Landmark Lawsuits: Medicine Meets Malpractice

Scott DeBoer RN,MSN,CPEN,CEN,CCRN,CFRN,EMT-P

Founder: Pedi-Ed-Trics Emergency Medical Solutions

Scott@PediEd.com

"The law only codifies what we all learned in school: EMS providers have a duty to respond, a duty to act, a duty to perform a thorough assessment, a duty to appropriately treat the findings of that assessment, and to transport where necessary. It's not brain surgery, it's EMS."
(David Givot JD)

Landmark emergency care lawsuits

Cases

Casts

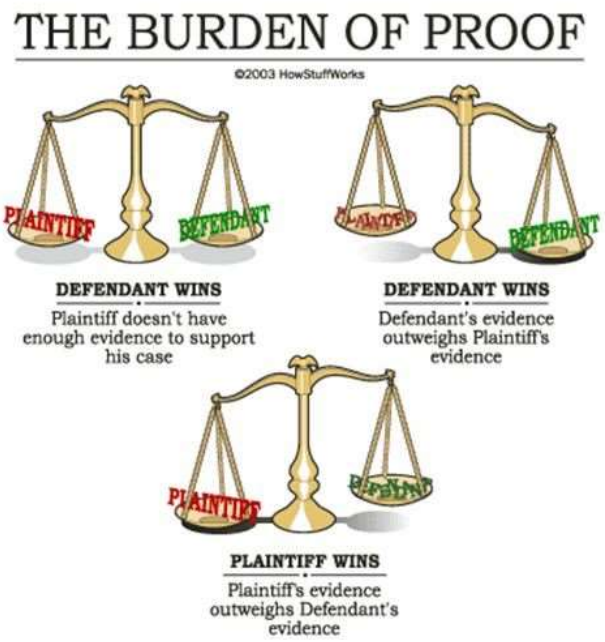
Courts

These educational materials are designed to provide accurate information in regard to the subject matter covered. This program is presented with the understanding that the speaker is not engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Florida Statutes defines standard of care as:
766.102 Medical negligence; standards of recovery; expert witness.—
(1) In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider as defined in s. 766.202(4), the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

Civil Case

- Case is brought to court by a party called the plaintiff (an individual or a group of people) who bring a complaint against another party.
- The party who answers a complaint and defends against it is called the defendant.
- Ex. *Burke v. Techno Corporation*



How Does a Lawsuit Work?

BASIC STEPS IN THE CIVIL LITIGATION PROCESS

Civil lawsuits arise out of disputes between people, businesses, or other entities. The 4 basic steps are as follows:

1. Pleadings

2. Discovery

3. Trial

4. Appeal

3 ALTERNATIVES TO LITIGATION

SETTLEMENT

Settlement, usually a cost-effective alternative to trial, can be discussed by any party at any time during litigation.

MEDIATION

The parties could negotiate a settlement without outside help, but it is common to involve a "mediator," which is a neutral third party. Neither party has to agree on a settlement.

ARBITRATION

Arbitration is an adversarial proceeding where each party selects an "arbitrator," a neutral third party, to resolve their dispute. Parties who agree to settle their dispute using binding arbitration typically cannot appeal the arbitrator's ruling.

PLEADINGS

Each party in a lawsuit files initial papers, known as "pleadings," which explain each party's side of the dispute. Litigation begins when the plaintiff files a complaint with the court and a copy is formally delivered to the defendant. The defendant is given a specific timeframe to file a response to the complaint.

DISCOVERY

Discovery, typically the longest part of the case, is the method by which parties gather information about the case from each other or from third parties. A claim or defense often requires support from expert witnesses to validate an argument or explain technical information or. Before trial, the parties may use motions to ask the court to rule or act.

TRIAL

At trial, the parties present evidence in support of their claims or defenses to a jury and/or judge. Each party provides to the judge a document right before trial, called a "brief," that outlines the arguments and evidence to be used. A party has the right to challenge a jury's verdict. The party who succeeds at trial will usually file a motion requesting the court to order the losing party to pay the prevailing party's costs to prosecute or defend the case.

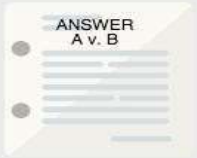
APPEAL

If a party is dissatisfied with the result of the trial, it may appeal, which is when a party asks a higher court to evaluate the trial court proceeding. The parties present their arguments in briefs, which are then submitted to the appellate court with the record of evidence from the trial court.

