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Risk Management for the Family Physician

Malcolm H. Weiss, MD

SUMMARY

This chapter focuses on legal, clinical, and risk-management issues that create pitfalls for the family physician. Examples of legal issues are vicarious liability and ostensible agency. Clinical issues include the timely diagnosis and treatment of conditions such as cancer and heart disease. Difficult-to-diagnose conditions such as pulmonary emboli and dissecting aortic aneurysms are also discussed. Risk-management issues that can destroy an otherwise viable defense are also noted. These include record tampering, failure to obtain informed consent or informed refusal, and the practice of treating patients over the telephone. The importance of the contemporaneous medical record is stressed.

Key Words: Risk management; informed consent; record tampering; standard of care; prescription errors.

INTRODUCTION

Failure to consider the medical-legal context in which medicine is practiced can undermine the defensibility of good medicine. Consider the case of a middle-aged man who was diagnosed by his family physician with chest wall pain and was treated conservatively. He died a

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few days later with an autopsy-confirmed massive myocardial infarction. A lawsuit was filed. Failure to diagnose coronary artery disease was alleged. The family physician reviewed his office record and panicked. There were hints in the chief complaint and history of present illness that suggested heart disease. The family physician altered the original chart entry. A suspicious plaintiff's attorney sent the chart to a laboratory that specialized in detecting record tampering. The lab was able to prove that the record had been altered. Medical care that might have been considered appropriate by a reasonable jury was now clouded by a physician who had lost all credibility. The case was settled for an amount in excess of the policy limit.

Generally speaking, medical malpractice lawsuits are based on allegations of clinical error, medical-legal error, or combinations of the two. This chapter addresses both.

The case just presented is a clear example of a medical-legal error. Had the defendant physician paid heed to the warnings that all physicians receive regarding the alteration of records, he would have avoided an emotionally draining and costly experience.

GENERAL ISSUES AND CONSIDERATIONS

The malpractice crisis is forever upon us. Family physicians continually work under the threat of litigation. In addition, there is the threat of regulatory sanction for Occupational Safety and Health Administration, Clinical Laboratory Improvement Act, and Health Insurance Portability and Accountability Act violations. There are also penalties for Medicare and Medicaid violations. Private insurers and managed care organizations put additional pressure on physicians. It seems as though family physicians live their entire professional lives under a microscope. The stresses under which they live and work direct their attention away from clinical medicine and increase the chance for error.

Family practice is a specialty in breadth rather than depth. Its responsibilities cross almost all other specialty lines. As gatekeepers, family physicians are expected to make the correct diagnosis in a cost-effective manner. As referring physicians, they are expected to make timely referrals to appropriate specialists. As treating physicians, they are held to the standards of each relevant specialty.

UNFORESEEN LEGAL PITFALLS

Under the doctrine of vicarious liability, a family physician can be held liable for the actions of another physician when a patient reason-