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HOW TO REDUCE

WE LIVE IN A LITIGIOUS SOCIETY. During my father's time, he refused to carry malpractice insurance. As a matter of principle he would stand behind his professional product. But I would not walk into my law office without malpractice insurance. Father's clients held him in awe and wouldn't think of suing him. My clients like me, but some of them would sue me if they thought they had a reasonable shot at success.

This is the world in which we live, and health care providers should give considerable attention to reducing malpractice exposure. There are several procedures they should follow.

1. KEEP EXCELLENT RECORDS

How many of you have taken a course in charting? Judging from your charts that I've examined, few of you have.

Your charts are illegible and incomplete. And your records are going to be a keystone in evidence produced.

Our office represents several school districts in Utah. It is not unusual that a school administrator wants to fire a poor teacher. But he or she can't do it without proper documentation. Professionals must maintain good records.

You need to understand that a matter may not be litigated for years. By the time it reaches court, you



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probably won't remember the details, nor will the nurses. But your well-kept records can reconstruct the circumstances and will help refresh your memories.

Our office recently tried a case for the LDS Hospital. After the matter had gone to the Utah Supreme Court and was ordered back to the district court for trial, it had been eight years in the courts. A psychoneurotic patient thought he was in a one-story hospital in Moab. He threw a chair through a window and jumped out. Unfortunately he was on the sixth floor of the LDS Hospital in Salt Lake City. Fortunately he alighted on an awning. Unfortunately the awning was held up by a 2" by 4" board. He was rendered a paraplegic.

You would think that when a patient went out of a sixth-story window that someone would start keeping records. It was much more difficult to win this case than it would have been with better-maintained records.

In contrast, last year a disturbed man went up to the top of the 26-story Church Office Building and climbed over a seven-foot restraining wall in an attempt to fall 26 floors. A female hostess, slight of build, tried to stop him. He kicked her away and went over the glass wall. She caught him by his tie. Standing on the inside, she held him by his tie while he hung 26 stories above the street on the other side. The security guards rescued the man.

There was immediate reaction. We put steel wire on top of the glass that was slanted in at 45°; new stations

for security personnel were fashioned; records were kept.

2. IDENTIFY RED FLAGS FOR RISK MANAGEMENT.

Our office has prepared a flyer entitled "Red Flags for Risk Management." The following red flag actions or conditions indicate situations that are likely to increase your liability *and* decrease the public image of your practice. These items were compiled by nurses, attorneys, and risk-administration personnel to increase awareness of potential problems and to improve patient care.

Let's look at the red flag checklist.

Treatment Condition

- Poor treatment results
- Repetition of problem
- Lack of follow-up care
- Equipment malfunction.

Practice Management

- Poorly maintained records
- Lack of critical policies and procedures
- Excessive volume of patients

Patient Relations

- Unsatisfied patient
- Antagonistic patient or family members
- Complaining relatives
- Patient discharged against advice
- Intimidated patient
- Poor doctor-patient relationship
- Poor staff-patient relationship

Conduct of Doctor

- Acting outside scope of training
- Exceeding informed-consent provisions
- Lack of consultation
- Noncompliance with rules, regulations, protocols
- Uninformed coverage by fellow doctors
- Cover-up of pertinent information
- Conflicting patient instructions

Conduct of Staff

- Acting outside scope of training
- Performance of procedure for first time without supervision
- Lack of qualified supervision
- Outspoken or rude behavior
- Personality conflict
- Poor doctor-staff relationship

The presence of one or more of these red flags should alert health care providers to go the extra mile in

providing appropriate care and treatment and to ensure that patient records reflect that treatment.

3. BE AWARE OF PROVISIONS IN THE UTAH HEALTH CARE MALPRACTICE ACT.

Several states have attempted to ameliorate the malpractice problem through legislation. The State of Utah has enacted the *Utah Health Care Malpractice Act*.

I don't suggest this as a model act. It is a compromise between the plaintiff's bar and the medical care community. It does set some helpful procedures and some legal parameters. Here are a few items to be aware of:

A. *Prelitigation Screening Panels.*

This bill establishes a procedure within the Department of Business Regulation for prelitigation screening of claims against health care providers.

Utah has a three-member panel composed of a lawyer, a layman, and a health care person. It listens to the facts to determine whether the case has merit, and, if so, it makes recommendations for settlement.

The informal proceedings would be instituted before filing a complaint. An adverse decision by the panel would have no effect on the plaintiff's ability to later file a civil lawsuit in the courts. However, if the party that prevailed before the panel also prevails in the civil action, that party may collect attorney fees from the other party if the court finds that the claim or defense of the losing party lacks merit.

