



PROGRAM MATERIALS

Program #30274

November 5, 2020

The Intersection Between Law & Medicine

**Copyright ©2020 by Clifford A. Rieders, Esq. - Rieders,
Travis, Humphrey, Waters & Dohrmann.
All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

5255 North Federal Highway, Suite 310, Boca Raton, FL 33487
Phone 561-241-1919 Fax 561-241-1969



The Intersection Between Law and Medicine



November 5, 2020, 2:00 p.m.

Presented by Clifford A. Rieders, Esquire

Rieders, Travis, Humphrey, Waters & Dohrmann

161 West Third Street

Williamsport, PA 17701

www.riederstravis.com





List of Topics



- (3) Medical Malpractice Avoidance**
- (5) Peer Review Process**
- (10) Reporting**
- (18) Risks and Complications**
- (20) Expert Witnesses**
- (22) Differential Diagnosis**
- (24) Standard of Care**
- (26) Biomedical Ethics**
- (28) Apology**
- (33) Depositions**
- (35) Insurance Companies**
- (37) Similarities Between Law & Medicine**
- (39) Burnout and Substance Abuse**
- (41) Family, Friends & Colleagues**
- (43) Money, Success & Fame**
- (45) Keeping Up Skills**
- (47) Knowing When & How to Quit**
- (49) Working for Yourself/Someone Else**
- (51) Telemedicine**
- (53) Genetic Information**
- (58) Disruptive Patient/Physicians**



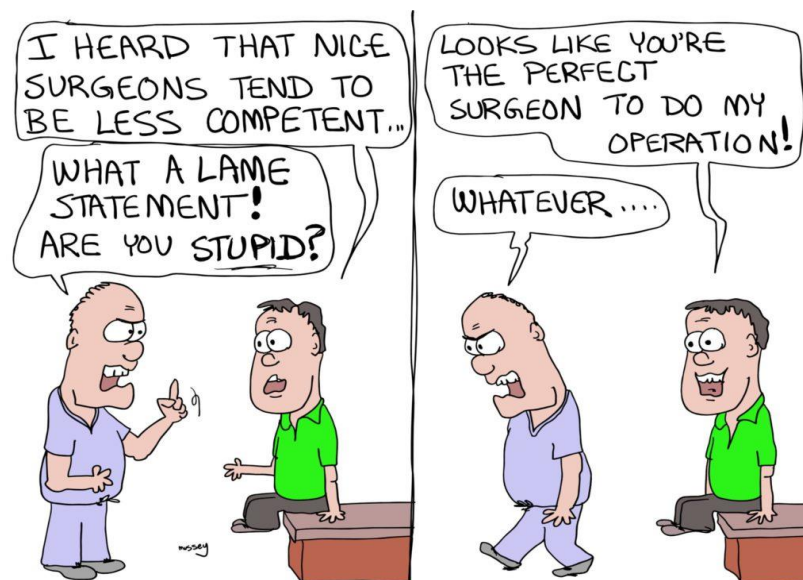
MEDICAL MALPRACTICE AVOIDANCE



Medical Malpractice Avoidance



**The cheapest insurance you will ever buy
is good bedside manner.**





PEER REVIEW



Peer Review



Good peer review information shows that people go to lawyers for the following reasons:

- **Answers to questions they cannot get from their physicians or hospitals;**
- **To have somebody to complain to;**
- **To receive empathy.**



Peer Review



Patients often go to lawyers for the peer review that hospitals should be doing.





Peer Review



Should secret peer review only be limited to specific peer review committees and not to other organizations that may have information or have done evaluations on hospitals and doctors, such as the National Practitioners Databank?





Peer Review



- What are the risks of giving empathy to a patient?
- What are the risks of giving patient peer review information?
- What are the risks of apologizing?





REPORTING



Reporting



What is happening with the patient safety movement?

- **Report carding has become popular in some states and by some hospitals.**
- **Punitive v. nonpunitive systems.**

A close-up of a rating card with a red pen pointing to the 'Exceptional' option. The card has a table with checkboxes and labels.

