said bill sponsor Sen. Dan Brown. “We need to support our medical professionals who provide Missourians the quality care they deserve.”

Senate Bill 239 creates a statutory cause of action for damages against healthcare providers that supporters believe will skirt questions of constitutionality. This bill seeks to set a defined amount that is available in lawsuits claiming noneconomic damages

“Doctors need certainty going forward,” said Sen. Ron Richard. “Ultimately, changes in the law will attract more insurance providers to offer competitive liability insurance to doctors and care providers in Missouri.”

The measure now moves to the House, which recently passed its own bill with much smaller caps.

NEW TDC CYBERSECURITY REPORT FOCUSES ON PROTECTING HEALTH DATA

In the wake of recent cyberattacks targeting health data, The Doctors Company issued a new report, *Healthcare Data Breaches: Risk and Mitigation Tips*. This in-depth report is among numerous cybersecurity resources provided by the Napa, Calif.-headquartered medical malpractice insurer to assist healthcare organizations and physicians in protecting data.

The cybersecurity report discusses the threat of new technologies such as spear

phishing, which is e-mail designed to lure recipients into providing personal information and clicking on malicious links, and ransomware, in which attackers encrypt files and demand payment to decrypt the files. The report also discusses the risks of sharing data with vendors, the complexities of responding to a breach, the threat of data breach class action lawsuits, and tips for preventing or minimizing a data breach.

“Healthcare organizations such as health

insurer Anthem, which recently fell victim to a data breach that could affect as many as 80 million consumers, experience 51 percent of all cyberattacks,” said Craig Musgrave, senior vice president, CIO, The Doctors Company. “Cybercriminals target healthcare entities for two main reasons—healthcare organizations fail to upgrade their cybersecurity as quickly as other types of business, and criminals find personal patient information particularly valuable to exploit.”

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when you're brushing your teeth,” than to say, “The medication is BD.” Most won't understand this instruction, and those that do will still forget to take it regularly.

Ask the patient to repeat back your instructions so that you can be confident he or she has retained the information. This will overcome a lot of communication breakdowns and reduce the risk associated with patients who don't follow through on instructions and further say that they never received any.

Always assume patients have concerns and ask them what they are. Don't ask, “Do you have any questions?” Rather ask, “What questions can I answer for you?”

5. Acknowledge when something goes

wrong and apologize*. When a physician avoids a patient following an unintended outcome, the patient feels abandoned, trust is broken and he or she becomes much more likely to sue for malpractice.

Because anger is the primary fuel driving litigation, providing a sincere apology that expresses empathy and acknowledges mutual disappointment without admitting fault can sometimes be enough to prevent the filing of a claim. Offer to help with immediate needs such as transportation, and document your conversation.

In malpractice as in medicine, prevention is always better than a cure. Patients are far less likely to sue a doctor they like, so ensure that ongoing interpersonal skills development is an important part of your

risk prevention strategy.

* Check with your medical professional liability insurance provider to make certain an apology does not violate the terms of your insurance policy.

Sue Larsen is co-founder and chief operations officer of Astute Doctor Education, a global education company committed to transforming healthcare through improved physician bedside manner. Astute Doctor provides a comprehensive suite of physician interpersonal skills courses that improve patient experience and health outcomes, improve healthcare efficiencies and reduce physician risk of malpractice litigation. The company's website is located at www.astutedoctor.com.