How to Recognize and Handle Potentially Litigious Patients

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Urgent message: *Although any urgent care center could potentially face litigation at any time, the risks of being sued can be reduced by focusing on provider behaviors that build strong relationships with patients, by recognizing patient behaviors that may increase the odds of litigation, and by having a plan for handling dissatisfied patients.*

> Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property.
>
> —Jean de la Bruyère

Lawsuits do not discriminate. They are filed against all types of health-care providers—new or experienced, group practice or solo, employee or independent, and regardless of specialty or facility setting. Lawsuits can involve an enormous amount of stress. In cases when I have been involved on the defense side, I have seen health-care providers start to second-guess their medical opinions, lose sleep at night, and even begin to wonder why they entered the profession at all. Sometimes the provider is stunned that a lawsuit was filed, particularly if the patient had a positive outcome. In other cases, the provider realizes, in hindsight, that there were some red flags (**Table 1**) along the way.

The Best Defense Is a Good Offense

It is much easier to prevent a lawsuit proactively than defend one that has been filed. Some provider behaviors can help foster good relationships with patients and reduce the chance of lawsuits.

- **Good bedside manner and rapport matter:** Make direct, eye-to-eye contact with patients, ask them questions, listen to their answers, and do not interrupt. Most patients know that a health-care provider's time is limited, but the quality of the time matters too. In electronic medical record settings, look up at the patient instead of just typing. Focusing on the screen instead of the patient might lead you to miss some important nonverbal cues. If a patient is visibly upset or crying, acknowledge it—do not ignore it because you are uncomfortable. You could say, "I'm sorry you are worried about this. Let's get some tests done."
- **Keep it simple:** Although you have had medical training, your patient has not. Avoid using complex medical terms and abbreviations. Patients may even nod while you are talking, but they may actually be confused and too embarrassed to ask for clarification. A confused patient may not follow instructions, take medications as prescribed, or understand the consent process.
- **Take the time:** You may have done this procedure many times, but it is likely the patient's first time to undergo it. A careful explanation of the risks, benefits, potential complications, and alternatives to a proposed procedure can go a long way in minimizing confusion and managing expectations. Patients may not remember what a provider tells them verbally, but encourage them to review written information that you give them, such as a brochure or information sheet. If you delegate the consent discussion to another health-care provider, is the information provided accurate and are you notified if patients still have questions or are confused?
- **Think organic:** When you ask what medications patients are taking, be sure to ask about herbal supplements too. Some patients may consider these to be safe, but these substances may adversely interact with the patient's current medications or what you might prescribe.
- **Communicate the results:** It may be a simple or common test to you, but many patients feel worried, frustrated, and helpless waiting for the results of laboratory

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Table 1. Traits and Behaviors of a Patient Likely to Sue an Urgent Care Center

- Frequently changes health-care providers, especially within the same specialty
- Has been discharged from another provider's practice
- Openly complains about another provider
- Complains about every aspect of their visit with you (forms, copayments, the long wait,[a] parking, etc.).
- Ignores provider instructions
- Fails to keep follow-up appointments
- Has unrealistic or vague expectations, especially for elective or cosmetic procedures
- Has previously sued their provider, employer, contractor, neighbor, etc.
- Filed a complaint with a government agency such as the Equal Employment Opportunity Commission, the U.S. Office of Civil Rights (Health Insurance Portability and Accountability Act), or the state medical board, or with a health-care accreditation agency such as the Joint Commission
- Has a pending lawsuit (workers' compensation, personal injury, business dispute, etc.) or has obtained a money settlement
- Is demanding, rude, or hostile to your staff members
- Challenges or criticizes your initial diagnosis with their own layperson research
- Has requested a copy of their medical records from your office. It is possible that the patient is moving and wants to give the records to a new provider, but it is more likely that the patient is involved in a lawsuit or is obtaining the records for legal or medical review.

[a] For best practices on decreasing wait time and changing patients' attitudes about wait time, see "Improving the Patient Experience by Thinking Differently About Waiting" in the October 2015 issue of the *Journal of Urgent Care Medicine*: http://www.jucm.com/improving-the-patient-experience-by-thinking-differently-about-waiting/.

or other tests. Do not underestimate how important the result is to patients—they could be searching the Internet and imagining the worst. When communicating a result, keep in mind an abnormal result can cause great stress and anxiety—especially if it includes the name of a disease or specific words such as *cyst*, *tumor*, or *carcinoma*. Make sure your staff members are not casual or dismissive when communicating results that could upset a patient. They should also let you know if a patient is upset or has questions, so that you can follow up.

- **Do not ignore patients' messages and questions:** Do not assume that a patient's call to the office is irrelevant. For example, after an office visit, they might go home and read the actual medication name on their prescription bottle and realize that it is different than what they told you, because there are so many similarly sounding names. Call the patient back and document your attempt at clarification. Also, if you receive new or different information than previously provided, document when (date and time) it was provided to you.
- **Your staff reflects on you:** Staff members should be polite, courteous, and helpful, both in person and on the phone. They should not be texting or using social media in between patients or during a slow part of the day. Also, they should be positive and not complaining in front of patients.
- **When writing or entering prescriptions, slow down:** Try to avoid cursive handwriting. Instead, print the name of the medication and the dosage, and spell out abbreviations. Also, use trailing zeros. For example, use *0.3 mg* rather than *.3 mg*, which reduces the chance that *.3 mg* could be misread as *3 mg*. For lists of commonly confused drug names and abbreviations, visit the website of the Institute for Safe Medication Practices.[1]

Recognizing Patients Who May Be More Likely to Sue

Proactive behaviors will not prevent all lawsuits. Some patients will sue despite the provider's best efforts and despite a positive outcome. Table 1 outlines some characteristics that appear to be more common among litigious patients. Remember—these are only generalizations, and exceptions will certainly apply. (For example, a patient's prior lawsuit or complaint might have been legitimate.) Keep these potential factors in mind, though, especially if a patient presents to you with many at the same time.

