

Relationships During Litigation

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Adverse Events, Stress, and Litigation: A Physician's Guide
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Dealing with Our Relationships During Litigation: Unnamed Defendants

Dr. Joseph Daley admonishes his younger colleagues:

I tell them to be prepared to have this intruding on their daily life and to warn their spouse about what is coming and ask for their understanding because I think that's the thing that's hard to accept. You're just brooding all the time. You're in the middle of doing something that you enjoy doing and suddenly the suit pops up and the whole process just keeps going. You're not as happy or as interested in doing fun things that normally you would be doing with the kids. Sort of withdrawn into the inner self. Even after the case is resolved, it will persist.³⁴

Our Marriage

Lawsuits markedly affect our most intimate relationships, especially our marriage. Our first decision is whether we are going to share that we have been sued with our spouse or our closest intimate, a decision that sets the stage for our emotional life during our long passage through the lawsuit. What we choose to do, of course, is a function of the strength of our relationships as well as of our personality style. Most of us choose what, for various reasons, suits us even though this choice will influence and perhaps alter our life dramatically.

Ideally, we find our richest source of support in our spouses or others close to us. We share our innermost feelings with our closest confidant and feel not only understood but also cherished by their responses. They may not always appreciate our obsessions about the medical details, but they do know how deeply we feel for the affected patient and family and sense and understand the emotional costs of being charged with negligence.

Only our spouse knows the dedication we feel or how hard we work to maintain our competence. They reinforce daily our own efforts to reassure ourselves that we are good physicians. Empathic spouses not only absorb our irritability but also share our worrisome nighttime vigils while maintaining a daytime calm in our family life, shielding us from unreasonable demands, and managing our social life. Supportive spouses understand rather than resent the time preempted from leisure and family activities by the multifaceted obligations of defending ourselves legally. We may be too preoccupied at the time to notice the generosity and graciousness with which they support us and maintain a balanced environment around us.

Spouses reveal their dedication when they actively join themselves to our battle to defend our integrity and honor. A dermatologist's wife describes becoming almost an expert in malignant melanoma, the clinical focus of her husband's lawsuit. She searched the literature, developed summaries for the defense team, attended depositions, and, at the time of trial, filled the courtroom with a supportive group of family and friends. The message to the jury that eventually acquitted her husband was of how highly he was esteemed by his colleagues and his community.

Not everyone is so fortunate. Some physicians characteristically keep work issues to themselves, not wanting to bother their spouses by making them privy to such concerns. When they are sued, they may be too ashamed or traumatized to share their deep feelings about their work with their spouses if they have never done it before. The stories of those physicians who choose to handle the situation on their own and muffle their suffering, as they habitually do, in silence, overwhelm their ability to tell them or to recount their side effects. This falsely shrouded suffering can manifest itself in an array of behaviors and symptoms that, easily misinterpreted by even those close to them, undercut them and complicate their lives. How are spouses to understand when their physician spouses, usually as in control of their world and in command of their feelings as a Gary Cooper cowboy hero, become increasingly preoccupied and irritable, replacing any interest in sexual or romantic life with growling ruminations on sleepless nights, seeming to become different persons supplanting their interest in their families with their absorption with a secret they hesitate to share—that they are being sued for malpractice?

Spouses cannot miss our backing away into emotional distance, our spending ever more time at work, and our coming home, persons cut off seeking solitary rest. Such combustible scenarios flare up easily into misunderstandings, accusations, and even bitter arguments. Such a wartime atmosphere can endure for months and sometimes years. It is not uncommon for spouses to feel so shut out of intimacy with us that they suspect that we are involved with another person. The possibilities of unnecessary pain and even separation are high unless we reject passivity and fully incorporate our poorly informed but long-suffering and frustrated spouses into full partnership with us in suffering the trauma of being accused of negligence.

It is possible that after sharing our distress about the lawsuit, we are disappointed in our spouse's lack of understanding and inability to offer us support. Just as we need our spouses to understand how preoccupied we are and how unhappy we feel, so they need us to understand and appreciate their bewilderment and the world they are trying to hold together. To secure the objective of protecting and strengthening our marriage during the sometimes protracted siege of litigation, we must recognize just how hard and how patiently we must work together to enlarge our mutual understanding.

