

Tips for Staying Out of the Medical Malpractice Trap

Approximately 34% of consumers polled reported having been personally involved in a situation where a preventable medical error was made in their own medical care or that of a family member.¹ Research and patient surveys indicate what many plaintiff attorneys already know - that positive elementary fundamental behavior by the physician can drastically reduce the likelihood that an injured patient will call a malpractice attorney. Seldom is the failure to know or understand the standard of care the cause of medical malpractice claims. As drivers rarely have accidents because they do not know how to drive, so it is that doctors rarely provide negligent care because they do not know the standard of care. Rather, most medical negligence lawsuits arise due to over scheduling, lack of communication, lack of focus, illegible writing, poor interpersonal skills, ignoring important patient data or failure to admit to the lack of expertise.

Having sat in numerous consultations with injured patients in a “previous life,” I have learned that many times the injured patient would not have consulted an attorney if the health care provider had handled the situation differently. For example, many plaintiffs see an attorney because the health care provider will not explain matters to the patient using laymen’s terms or “plain English.” Additionally, many times plaintiffs feel helpless because the health care provider fails or refuses to speak to the patient or address the patient’s concerns altogether, which leaves the patient mad, and thus more willing to file suit.

There are many common sense actions a health care provider can take to reduce the risks of one of his or her patients filing suit against the health care provider. One of the basic principles of patient safety is to talk to and listen to patients. Honesty really is the best policy. All patients respect an honest answer. Although the truth may hurt or be difficult to explain, patients typically understand that risks are inherent in medicine and doctors are not perfect. When explaining the circumstances to the patient, talk to the patient, not at the patient, be sincere, take your time and look the patient in the eye, avoid vagueness, double talk, medical jargon, blaming others or blaming the patient. If a patient likes and respects you, in all likelihood, the patient will not sue the doctor or will settle for a drastically smaller settlement than if the patient dislikes you. In fact, many times the patient is hesitant to sue his or her own doctor who the patient has a relationship with, but is more than willing to sue the other healthcare providers.

When talking to the patient, comfort him/her and the family when a problem occurs. Also, advise the patient and family that an investigation will be performed and that you will report back to the patient. Once the investigation is completed, inform the patient of the investigation’s conclusions. Finally and most importantly, as with any mistake or error inform the patient what the provider and facility have learned as a result of the error, how it intends to correct the error and what the provider or facility will do to prevent the errors from occurring in the future.

¹ See Keyser Family Foundation/Agency for Health Care Research and Quality/Ford School of Public Health *National Survey on Consumers’ Experiences with Patient Safety and Quality Information, November 2004* (Conducted July 7 - September 5, 2004).

It is also okay to apologize to the patient. An apology is not an admission of negligence. For patients and family members, the physical and emotional devastation of medical errors cannot be easily overcome. What they want most out of their ordeal is honest and open dialogue about what went wrong, and ensuring that their experience serve as a lesson for prevention of similar errors in the future.² In the past, such communications and assurances have seldom been forthcoming. Lack of disclosure and communication is the most prominent complaint of patients and their families. Years of expensive litigation often ensue when patients are sometimes only seeking answers.³

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James A. Hoover



Jim practices in the Burr & Forman LLP Health Care Practice Group and represents numerous hospitals and physician practices in the state of Alabama. He has extensive experience in healthcare litigation and health law including responding to alleged EMTALA violations, Medicare/Medicaid fraud and abuse, medical staff credentialing, peer review actions, certificate of need issues, professional licensing, healthcare joint ventures, Medicare sanctions, HIPAA privacy and security, as well as other health care litigation matters. He frequently lectures on the requirements imposed by HIPAA and implementing a HIPAA compliance program, and other health care compliance issues for various continuing education seminars. Jim recently authored Chapter 9 of the *Health Law Handbook, 2005 edition* entitled "The Emergency Medical Treatment and Active Labor Act: Responding to an Active Investigation". He has also authored numerous articles on healthcare compliance issues including "Physician Emergency Department On-Call Responsibilities" and "A Parent's Right to Access Their Minor Child's Health Information - Confidentiality and Consent" in the *Birmingham Medical News*; "Don't Kill the Messenger", a monthly column in *M.D. News Magazine* addressing corporate compliance strategies; and "Voluntary Disclosures" for the Corporate Compliance Forum's monthly publication, *Checklist to Compliance*.

Jim is the immediate Past-Chairman of the Alabama Bar Health Law Section and serves as Chairman of the Board of Trustees of the Alabama Bar Lawyer Referral Service. He is a member of the Board of Directors for the American Heart Association, Birmingham chapter. Jim is a member of the American Bar Association, the Alabama State Bar, the Birmingham Bar Association and the American Health Lawyers Association and was selected for the *Birmingham Business Journal's* "Top 40 Under 40."

² See Joint Commission on Accreditation of Health Care Organizations, 2005.

³ See Joint Commission on Accreditation of Health Care Organizations, 2005.

Jim received his B.B.A. in Risk Management and Insurance in 1987 from the University of Georgia and his J.D. in 1992 from Cumberland School of Law at Samford University.