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The Patient's Perception of Care: A Factor in Medical Litigation

SUMMARY

What motivates a patient to sue a physician? Review of Association case files and results of research done by medical insurers in the United States indicate that strong subjective factors play a part. Patients sense an impersonality from technological medicine and look to the physician for concern and compassion. When there is a perceived lack of concern on the part of the medical treatment team, particularly in the face of an unfortunate outcome, the seed is sown for a lawsuit. The author of this article describes cases which show the effect of the patient's perception of care on the decision to commence litigation or lodge complaints. He suggests how similar situations might be dealt with, short of litigation, through more effective patient-physician communication. (*Can Fam Physician* 1989; 35:133–135.)

Key words: litigation, patient care

RÉSUMÉ

Qu'est-ce qui incite un patient à poursuivre un médecin en justice? L'analyse des archives de l'Association et les résultats d'une recherche menée par un qroupe de sociétés d'assurance-responsabilité médicale américaines montrent que les facteurs subjectifs jouent un rôle important dans ce domaine. Le patient trouve la technologie médicale impersonnelle et attend du médecin qu'il lui manifeste attention et compassion. S'il a l'impression que l'équipe de soins médicaux le néglige, et en particulier si son intervention a des suites fâcheuses, la graine de la poursuite judiciaire est prête à germer. En s'appuyant sur des cas réels, les pages qui suivent montrent comment la perception qu'a le patient des soins qu'il a reçus influence la décision d'intenter une poursuite judiciaire ou de porter plainte. Elles indiquent également comment une meilleure communication patient-médecin peut régler ce genre de situations sans l'intervention des tribunaux.

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A doctor, describing his surgical clinic to CMPA, misspelled the word "wander", resulting in the following telling statement: "There is an exercise program at 10:30 a.m. Then patients are free to *wonder* the rest of the day."

MODERN MEDICAL treatment, like most things in life, carries some risks which must be balanced against benefits. The public is regularly exposed to news of spectacular and successful medical treatment, as reported by the media. It is not surprising, therefore, that patients entering on medical care will expect a successful result. Disappointment and anger easily follow if those expectations are not realized. Such emotions are often a prelude to a trip to a lawyer's office.

How risky is modern medical care? Occurrence screening, done as part of U.S. hospital risk-management programs, indicates that as many as one patient in a hundred emerges from a hospital as the victim of a "potentially compensable event". (This is sobering information for those who would advocate a "no-fault" system of compensation.) The fact is that under the present system of civil litigation, less than 10% of these events become the subject of lawsuits against the medical establishment.

What motivates a patient to sue? The Association hears frequently of incidents which, at first glance, seem highly predictive of a lawsuit. In a good number of these situations, however, the lawsuit does not materialize. On the other hand, we are frequently surprised by lawsuits brought against doctors, by persons alleging injury in circumstances where clearly,

from a medical point of view, there was no negligence.

Incident #1

A busy family physician's day was interrupted by a telephone call from one of his colleagues reporting bad news. Each of these two physicians had a child in hospital, and both children had the same name. One had tonsillitis. One required circumcision. The wrong child was circumcised, and the child's attending physician was horrified to think about the unnecessary operation, to say nothing of the prospects of facing the consequences of the event once the parents found out. He was surprised to find that no legal problems followed. It turned out that once the child was safely in the Recovery Room, his colleague hopped into his car and drove out to make a personal visit to the parents, who lived some 20 miles away. The physician explained the error that had been made, expressed his apologies, and reassured the parents that the child was in good condition. Both parents were very gracious to the doctor and most impressed by his concern about the error, as well as by the time he had taken from his day to visit them at home. They even informed the doctor that they had always wished that the little fellow had been circumcised at birth and expressed their pleasure that the procedure had been done, allowing "everything" to be taken care of during the same period of hospitalization! When Christmas time arrived, the physician who had done the circumcision and had made the house call, received a Christmas present from the parents, while the other physician did not!

Subjective Factors in Bringing Suit

Research suggests that there are strong subjective factors that play an important part in a patient's motivation to sue. Focus groups, formed of persons who had been plaintiffs in malpractice suits against physicians, were convened by a U.S. physician-insurance company. An interviewer sat with each group and allowed the claimants to discuss the feelings behind their decisions to sue. Other focus groups were formed, comprised not of persons who had been plaintiffs but of persons participating in a public opinion survey on the quality of health care. In the opinion of these focus groups, the most influential subjective factor appeared to be the patient's perception of a physician and the health-care establishment. This perception extends beyond the physician to his or her staff and the hospital environment. While people appreciate the improvement in health care that technology has brought, patients also sense an impersonality relating to technological medicine that gives patients the sense that no one is looking out for their welfare. It appears that although a doctor may be forgiven for failing to achieve perfect results, he will not be forgiven for lack of concern or compassion.[1]

Recently, the Canadian Medical Protective Association (CMPA) and the Canadian Medical Association polled 2500 physicians for their opinions on medico-legal matters. When asked for comments about the present medico-legal climate in Canada, physicians most often made the point that in their experience, good communication and rapport with patients was the best deterrent to litigation.

Sometimes, a perception of inept medical care can develop after a series of unhappy events, each one in itself inconsequential.