FLOW OF A LAWSUIT

by Andrea W. S. Paris
www.andreaparislaw.com

Highly Simplified - Real Lawsuits Don't Flow so Nicely



Complaint Filed
by Plaintiff

Complaint **Served on Defendants**

Response Filed
by Defendant

Depositions
by both sides

Discovery
Like an investgiation - written questions & answers, getting documents, interviews

Research & Strategy

Mediation
(optional) if you're lucky the case ends here. If not, continue on.

Trial Preparation

Trial
by a judge or jury

Verdict
winners
losers

brought to you by :

Law Office of Andrea W. S. Paris
Employment | Business Attorney
www.andreaparislaw.com

Givot, D. Negligence explained for the EMS Professional. www.EMS1.com

(Verbatim Summary)

Negligence and the EMS Professional

One legal issue that affects every emergency responder is negligence. To be honest, I don't recall learning much about negligence in EMT school. But then again, that was nearly 30 years ago.

When I became a paramedic in 1989, I was told vaguely that negligence was a foul but generally hidden monster that could kill my career. As far as I knew, good patient care and following procedures would keep me insulated from the threat of any legal action. I found out I was very wrong. I was WMDs-in-Iraq wrong.

While a negligent act can certainly carry a devastating cost, understanding negligence and how it fits into a provider's daily life can help keep the monster at bay. In a simple summary of what I will cover, negligence arises when:

- There is a **duty** to act
- There is a **breach** of that duty
- The breach **causes** an affect
- **Damage** has been inflicted to another

Duty
Each of us owes a general duty of care to everyone — the duty not to intentionally harm anybody and to try not to do anything too stupid.

Legally speaking, there is a general duty "not to behave in such a way as to endanger the well-being of others." I like my description better.

EMS professionals, on the other hand, owe a much greater duty to the community while on or off the job. Providers have the duty to act as would a "prudent, reasonable EMS provider with the same level of training, in the same community, and under similar circumstances." That's the legal description.

Breach
The concept of breach is simple: You did something that you had a duty not to do, or you failed to do something that you had an absolute duty to do. The concept of breach does not consider whether anyone was hurt or even affected by your act (or non-act). It only considers your behavior relative to your duty.

Causation
Here is where things get a little sticky.

When you breach a duty (as defined above) **AND** your breach is the direct cause of damage (I'll get to that in a minute), then you will be considered a cause of the damage.

But the law generally requires that you also be the proximate (most direct) cause. Thus, it is possible for your breach to cause damage, but if there are unforeseeable, superseding or intervening factors, you may not be completely liable or even negligent.

That was fairly basic, but it gets harder.

Anytime a duty exists and you fail to comply with it, you become part of a potentially long chain of causation and your portion of the damage may be actionable.

It gets even more confusing, but I will leave it at this: For a negligence act to hold, the act must cause some harm or result in some damage to another. When you run a stop sign without incident or negligently hang D5W instead of normal saline, but no harm is done, then no action for negligence will hold. However, if the same actions result in the minutest of damage, then not even the best excuse in the world will likely help you.

Damages
Any physical, financial, and sometimes emotional injury caused by the breach of a duty can constitute this final element of negligence.

Damages commonly are medical expenses, lost wages, physical damage to property, and manifested emotional distress.

The important thing to know about damage is this: the idea is to make the damaged person whole and to place him back in the position he would be in prior to the negligent act. Civil law seeks to do that through cold, hard cash — your cold, hard cash.

If you are driving recklessly with your lights and sirens and you smash up someone's brand new car, you just bought that car. If your failure to properly treat a spinal injury results in damage that would otherwise not have been sustained, it's coming out of your pocket. If you negligently tell a family member that a loved one is dead…and they're not, you could be made to pay dearly.

To truly understand negligence, one must study volumes of text, review decades of case law, and comprehend complex legal theory. You don't need to do any of that.