Twenty-three states have screening panels.

B. *Limitation on Attorney Fees.*

The Utah bill limits contingency attorney fees to 33 1/3 percent of recovery. (Eighteen states have some limitations.)

C. *Confidentiality of Disciplinary Proceedings and of Immunity from Civil Liability.*

These two bills encourage hospitals, medical staffs, health care providers and their professional societies to police themselves. One allows such disciplinary proceedings to be confidential and not subject to discovery. The other provides immunity from civil liability to participants who testify and conduct such proceedings in good faith.

These laws should allow professional groups to deal with touchy situations before they become volatile and damaging to anyone.

4. INTEGRATE GOSPEL PRINCIPLES WITH YOUR MEDICAL PRACTICE

Finally, the way to reduce malpractice exposure, and more important in my judgment, the way to reduce malpractice, has to do with gospel principles and medical practice.

First, from the Sermon on the Mount, is the Golden Rule: “All things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets” (Matthew 7:12).

Do unto others as you would have them do unto you. Patients are human beings too. Treat them as such.

Follow Peter’s pungent sermon: “Be courteous” (1 Peter 3:8). Paul continues: “And be ye kind one to another” (Ephesians 4:32).

Pray with the wisest of kings: “Give therefore thy servant an understanding heart” (1 Kings 3:9).

Be honest with your patients. “Do that which is honest” (2 Corinthians 13:7).

My father followed these scriptural injunctions. That is why his clients held him in almost reverential awe. He loved them as himself.

Second, God has always been interested in the health of his people.

“Your body is the temple of the Holy Ghost. . . . Ye are the temple of God” (1 Corinthians 6:16, 3:16).

Our bodies are sacred. LDS doctors are under obligation to impart this gospel concept to others.

From the days of Moses until now, we have statute after statute directing in great detail what is fit for human consumption and what is not. These statutes were given for the benefit of man.

You should both live and teach the word of wisdom; and then you “shall run and not be weary, and walk and not faint” (D&C 89:20).

In choosing the healing arts, you have chosen God’s part. One of the first statements in our Holy writ is “I am the Lord that healeth thee” (Exodus 15:26). You who have chosen the healing arts should make God’s purposes your own.

The practice of medicine is a public trust. You have the obligation to serve. As I understand, you are oath bound.

Third, you are Saints before you are doctors.

The Prophet Joseph “plucked from the Tree of Paradise the Lord’s message of peace to us” (D&C 88, Introductory Statement). If we are to enjoy the Lord’s peace we are to “teach” (D&C 88:77) and “testify” (D&C 88:21). This applies to all Saints.

If doctors want the Lord’s peace, they should teach and testify. If lawyers want the Lord’s peace, we must teach and testify. If artisans want the Lord’s peace, they

must teach and testify. You have unusual teaching moments. You have a willing people when catastrophic events come into their lives. These are important times to teach and to heal.

For example, you are there at death. At such a time you have the opportunity to comfort and care for the needs of your patient’s loved ones. In some of these circumstances, you should teach and testify about the resurrection and eternal life, since most people know little about it.

A close friend of mine died recently. He was a great Christian gentleman and an important figure in the Congregational Church. In the Christian world he was a believer, and many of his congregation sought counsel from him. His concept of immortality was that if people remember him, that was his immortality. We are under obligation to do better than that.

Saints simply have better information. Sharing information may be the most effective treatment. We should not keep our “light . . . under a bushel” (Matthew 5:15).

When a baby dies, your patient mother deserves that her whole ailment be treated. This includes her emotional well-being. The gospel is rich with specific healing doctrines for those with wounded souls. I believe that an LDS doctor, in many instances, should teach and comfort.

The gospel requires that we give of ourselves.

Anxieties of sick patients may be treated with truth—scientific or gospel.

Concerns for physical well-being, worry about incapacity and death, do make for good listeners. Give your patients what they need and deserve.

In some instances, as a matter of Church discipline, the physician may even counsel and act at the jeopardy of his or her own salvation: abortions, under some circumstances; sex change operations; and some sex therapy, for instance.

Just remember, you are Saints before you are doctors.

You in the healing profession are on the Lord’s errand. As such you are under a high degree of scrutiny. You serve yourselves and your patients better by keeping excellent records, using wisdom in risk management, being aware of the provisions in the Utah Health Care Malpractice Act, and most important, integrating gospel principles with your medical practice.