Dr. Henry Clark managed his first malpractice suit well, developed no real symptoms, and, within a year, settled for a minimum amount of damages. Seven years later, a fellow physician filed a complaint against Dr. Clark on behalf of his birth-injured child. Dr. Clark was devastated and poured his heart out to his wife of 20 years. She responded by telling him that his work was becoming too preoccupying, not worth the cost to him, and that he should give up his obstetrical practice. He felt that her response totally missed his concerns since, even though it was fraught with difficulties, he loved his work. She made no real effort, in his view, to understand his concerns. She seemed to dismiss his distress and began to complain to him about his lack of sexual interest and his withdrawal from family activities. During this period, feeling increasingly alienated from his wife, he confided in his office nurse who seemed solicitous of his concerns. Within eight months, he separated from his wife and began an affair with the nurse that eventually led to marriage.

When There is no Spouse

Some of us find that having no spouse or significant other person in our lives due to death, divorce, choice, or some other personal circumstances, leads us to feel isolated and alone without much hope of obtaining the support we so desperately need. We may also possess those personality characteristics that make entrusting ourselves and our needs to others an awkward or difficult challenge even when we do not feel particularly stressed. In such circumstances, the most important gift we can give to ourselves is to a serious effort to observe our feelings, our needs and our situation so that we can take steps to relieve our distress.

Dr. Tim Miller was sued for malpractice shortly after he had terminated a 10 year relationship with one of his male medical school classmates. His feelings of loss and isolation were compounded by feelings of anger, guilt, and distress about the perceived injury by his patient. Although able to attend to his patients, he dreaded the end of the day that brought feelings of intense loneliness and sleep disturbed nights. Aware that he was beginning to become increasingly preoccupied and depressed, he sought out an older respected colleague who eventually suggested that he seek professional help to forestall further depression.

Professional help is not, however, the only recourse in such instances. Our personal physician, respected colleague, claims representative, defense attorney or risk manager are often helpful resources as are support programs offered by malpractice insurance companies. Such resources help us discover where we might find support in our own personal network. In Dr. Miller's case, a short series of sessions with a professional enabled him to begin to socialize with peers and to eventually share his concerns with a new friend.

Our Family

During litigation, we apply ourselves earnestly to keep our emotional balance at work so that we can offer our patients our full attention and skills. When we go home, our feeling that we can lower our guard can result in our being moody, irritable, and short-fused with those closest to us. We may opt out of long-planned family events, criticize our spouses for minor inconveniences, yell at the children, slam the door, or kick the dog. We may attempt to soothe our discomfort with excessive drinking or television viewing, isolating behaviors that further complicate our relationships.

Our best approach requires that we work at becoming aware of our own reactions and better at monitoring our effect on others. Such self-knowledge gradually enables us to reduce abrasive behaviors and to make constructive changes in our responses to others. At the least, we can begin to talk calmly and openly about what we are experiencing so that our spouses and families can understand the reaction that otherwise puzzles and frustrates them.

Being sued affects and changes family dynamics. Our maturity in managing this event and our family relationships may ultimately lead to strengthening our initially tested family ties.

Our Children

Older children, who may be physicians themselves, offer significant support to their sued parents. Shielded as children from our problems, they may be parents themselves and understand adult burdens. If we have recognized and appreciated their growth, we can be fortified by sharing our distress about our malpractice suit with them.

Older children often demonstrate an amazing capacity for understanding and solicitude. Serving as confidants to one or both parents, they are able to mediate and alert one or the other about their sometimes separate concerns. A grown daughter may tell her father of her mother's feeling that he does not appreciate how hard she works to manage their life so that he will not have to bear that burden. So informed by a daughter, the father may respond with positive tactics, such as a weekend get-a-away with his wife or a special dinner with close friends at which the conversation will broaden everyone's perspective on their current life stresses. So, too, the son can talk to his father about the latter's excessive ruminating and drinking alone, suggesting such positive alternatives as a golf game together, helping to snap the bad habits before they bring further sadness and disruption to the family. The active support of older children deepens family relationships, endowing them with richness that, lacking such a crisis, they might not otherwise achieve.