To protect yourself against a negligence claim, simply do the following:

- Behave in such a way as to protect and defend those around you from harm
- Act within your scope of practice at all times
- Act in accordance with local protocols and procedures at all times
- Serve to maintain the dignity of each person with whom you come in contact

- Continuously repeat the above steps

Emergency Medicine Medical Malpractice Claims Statistics

www.medicalmalpracticelawyers.com

(Verbatim Summary)

The results of a recent study of medical malpractice claims involving emergency medicine that were closed between 2007 and 2013 by the largest physician-owned medical malpractice insurance company found that issues related to diagnosis are the main reason that emergency room physicians are sued for medical malpractice and is the top cause of injuries suffered by patients.

The study analyzed 332 emergency medicine claims that the medical malpractice insurance company closed during the relevant period (2007 to 2013). The study found that the medical conditions that were most often misdiagnosed in the emergency department were acute cerebral vascular accident, myocardial infarction, spinal epidural abscess, pulmonary embolism, necrotizing fasciitis, meningitis, torsion of the testis, subarachnoid hemorrhage, septicemia, lung cancer, fractures, and appendicitis.

The Four Most Common Patient Allegations In Emergency Medicine Claims

The study found that the most common claims (57%) were diagnosis-related, involving allegations of failure to diagnose, delay in diagnosis, or wrong diagnosis, and sometimes involved the failure to obtain a consult or discharge too soon from the emergency department.

The second most common patient allegation involving emergency medicine (13%) involved allegations of improper management of treatment, including the failure to stabilize a patient's neck following an accident with trauma to the head and neck that resulted in paraplegia, and failure to explore a wound that was infected or found to contain foreign bodies.

The third most common patient allegation involving emergency medicine (5%) involved allegations of improper performance of a treatment or procedure, including intubation, suturing, x-rays or imaging procedures, and insertion of an IV or central line for medications.

The fourth most common patient allegation involving emergency medicine (3%) involved allegations of failure to order medication, including the failure to order antibiotics in cases of suspected pneumonia resulting in death, fever that resulted in sepsis and death, localized infections that spread, and the failure to initiate fibrinolytic therapy in acute MI or stroke patients.

The Six Top Factors Contributing To Patient Injury

The study found that 52% of the emergency medicine medical malpractice claims that contributed to patient injury involved patient assessment-related issues, involving the failure to establish a differential diagnosis, failure to order diagnostic tests, failure to address abnormal findings, and the failure to consider available clinical information.

The second top factor contributing to patient injury (21%) were patient factors, including physical characteristics (such as obesity) and patient behaviors (such as non-adherence with treatment plans or follow-up appointments).

The third top factor contributing to patient injury (17%) involved communication among providers, including the failure to communicate, the failure to review the medical records, and poor professional rapport.

The fourth top factor contributing to patient injury (14%) involved communication between the patient and/or family and providers, including poor rapport with the patient and communication issues involving inadequate patient education of follow-up instructions or language barriers.

The fifth top factor contributing to patient injury (13%) involved insufficient or lack of documentation, including inadequate documentation involving clinical findings, follow-up efforts, history, and telephone advice to patients.

The sixth top factor contributing to patient injury (12%) involved workflow and workload, which may occur at times of limited staffing and/or services, such as weekends, nights, and holidays, and may involve the level of activity and chaos in the emergency department.

Givot, D. How to avoid documentation disasters. www.EMS1.com

(Verbatim Summary)

"If you didn't write it, you didn't do it." That may be the oldest and most tired cliché in all of EMS and it is not exactly true.

Likewise, "paint a picture & tell a story," is another biggie in documentation classes. I happen to agree with that one; unfortunately many providers are painting the wrong picture and telling the wrong story because they are not thinking about their audience. They are not considering who will be reading their report and why. Not to worry. I can fix it.

Contrary to popular belief, patient care reports are not created for the singular purpose of feeding the voracious appetites of greedy lawyers. However, at feeding time, lousy documentation — and your career — make for a nice meal and there are plenty of sharks eager to take a big bite out of your assets.

Like every call, every report is unique. There is a specific series of events (or non-events) that must somehow be recorded in a way that both shows and tells the reader what happened, and clearly describes your reaction to it. At the same time, for better or worse, the reader will gather some insight about your appreciation of the circumstances that brought you to the scene, your assessment of everything, your understanding of associated protocols, and your application of technique. That is a boatload of information for one narrative and how you communicate it will depend on who will be reading it, and why.