Dealing with Unhappy, Complaining Patients

If a patient is unhappy and complaining, take the time to listen and see what can be done to resolve the situation. You are not only resolving a patient dispute; you are also providing good customer service to a potential referral source. It may be a minor misunderstanding or an office staff issue that you can address and move on. A quick phone call from a provider could also be meaningful and resolve the matter. For example, you could say: "I'm so sorry for your inconvenience—I agree that my staff should have called you to cancel your appointment when I was out of town. Let's get you in right away. When is convenient for you?"

Even though a patient might be complaining just to vent (or to try to have a bill reduced), do not assume that this is the case. You might learn about a legitimate issue that you should correct. Document the patient's complaint and the steps you took to investigate, even if the complaint turns out to be false, exaggerated, or unfounded. Also, document the steps you took

1. http://www.ismp.org/tools/confuseddrugnames.pdf; http://www.ismp.org/tools/errorproneabbreviations.pdf

to resolve a complaint, including follow-up calls and other support provided to the patient. If a patient is belligerent, hostile, or rude to staff members, these instances should also be documented. Use quotations when possible to capture the patient's exact words, especially for threatening statements.

If a serious adverse patient outcome occurs with a potentially litigious patient, keep in mind that *what you suspect happened might not actually have happened*. The facts are not immediately known, but they will be investigated. Do not let your gut instinct or the outcome itself move you too quickly to label something as a medical error. Sometimes an adverse outcome occurs in the absence of negligence. However, once a health-care provider admits an error to the patient or family (especially a litigious one), that admission cannot be taken back later—even if the facts or an expert review later show that no error occurred.

Depending on state law and the type of facility in which you practice, there may already be a mandate for you or the facility to self-report certain types of events. These reports can be made, within the applicable time requirements, by the proper person and when the facts are known (or at least better known). In the meantime, before you decide to communicate with a patient about an adverse outcome, consider the following:

- **Apology laws:** Many states have laws that specifically protect a provider's expression of sympathy, apology, mistake, or error to the patient or family regarding an unanticipated outcome from being used as evidence against the provider in a later lawsuit. Each state's laws differ, so be sure to confirm with legal counsel whether your state has an apology law and, if so, what it says.
- **Cooperation clauses:** Some insurance policies contain a cooperation clause. This type of clause states that the insured (the provider) cannot make a payment, admit liability, settle a claim, assume any liability, or incur any expense, unless the insurance company has provided written consent. You would not want a well-intended statement about an adverse outcome to jeopardize your insurance coverage. Discuss the incident with the insurer or the attorney assigned by the insurer. Confirm with your insurer whether it is appropriate to make such a disclosure and whether your insurer will provide you with *written* permission to make the disclosure.

Terminating the Provider–Patient Relationship

Even when there is no adverse patient outcome, there are times when it is best to part ways. Review the patient's record to confirm whether it documents facts and events, at the time they occurred, that would objectively support a proper decision to terminate, such as the patient's repeated noncompliance or rude behavior toward staff members. Check your managed-care and payor contracts to see if there are additional notice or procedural requirements you must fulfill before you can terminate the relationship. (If you are considering terminating a relationship because of nonpayment by the patient, first consider establishing a payment plan.) Comply with your state's laws and medical board regulations to avoid an allegation of patient abandonment. (Many state medical boards and insurers provide guidance on how to notify patients, plus sample letters.)

Generally, a letter to a patient terminating the relationship specifies the following:

1. Thirty days' advance written notice
2. The provider will be available for only emergency care within those 30 days
3. Objective facts as to why the relationship is being terminated
4. A publicly available way for the patient to find another provider (such as checking with a health insurer, a medical society, or a local hospital website)
5. The patient should dial 911 or go to the nearest hospital emergency department (ED) if there is a medical emergency
6. How the patient can obtain a copy of their medical records or have the records sent to a new provider, if an enclosed authorization is signed that is compliant with the Health Insurance Portability and Accountability Act

There are two final caveats:

1. If the patient is in the middle of ongoing care for a serious condition, such as dialysis or chemotherapy, consult legal counsel and consider ways to provide notice, and *then* transition the patient to another provider selected by the patient, so as not to interrupt or delay ongoing treatment.
2. There are federal (and often state) obligations for patients who present to a hospital's ED. If you terminated a relationship with a patient from your office practice but the same patient presents to you in the ED while you are working an extra shift there, you should fulfill your EMTALA (Emergency Medical Treatment and Labor Act) obligations by seeing the patient in the ED setting.

Conclusion

Where medical practice, business, and the general public meet in urgent care, lawsuits are bound to eventually occur. For the urgent care provider or operator, the risk of litigation can be reduced by communication that demonstrates caring and competence, by recognizing the traits or behaviors that signal potentially litigious patients, and by having a plan for service recovery or terminating the provider–patient relationship for patients who cannot be satisfied. Although these efforts can reduce the chance of lawsuits by demonstrating that the provider cares (and also can alleviate patient angst), such efforts can also help create positive patient experiences that lead to practice success in repeat visits and good word of mouth. ■