RATING	
<input checked="" type="checkbox"/>	Exceptional
<input type="checkbox"/>	Exceeds requirements
<input type="checkbox"/>	Meets requirements
<input type="checkbox"/>	Needs improvement
<input type="checkbox"/>	Poor



Reporting



- **Report cards for doctors and hospitals are generally unreliable and frequently based upon self-reporting.**
- **Sometimes report card information comes from CMS, Social Security, and only deal with a specific universe of patients.**



Reporting



Objective legitimate statistical data, on hospital or doctor safety is hard to come by. Some issues are more easily susceptible of report carding than others, such as:

- Falls in hospitals, although even this depends upon patient condition;**
- Wrong site surgery;**
- Hospital-acquired infections; but what about benchmarking since some infections are inevitable?**



Reporting



What is a nonpunitive reporting system?

- This is what Pennsylvania has tried with its Patient Safety Authority.
- It receives about 1/3 of a million reports a year which are confidential.
- “Serious events”, where there is harm, there is also supposed to be reporting to the Department of Health.



Reporting



- **Is a nonpunitive system one which simply considers reports of avoidable medical errors or unanticipated events and simply gives feedback?**
- **Does it matter if there is harm to the patient?**

Model for this is the FAA



Reporting



- **What is an avoidable medical error?**
- **Are bedsores always avoidable?**
- **What is an anticipated event?**
- **If informed consent has been given, and possibility of event was revealed, is occurrence of event anticipated or unanticipated?**



Reporting



- Much ink has been spilled on the subject of whether an event should be reported because it is or is not unanticipated.
- This is a category that has proven to be unworkable.
- What about “never events” as something that should be reported?
- As you see, even determining what to report as something which should not happen can become very confusing.



RISKS AND COMPLICATIONS



Risks and Complications



- **There are risks and complications to everything in life and everything in medicine.**
- **Is there some way of saying that certain risks and complications are acceptable if the patient does not do well and certain ones that are unacceptable?**
- **Who should that be up to?**
- **Is that the job of the legal system, or some combination of both?**
- **Is it a question for peer review studies and the scientific community?**



EXPERT WITNESSES



Expert Witnesses



- **Should you serve as an expert witness in a case?**
- **What is your responsibility as a treating physician as to whether you should give opinions?**
- **Is there a difference between opinions that you have arrived at in the course of treatment as opposed to opinions on the standard of care with respect to the treatment the patient received?**



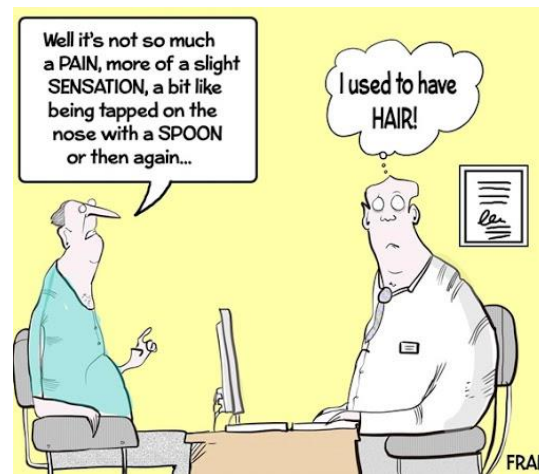
DIFFERENTIAL DIAGNOSIS



Differential Diagnosis



- How does differential diagnosis interface with the legal system?
- A differential diagnosis is a list of possibilities?
- Is failure to consider all possibilities a violation of standard of care?





STANDARD OF CARE



Standard of Care



- **What is the standard of care?**
- **What does it mean to be a reasonable physician in your field?**
- **Can such a general definition ever be workable either in the legal or the medical system?**
- **Should doctors be judged by fellow professionals, laypeople or by some combination of both?**



BIOMEDICAL ETHICS



Biomedical Ethics



- **What is biomedical ethics?**
- **Is there something specific about medical ethics which is different from any other kind of ethics?**
- **Does Pirkei Avot supply all ethics that a doctor needs to know about?**
- **“Greet all people cheerfully; treat no one with contempt and consider all things as possible.”**



APOLOGY



Apology



- **Some states say that an apology can never come into evidence against a doctor and therefore apologies should be encouraged.**
- **Some lawyers who defend doctors want that apology to come into evidence since it will make the doctor look empathic, fair, reasonable and honest.**
- **Journal of Patient Safety and Risk Management claims that simple apologies were able to resolve medical error cases 43% of the time.**



Apology



- After being sued, physicians may experience episodes of major depressive disorders (27% to 39%), adjustment disorder (20% to 53%), adjustment disorder (20% to 53%), and the start or aggravation of a physical illness (2% to 15%).
- A founder of the Sorry Works Coalition says that 5-10% of hospitals across the country have created apology policies.
- “Sorry” initiatives have certain common elements: (1) proactively identifying adverse events; (2) distinguishing between injuries caused by medical negligence and those arising from complications of a disease or intrinsically high-risk medical care; (3) offer patients' full disclosure and honest explanations; (4) encourage legal representation for patients and families; and (5) offer an apology with rapid and fair compensation when standards are not upheld.