The BIG Five
1) Write for the Attorney who is suing you over this call (sad, but true)
2) Organize as if you expect to see the report projected onto a giant screen in a courtroom — because it will be
3) Assume that the person reading your report (and the jury) knows nothing about anything that happened while you were on the scene
4) Make the reader understand WHY you didn't treat or transport
5) Presume nothing and leave nothing [relevant] to the imagination

As you can see, knowing the audience for your documentation is as important as everything else an emergency provider has to do, perhaps more so if knowing the audience leads to greater diligence and better care.

Givot, D. 3 ways to protect yourself from EMS patient lawsuits. www.EMS1.com

(Verbatim Summary)

The lawsuit may be a bunch of crapola, but you need to take precautions to make sure it goes away as fast as it comes up.

Not to worry, though. Your own protection and security are as easy as these three steps.

Step 1: Get your facts straight

Take a minute; take a breath. Remember that the call you make to medical control is recorded and you have to assume that recording is going to be played back for an entire courtroom to hear.

Before you make that report, be certain you understand what is going on. Make sure you have enough relevant information to paint the appropriate picture without having to say "stand by" or "I'm not sure, let me check."

Also be sure that the information you are relaying is correct and be clear in your own head before you start speaking; too many pauses, "ums" and "ahs" will not only frustrate the person on the other end, but it will create the appearance that you are clueless.

Step 2: Be predictable

Follow a prepared, consistent format. Deliver each report in the same organized manner, following the same systematic formula every time.

If you follow the same format on each and every call-in report, you will be far less likely to miss anything and far more likely to paint the proper picture and get the necessary orders without delay or confusion.

Step 3: Make it match

All too often, providers forget that the recorded call-in reports to medical control are a form of documentation, and the recorded report and the narrative on the written patient care report are frequently at odds.

Be sure that the content of your call-in report matches the content of your narrative documentation. Once again, a prepared and practiced formula or consistent system for documenting will help assure that nothing is missing and that the correct picture is painted.

Think about the lawsuit proposed in this hypothetical scenario, and the excerpt of the call-in report on which it is based. You will quickly see that if you are the provider, and your documentation is as clear and organized as your report, you have nothing to fear.

Another lawsuit bites the dust.

Gandy, W. & Grayson, S. The EMT in Court. www.EMSworld.com

(Verbatim Summary)

Most medics would rather endure an enema than face the prospect of testifying in court. But you need to be prepared for the day when a process server pays a visit to your station and delivers a document that begins:

"YOU ARE COMMANDED to appear at the time, date and place set forth below to testify … [and further] … You, or your representatives, must bring with you the following documents, electronically stored information or objects, and permit their inspection, copying, testing or sampling of the material…"

There follows a long list of items that may include patient care forms, protocols, policies and procedures manuals, and even your income tax returns for the last few years.

After the shock wears off, you set about trying to understand why this affliction has been visited upon you. The best case scenario is one where you simply rendered care to a patient who's suing the person who injured her, or where you rendered care to the victim of a crime. You're simply being called to testify to the extent of the patient's injuries as you found them—a so-called "fact witness."

The worst case is when you're the defendant in a lawsuit, being sued for damages by a former patient. You're being called to a deposition where you are, essentially, going to be made to give testimony against yourself.

In either case there are some important things to understand. First, even though the lawyers may seem intent upon ripping your heart out and depicting you as Satan's helper, for them it is not personal—it's just business. They have a job to do, and they do it routinely, the same way that you start IVs and dispense oxygen. It's just their job.

Second, there are ways for you to prepare and present yourself in the best possible light, making the opposing lawyer's job hard.

Here are some basic rules for testifying, either in court or at a deposition.

Be Prepared

Review every document available pertaining to the matter in question, starting with the patient care report. It's usually at this point when you'll fully begin to understand why you should have paid better attention in class during that boring session on documentation, the one where you fiddled with your smart phone and tweeted and played solitaire during the lecture.

You see, the opposing lawyer will study your PCR in great detail, have a paramedic expert go over it with a fine-toothed comb looking for defects, study your protocols and standing orders, search textbooks and journals for current standards of care, and compare your actions against them.

We've all heard the adage, "if it wasn't documented, it wasn't done." Keep that in mind as you review your documentation. Since you'll often provide testimony years after the fact, don't pretend you can remember details of the case, because you won't. You're at the mercy of your own documentation.

