

The art and science of defensive medicine

I was told at the start of my career that clinicians are involved in a lawsuit once every 5 years. I didn't believe this at first, but after 9 years of practicing medicine and seeing many of my peers become involved in lawsuits, I realized there may be some truth to this observation. I was astounded to discover that in 2007, in the United States malpractice awards totaled \$4 billion.¹

PAs are taught that medicine is both an art and a science. We begin our careers by learning the science of medicine. The art of medicine, less clearly defined but intricately related, is developed by using clinical intuition to dissect and diagnose difficult manifestations of disease processes. Unfortunately,



clinicians have no crystal ball with which to predict the future and few opportunities to change patient assessments or treatment plans. Diagnoses are based on the patient's condition at presentation. Even when our treatment protocols follow the accepted standard of care, we have no way of knowing how a patient will respond and no guarantees that the patient will adhere to our treatment plan.

Yet, we are often held accountable for both of these in a court of law. Is there now a legal component to practicing medicine? If so, should defensive medicine tactics be included in PA program curriculums?

Historically, many people revered clinicians because of their ability to deal with death, disease, and devastation, and to persevere to find a cure for the patient's illness. The tide has turned, however, and some clinicians are now told they have a "God complex." Yet in many malpractice cases, clinicians were expected to have been able to predict and prevent every possible adverse event without regard to the probability of a negative outcome. How could a clinician know that 6 months after having a mild cough from a cold, lung cancer would be diagnosed in a patient? Or that a seemingly simple case of cellulitis would regress and require more aggressive treatment? We make our assessments and treatment plans with only the information available to us at that moment in time. In contrast, lawyers can use hindsight to find loopholes and supposed failures in our treatment strategies. Finding a fault in what was done after an adverse event occurs is easy.

Clinicians typically get some sense of security from basing their diagnoses and treatment plans on the science of medicine. However, many lawsuits are based solely on patient outcomes. Plaintiffs' lawyers convince the jury that if the patient experienced a poor outcome, the clinician must have made a

mistake. Jurors are humans and can be swayed by emotion, especially when the outcome was a death. The science of medicine may define the appropriate standard of care, but the plaintiff's lawyer's ability to sway the emotions of a jury often determines a verdict.

Many of my colleagues practice defensively. They will order a diagnostic test, even if they believe it may be unnecessary, in order to protect themselves from potential lawsuits. Is this fair to the patient, the clinician, or even the taxpayer? Doctors are not sued because they ordered too many tests; unfortunately, they can and will be sued for not ordering a test. Frank deviation from the standard of care should not be tolerated. But should an unpredictable consequence of a disease be punished severely, if at all? Laws should protect patients from frank deviations of care but should not punish clinicians for unpredictable outcomes.

Two things can improve the current system: First, malpractice cases should be removed from the regular court system. A special malpractice court should be created, similar to a patent court, with only people who have medical knowledge and experience serving as jurors. A jury should be a panel of our peers; however, those with medical knowledge are the first to be excused during jury selection. Second, a forum should be created specifically for discussing malpractice case outcomes and promulgate that information to the broader medical and lay communities. This will disseminate the information to help us learn from what went wrong and see where changes may be needed.

Should we teach our students to practice medicine in a manner that will prevent potential lawsuits but have a net effect of increasing health care costs? I say, "No! We should not." We can either lie down in retreat or stand up and fight. No one state, person, or society can fight alone. While reforming health care, we should also be working towards tort reform. The money once spent to settle frivolous malpractice lawsuits and to perform extraneous tests that only serve to avoid potential litigation can be funneled toward care for the uninsured and elderly. In the meantime, PAs should remember the reasons why we entered the field of medicine, resist becoming jaded when exposed to the devastation of a malpractice suit, and continue to teach our students the treatment protocols that serve the best interests of patients. [JAAPA](#)

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