Apology



- **Lexington Veterans Affairs Medical Center in Kentucky conducted a 6-year study after an apology program. The hospital paid an average of \$15,622 per claim, compared with a \$90,000 average in VA hospitals without “I’m sorry” policies.**
- **University of Michigan Health System adopted a disclosure, apology and compensation policy during the same year that diminished litigation expenses by \$2 million annually and new claims by more than 40%.**
- **National Practitioner Databank Public Use Data File showed mean length of litigation in those states with apology laws was 3.4 years. In jurisdictions without such laws the average litigation time was 5.6 years.**



Apology



- Full apology laws shield conversations that contain an apology as well as an admission of fault, error, mistake and liability. Other states do not shield statements of fault or negligence, such as Pennsylvania's law.
- The partial apology law which protects words of sympathy, condolences or compassion but not admission of guilt is the majority.
- A good article on this subject is "Should a Physician Apologize for a Medical Mistake? – The Controversy Over the Effectiveness of Apology Law Statutes" by Samuel D. Hodge, Jr., a well-known writer in the field.



DEPOSITIONS



Depositions



- How to be in a deposition?
- Should you prepare for the deposition?
- Is it better to be unprepared?
- What should your interface be with the insurance company lawyer who will represent you?
- How feisty to be?



INSURANCE COMPANIES



Insurance Companies



- **Working with insurance companies within the litigation process.**
- **Some insurance companies will give you the right to consent or not consent to settlement.**
- **Other insurance companies do not give you that right, and if you do not do what the insurance companies want, they will claim lack of cooperation and may deny coverage.**



SIMILARITIES BETWEEN LAW AND MEDICINE



Similarities Between Law and Medicine



- **Skillset.** In terms of educational background.
- **Evaluation.** The process of evaluation and consideration of differing factual information is paramount.
- **Risks.** Risk of an incorrect decision is high.
- **Supervision.** You always are having someone else look over your shoulder in connection with decisions your make.
- **Experience.** There is no substitute for experience; so what do you do before you have a lot of experience?
- **Mentoring.** The role of mentoring is similar. People depend upon you in the same manner.



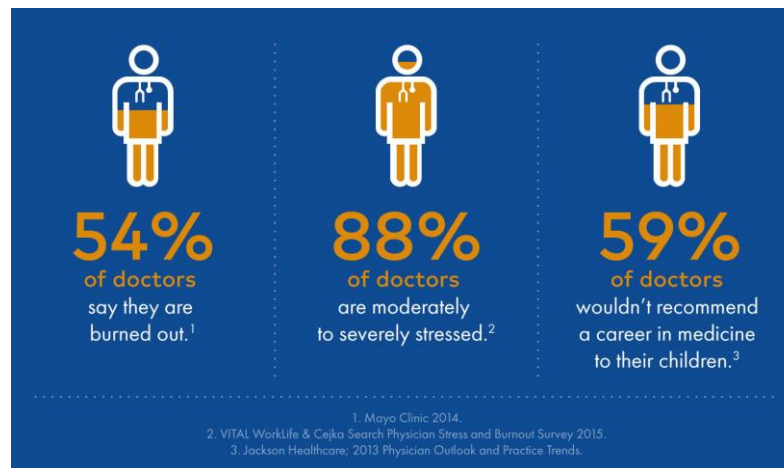
BURNOUT AND SUBSTANCE ABUSE



Burnout and Substance Abuse



This is a major issue in both law and medicine, and both legal support groups and medical support groups do exist and, for the most part, do a good job. Do not be afraid to take advantage of them.





FAMILY, FRIENDS & COLLEAGUES



Family, Friends and Colleagues



Unless they are in the same profession, most people will not be able to fully appreciate what you go through, what you worry about, and the dedication that is required for these professions.





MONEY, SUCCESS & FAME



Money, Success and Fame



- You now have achieved these goals, but are you happy?
- Is there ever enough money, success and fame?
- At what point do you stop doing the little things or the less important things or give up the pro bono activity because you have achieved all of your goals?