So, review your PCR and the story it tells, because that's the story it will also tell the jury, if there is one, or the judge if there's not. But don't try to memorize your testimony. That doesn't work. Begin your review days before the scheduled testimony and go over it again and again. The better you know the case, the better you'll do.

In a typical trial there are going to be many witnesses. While jurors will listen attentively to you, they'll inevitably forget exactly what you said or confuse what other witnesses said with your testimony. But when they retire to the jury room to deliberate, your documentation will be there for them to study. This is the document they'll use to remember what you said, and this is the document that will tell your story. This is your chance to tell a story that's either favorable or devastating to your side. At minimum, your documentation should prove you provided the requisite standard of care.

Know Your Case

Be prepared to define and explain every single word and medical term you wrote. Check your spelling, and if you find that you misspelled a term, be prepared to say, if questioned, "Yes, ma'am, I sure did misspell that. That's what happens sometimes when you're in a hurry trying to get ready for the next call. The correct spelling is H-E-M-A-T-O-M-A." That takes the sting out of the other lawyer's point. Of course, you could have just written "bruise" in the first place and you wouldn't have had to explain it.

When documenting, resist the impulse to "show off" by using highfalutin medical words. You won't impress anyone and if you use a term incorrectly you'll get nailed for it.

Remember, the jury likely won't understand that the patient had "a hematoma at the right greater trochanter." You must be prepared to explain everything you wrote in detail.

Also prepare to explain how the devices you use work. If you're asked to explain what a pulse oximeter reading means, you must also be able to explain what a pulse oximeter is and how it works. If you're asked to explain an ECG strip, be prepared to dissect it, explaining it as though you're teaching a rookie class about it—because that's what your judge and jury will, in effect, be.

But don't assume the lawyer doesn't know about those things. He or she will be thoroughly briefed and educated by their expert and may, in fact, be a physician or nurse as well as a lawyer.

Lawyer Preparation

Will your lawyer prepare you adequately for your testimony? Don't count on it. If you're called by an assistant district attorney, understand he or she may not even look at the case until the morning of the trial, and may or may not have time in advance to discuss your testimony. But the more important the case is, the more time you can expect they'll spend preparing you.

If you're testifying in a civil case as a fact witness, you have the right to have a lawyer with you. Some insurance policies available to medics will provide legal representation for depositions and court testimony even when you're only a fact witness.

If you're a defendant, insist your lawyer spend enough time with you prior to the court proceedings to ensure you're comfortable with your testimony. Often your lawyer will work for the insurance company that's defending both you and your service, and he or she may be more interested in your agency's interests than your own. If you sense any conflicts, consider retaining your own lawyer. For this reason, it may be prudent to carry your own malpractice policy even though your service or municipality is insured.

Tell the Truth

Be truthful, honest, direct and answer simply. An old lawyer's advice to clients is this: "If you're asked what time it is, don't explain how to construct a timepiece." Listen to the question, think about your answer, and answer only the question asked. If you're asked, "Do you know what time it is?" your answer should be either yes or no. If you're asked to tell the jury what time it is, say the time and stop. Do not anticipate a lawyer's next question. Do not go beyond the answer to the immediate question. An opposing lawyer loves nothing more than a "runaway" witness. He will allow you to go on and on, digging your grave a little deeper with every statement you make. Don't let that happen.

Never answer with a guess. If you don't know, say so. If you don't understand the question, simply say, "I am sorry, but I don't understand," or "I don't understand. Can you repeat the question in a different way?"

If you're asked to recall something you don't, say, "I don't recall." If you think the answer is in your documentation, say, "May I refer to my call documentation?" And you will be able to do that. Take your time, find the item you are looking for and then state, "I wrote in my documentation [and say whatever you wrote]." If you have no present recollection, NEVER attempt to fabricate. Just say, "I'm sorry, but I don't recall."

It's best that you don't take personal notes that aren't a part of the official medical records with you into court, because anything you refer to may be inspected by the other side.

Don't try to be cute. In gambling the rule is never to play "the other man's game." In court, it's the lawyer's game. In the back of the ambulance it's your game, but in court you cannot win the lawyer's game.

Before you answer, be sure your lawyer is not going to object to the question. Give your lawyer time to enter an objection. And if lawyers for both sides start talking, stop and don't start again until the judge or lawyers instruct you to.

And always address the judge as "Judge," or "Your Honor."