Incident #2

Recently, the Association considered the case of a lawsuit brought by a 48-year-old woman against a number of physicians in respect to medical care she received in hospital. In fact, there were some post-operative complications, but the end result was quite satisfactory, even to the patient. Nevertheless, she brought a lawsuit, and the allegations in the Statement of Claim related to what she perceived as incompetent medical care.

A detailed review of this woman's file showed clearly that she was not the easiest of patients to deal with. On her arrival in hospital she declared that she would certainly suffer migraine headaches unless she was placed beside a window; that she needed an air mattress for her back; and that she must have cranberry juice four times a day. Her husband appeared to the medical staff to be a rather menacing individual. Obviously, this patient was not destined to be the instant favourite of the medical and nursing staff.

Untoward events in hospital began to occur right from the time of this patient's admission. The patient's name was incorrectly spelled on her nameplate. This error led to a number of other problems: for instance, all flowers sent to her were sent back to the sender, since the hospital claimed that no such person was registered. She was placed beside a babbling, hysterical patient who disturbed her sleep over her entire hospital stay. The hospital was able to fulfil her request for a special mattress, but it turned out to be a water mattress filled with cold water. No water heaters were available, and the woman spent at least one night in a chair beside her icy bed. Despite her reporting previous adverse reactions to Valium, she was given that medication, much to her displeasure.

One can easily imagine the relief on everyone's part when this patient was sent home. In the general atmosphere of jubilation, however, no analgesics were given her at the time of her discharge, and she misunderstood instructions about follow-up care.

This patient did suffer genuine complications after discharge, necessitating readmission to hospital. Eventually, she requested transfer to another hospital, alleging that she had arranged to go somewhere where she would get "proper care". Had she remained in the first hospital, the doctors who performed her original surgery would no doubt have had the opportunity to deal with her problems and put them right. However, such was her attitude of dissatisfaction, that she removed herself from their care, received definitive treatment elsewhere, and alleged that the treatment given by the first medical team had been incompetent.

Communication Skills

It is impractical to suggest that all patients can be pacified by the attending physician. Doctors are certainly unable to control the attitudes and actions of the entire treatment team. However, it is in such circumstances as those described above that the doctor's communication skills are most acutely put to the test. A caring, compassionate attitude on the part of the treating physician is often an effective counterbalance to untoward

events, whether caused by the doctor or not.

Physicians must take steps to be alert to the development of a climate of dissatisfaction. We recommend that the doctor scan the nurses' notes daily. These notes will often lay out in detail some of the problems that have occurred since the doctor's last visit. We also commend physicians who spend extra time with disgruntled patients, answering questions and allowing time for discussion of concerns. Such extra time set aside to allow an unhappy patient to ventilate frustrations is well spent.

One of the most frequent causes of a patient's perception of poor care is a *doctor's failure to attend.*

Incident #3

A patient, hospitalized for investigation of intractable back pain, wrote, in a letter of complaint:

> On Wednesday, that so-called Doctor came to see me. As before, he asked some foolish questions, twisted my legs in circles, would tell me nothing and left and said he would be back the next day. The next day, Thursday, he was supposed to be coming in the afternoon but he did not show up. The nurse said he got delayed and that he would be in to see me first thing on Friday. On Friday afternoon, when he had not shown up by 4:00 p.m., I asked the nurses to enquire from his office if and when he was coming. I was told that he was gone for the weekend and had left at noon.
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> Monday and Tuesday went by. Each day I was told he would be in. All this time, all I was getting was ice packs on my leg so I figured I might as well go home and let someone else have my hospital bed. Perhaps they would have a doctor who would do something for them.
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> So this is what I did. I left the hospital leaving word that the doctor should contact me at home or by letter. It is now over two months later and I have never heard anything from Doctor . I would like to know what the use is of having X-rays and then never getting a report and nothing being done or recommended.

Forestalling Patient Dissatisfaction

One can easily imagine how such a problem could arise. For example, misunderstanding between consultants about who would be in charge over the weekend; unforeseen emergencies arising to fill the consultant's time; physician fatigue and the like. However justified the doctor's activities from Wednesday until the following Tuesday, in the eyes of a patient who felt abandoned, he is an incompetent physician.

The doctor is now troubled by a formal investigation into the circumstances of this case and his competence to practise. The process will be a long one, requiring the best part of a year to resolve. One cannot but reflect that a simple phone call to the hospital floor, placed by the doctor to explain his absence and to make other arrangements to see the patient, would have forestalled this complaint.

Given that the patient's perception of care is such an important ingredient in medical litigation, doctors should remember that adherence to technical excellence alone is not sufficient to keep them "lawsuit-proof". From a medico-legal point of view, good communication is essential to good medicine. It is regrettable that good communication in medicine seems most often to be encouraged in a medico-legal context. Good communication is part of good medicine, from *any* viewpoint.

The importance of this subject cannot be exaggerated. Seventy per cent of lawsuits against CMPA members are discontinued short of an award or settlement. Most often, the case is dropped when it emerges that from a medical point of view the doctor has done no wrong. However, the communication failure which sparked the lawsuit will have cost thousands of dollars for the defence process, to say nothing of the stress imposed on the defendant physician and his or her family. Of all factors which could lessen the burden of liability on Canadian doctors, *better communication with patients* ranks as number one. ■

Reference

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