KEEPING UP SKILLS



Keeping Up Skills



- **Never stop learning**
- **Never stop going to seminars and listening to others.**
- **Never stop teaching.**
- **Never stop being taught.**
- **Never think you know it all.**



KNOWING WHEN & HOW TO QUIT



Knowing When and How To Quit



- Listen to your colleagues.
- Listen to your friends and significant others.
- Listen to your own soul.
- Always keep busy and try to learn.

THE SHOULD I STAY OR SHOULD I GO NOW EQUATION





WORKING FOR YOURSELF/SOMEONE ELSE



Working for Yourself/Someone Else



- **In medicine today, it has become highly industrialized, especially in the States.**
- **It is difficult to work for yourself, and most of those positions have evaporated.**
- **Therefore, you are bound to be a cog and a machine, an employee and a factory.**
- **This is the largest component of physician burnout.**
- **Your employer may take care of the financial and even legal needs, but you are still working for someone else.**



TELEMEDICINE



Telemedicine



- **There is a host of legal issues which arise when you have not seen the patient and have received a minimum of information.**
- **The guidelines of telemedicine must be strict, relayed to the patient or the other physician you are working for, and the limitations must be understood.**



GENETIC INFORMATION



Genetic Information



- **What to do with it?**
- **When to obtain it?**
- **What responsibility to relatives of the patient?**
- **The Institute of Medicine issued a report pertaining to genetic risks and noted that genetic information should be considered confidential.**



Genetic Information



- **“Does a Physician Have a Duty to Inform At-Risk Relatives of a Positive Genetic Test When the Patient Refuses to Allow That Disclosure?” by Samuel D. Hodge, Jr.**
- **The American Society of Clinical Oncology Policy Statement on Genetic Testing for Cancer Susceptibility indicates that health care providers discuss the importance of sharing genetic test results with at-risk relatives in the pre-test counseling and informed-consent processes prior to testing.**



Genetic Information



- **On the other hand, several states have passed laws prohibiting the disclosure of genetic information without a patient's consent.**
- **Physicians owe a duty to non-patients with respect to contagious diseases. As the AMA Code of Medical Ethics and Opinion 8.4 notes: “Physicians must balance dual responsibilities to promote the welfare and confidentiality of the individual patient and to protect public safety.”**



DISRUPTIVE PATIENT/PHYSICIANS



Disruptive Patient/Physicians



“The art of medicine consists of amusing the patient while nature cures the disease.” Voltaire





Disruptive Patient/Physicians



- **There are plenty of people with serious emotional problems that you will meet in your own profession, among patients, lawyers, and the rest of the world.**
- **Sometimes it is impossible to stay away from such people, but never join the ranks of the crazies.**
- **A spiritual path is one way to help avoid getting into unnecessary combat with disruptive people.**



Disruptive Patient/Physicians



My wife received a letter from The Breast Center, where she went to have regular mammograms, signed by all the doctors indicating that they would refuse to treat her because I handle medical malpractice cases.

- **Is this legal, proper or ethical?**



Disruptive Patient/Physicians



- **Failure to treat an emergency will certainly subject a doctor to liability.**
- **What does a doctor do if the patient wants to record, videotape or put on their cell phone the conversation of the doctor?**



Disruptive Patient/Physicians



- Whether there is a physician-patient relationship is going to be the turning point on the question as to whether the doctor can refuse to see the patient.
- The American Medical Association has established a Council on Ethical and Judicial Affairs that is tasked with maintaining and enforcing a Code of Ethics. The Council has provided guidance on terminating a patient-physician relationship in Ethics Opinion 1.1.5, which notes that the doctor has a fiduciary obligation to support the patient's continuity of care. When a physician wants to withdraw from that relationship, the patient must be timely notified in advance so that the person can locate another health care provider.
- The situation may be different where a doctor is an employee of a hospital, insurance company or health care system, and in those scenarios the doctor may have little or no choice.



Disruptive Patient/Physicians



- **“What Can Be Done About a Disruptive Physician? A Legal Analysis,” Samuel D. Hodge, Jr.**
- **“The Paul University Journal of Health Care, Vol. 21, Issue 2, Fall 2019, Article 1, ‘Must a Physician Treat a Disruptive or Abusive Patient or Can the Doctor Fire That Person?’, Samuel D. Hodge, Jr., Temple University.”**



Maimonides



- **Being a doctor is not easy but following the role of Maimonides to serve your patients and be rewarded by them is the best model there is.**
- **Maimonides was ahead of his time in integrating the physical and the emotional in terms of the treatment he provided.**