Look and Act Professionally

Dress professionally. Wear your uniform if it's appropriate. The jury will form its first impression of you as you walk into the courtroom and take the oath. If you don't have a nice uniform, then dress as you would for church or a professional job interview.

Never chew gum or tobacco in court. Turn your cell phone and pager off.

Be polite at all times. Don't allow the opposing lawyer to make you angry. Opposing lawyers like nothing better than making you angry and throwing you off stride.

Don't visibly reaction to a question. Keep a calm, steady and professional demeanor at all times.

Communicate Effectively

Address only the people with whom you're trying to communicate. If you're being deposed, you'll most likely be in a conference room at a lawyer's office. There will be a long table, and you'll sit at the head at one end. Lawyers will be on either side. The court reporter recording your testimony and the videographer filming it will be at the opposite end.

Remember, the camera is your "audience" for a deposition, because if your deposition is shown in court, the judge and jury will see what the camera saw and recorded. So look toward the camera and talk to it. Usually, but not always, the videographer will stand or sit next to the camera, so that's a "human" you can talk to. Or, simply pretend the camera is somebody you like very much and talk to it as if it were a person. That's not easy, but you can learn to do it.

Sit close enough to the microphone so you can be heard. Speak slowly and loudly. If the judge admonishes you to "speak up" be sure you keep your voice level so everyone can hear you. Remember the court reporter must record everything said, so never talk over someone else. Always answer verbally. Do not nod yes or no, or say "uh-huh."

If you're in court, you'll be in the witness box and your audience will be the jury, if there is one, or the judge. Now you'll have to shift your gaze as appropriate. Look at the lawyers when they're talking to you and asking questions, but when you answer, turn and talk to the jury or, if appropriate, the judge. Testifying is all about communication. Whether you're a fact witness or the defendant, your job is to tell your story to the finder of fact in a way that's both believable and persuasive. Make your testimony a conversation. Establish eye contact with each and every member of the jury, and do so repeatedly. Talk to them as you would a friend and make them your friends. You also may have to teach them about the condition of the patient and what you did for them. Be prepared to explain each intervention and treatment you performed in detail.

Approach them as if you were teaching a brand new medic student. Watch their reactions. Are they paying attention? Are they smiling or frowning?

Never answer a question with a question of your own. That makes you appear argumentative and unprofessional. Never argue. Always show professional courtesy.

Be positive and confident, but not overbearing. Try not to allow yourself to get trapped by saying, “I never” or “I always” when describing your approaches to treatment. Realize things are seldom that absolute.

Be aware that lawyers will try to ask you questions that suggest your answer. The opposing lawyer can ask you leading questions, so beware of the question that begins, “Wouldn’t you agree that…?” Listen carefully and frame your answer carefully.

There’s nothing wrong with spending a little time formulating your answer. If you need more time, try taking a drink of water. But avoid giving the appearance of attempting to avoid the question.

While testifying can be stressful, careful preparation will alleviate some of that stress and enable you to communicate effectively and persuasively with the lawyers, judge and jury.

10 Things That Will Get You Sued – Part 1

thetraumapro.com/2017/08/28/10-things-that-will-get-you-sued-part-1-3/

TheTraumaPro

Many trauma professionals believe that they can only be sued if they make a medical error and some harm occurs. Unfortunately, this is not entirely true. Yes, this is one obvious way to spark a suit or claim.

Unfortunately, it goes beyond that. Your patient may sue you if they even **believe** that they were harmed in some way, or think that something untoward happened while you were providing care. Here are the top 10 reasons for getting sued and my thoughts on each (in no particular order).

#1. "What we have here is a failure to communicate"

Your interpersonal skills are at least as important as your clinical skills! You may be a clinical prodigy, but if you are an asshole at the bedside, your patients will **never** appreciate your skills. You must be able to listen and empathize with your patient. Sit down, look at them eye to eye. Listen attentively. Don't appear to be in a rush to get out of the room. You'd be surprised at how much more valuable information you will get and the relationship you create.

#2. "Work not documented is work not done"

This is my quote and it's one of my favorites. **Accurate, complete, timely, and legible documentation is a must!** The legibility problem is fading with the widespread use of electronic health records (EHR, although this is creating new problems). Documentation, or lack thereof, will not get you sued. However, if you are involved in a suit or claim and your care is scrutinized, poor or missing documentation will make it impossible to plausibly contend that you did what you say you did.

It's critical that you document every encounter thoroughly enough to be able to reconstruct what you were thinking and what you did. And providing a date and time is absolutely critical. This is especially important when the EHR timestamps everything you enter. Frequently, you will be documenting something somewhat after the fact. Always make sure that it's not *too far* after the fact. Document as promptly as you can, and include the time that you were actually providing the service.

And *never* go back and try to "correct" your documentation, especially if the chart is being requested for inclusion in a suit or claim. If you believe there is an error, create an **addendum** and explain why the correction is necessary. If a suit or claim has been started, do not touch or open the chart without advice from your legal counsel.

Tune in for Part 2 in my next post!

10 Things That Will Get You Sued – Part 2

thetraumapro.com/2017/08/29/10-things-that-will-get-you-sued-part-2-3/

TheTraumaPro

#3. You are responsible for the conduct of your staff

If the people who work for you treat patients poorly, you may be responsible. It is important that your staff have bedside manner at least as good as yours.

#4. Avoiding your patients

Some of your patients may need to contact you, either while in the hospital or while at home. Don't appear to be inaccessible. This is an extension of your bedside manner. Return phone calls or messages promptly, or have one of your staff do so. Make time to meet with patient families while in the hospital. Remember, **you deal with trauma all the time; this is probably the first time they have and it is extremely stressful.**

#5. Ordering a test without checking the result

I presume that if you order a test, you are interested in the result. And hopefully it will make some difference in patient care. If not, don't order it. **But if you do order a test, always check the result.** If a critical result is found, don't assume that "someone" will tell you about it. You are responsible for checking it and dealing with any subsequent orders or followup that is needed.

#6. "What we have here is a failure to communicate" – part 2

Most of the time, our patients have primary care providers somewhere. Make it a point to identify them and keep them in the loop. Provide, at a minimum, a copy of the discharge summary from the hospital or emergency department. If new therapies of any kind are started, make sure they are aware. And if an "incidentaloma" is found (a new medical condition found on lab tests or imaging studies), followup with the primary care provider to make sure that they are aware of it so they can take over responsibility for further diagnosis or treatment.

Tune in for the final installment in my next post.

10 Things That Will Get You Sued – Part 3

thetraumapro.com/2017/08/30/10-things-that-will-get-you-sued-part-3-3/

TheTraumaPro

#7. Inappropriate prescribing

Most trauma professionals worry about over-prescribing pain medication. But under-prescribing can create problems as well. Uncontrolled pain is a huge patient dissatisfier, and can lead to unwelcome complications as well (think pneumonia after rib fractures). Always do the math and make sure you are sending the right drug in the right amount home with your patient. If the patient's needs are outside the usual range, work with their primary provider or a pain clinic to help optimize their care.

#8. Improper care during an emergency

This situation can occur in the emergency department when the emergency physician calls a specialist to assist with management. If the specialist insists on the emergency physician providing care because they do not want to come to the hospital, **the specialist opens themselves up to major problems if any actual or perceived problem occurs afterwards.** The emergency physician should be sure to convey their concerns very clearly, tell the specialist that the conversation will be documented carefully, and then do so. Specialists, make sure you understand the emergency physician's concerns and clearly explain why you think you don't need to see the patient in person. And if there is any doubt, always go see the patient.

#9. Failure to get informed consent

In emergency situations, this is generally not an issue. Attempts should be made to communicate with the patient or their surrogate to explain what needs to happen. However, life or limb saving procedures must not be delayed if informed consent cannot be obtained. Be sure to fill out a consent as soon as practical, and document any attempts that were made to obtain it. In urgent or elective situations, always discuss the procedure completely, and provide realistic information on expected outcomes and possible complications. Make sure all is documented well on the consent or in the EHR. And realize that if you utilize your surrogates to get the consent (midlevel providers, residents), you are increasing the likelihood that some of the information has not been conveyed as you would like.

#10. Letting noncompliant patients take charge

Some patients are noncompliant by nature, some are noncompliant because they are not competent (intoxicated, head injured). You must use your judgment to discern the difference between the two. Always try to act in the best interest of your patient. Document your decisions thoroughly, and don't hesitate to involve your legal / psych / social work teams.