Younger children must be informed in ways that match and do not excessively tax them based on their age or their capacity to understand. We may offer young children simplified versions of what is going on: Daddy or Mommy is having

problems at work that may make them seem upset but they do not mean to be irritable and unhappy with the children and it is certainly not their children's fault. The success of this approach depends on how well we monitor our feelings and behavior so that when we notice, for example, that we are overreacting to the child's untidy room, we can explain our reaction and apologize immediately.

Special problems arise when the lawsuit receives media attention. Children need to have available some explanation that they can understand easily and tell their friends and that they can use if others taunt them with news reports about litigation involving a parent. This can be complicated if the lawyers who initiated the action are the parents of their friends. Part of what children need to learn is that when people are sick, sometimes bad things may happen. These injured people can get money from the insurance company to take care of their problems only if they sue the physician. This does not mean that we are bad physicians, that we deliberately hurt people, or that we are criminals. There is no chance of our going to prison because of this, but these episodes in our family life may last for a while and we may have to go to court before we can get everything settled. Some version of this explanation usually allays their anxiety. Children have an amazing capacity to sense our feelings and the more open and, at the same time, protective we are of their feelings, the healthier it is for all of us.

Our Social and Professional Life

Our prelitigation manner of relating to our extended family, our medical colleagues, and our friends and acquaintances will be mirrored in our postlitigation relationships. The more intimate we are with members of our extended family—parents, siblings, aunts, and uncles—before we are sued, the more easily we can confide in them after the suit is filed. We may share our situation with close friends and trustworthy staff members, or we may continue in our usual style of confiding only in those closest to us. As all of us know, even with the best of intentions, it is difficult to change our behavior.

Dr. Paul Young describes his family as a “typical” midwestern clan. The men in the family hunt and fish together, talk politics, and enjoy exchanging barbs and jokes. The women talk about children, recipes, and vacations, without mentioning their individual troubles. Learning that his anesthesiologist cousin had been sued, he felt impelled, given his own experience with litigation, to schedule a fishing trip with him so that they could talk. He describes fishing for most of a weekend, talking constantly, but never once broaching the subject of either his own or his cousin's lawsuit. Although neither changed their usual style of relating and they were aware that talking about their concerns might have been helpful, they nonetheless each expressed satisfaction about sharing the weekend “away.”

Colleagues may suspect we have been sued after we experience a widely known catastrophic outcome but hesitate to mention the subject. Sometimes it is helpful, especially for senior physicians or department chairmen, to approach colleagues,

of whose suit they have knowledge or suspicions, and offer to talk with them about it. They can be especially helpful if they have been through the process themselves. Our partners and other colleagues can be even more helpful, as we have noted, if they know that we are in the midst of a lawsuit, switching coverage, for example, because they understand that we need extra time to attend to it. Uninformed, they will not know that our request for time away is to attend our trial and not just a vacation. It is far better to be accepted with understanding and support than to invite hard feelings into our lives because of our frequent unexplained absences.

Sometimes we sense that one or more of our colleagues, especially those who are well-meaning family friends of the potential plaintiff, are involved in the case. They may have made remarks to the patient that proved instrumental in the plaintiff's filing of the lawsuit, they may be serving as an expert witness, or they may have a social relationship with one of the litigants. There is no easy cure for the disruption this can introduce into previously harmonious relationships.

Dr. Cynthia Davis had a good friend who had repeatedly expressed her concern about Davis's eye problem. Finally, she insisted that Davis consult with another of her friends, an ophthalmologist who Davis later sued.

So I thought, I cannot tell her that this has happened. She was upset that she didn't act in time, didn't refer me soon enough; how is she going to feel now if the physician she referred me to screwed up? And so while the jury trial was going on, she called me several times and she said, "What's going on, how's everything, how are you doing?" And I told her nothing about this because I had resolved not to tell her anything. I didn't know she knew. I wouldn't have told her. She was withholding and I was withholding. My motivation was to protect her. Her motivation was she was very angry with me because I hadn't told her. Then afterward, she called me and said, "Okay, I know all about it, tell me, I'm very angry. A friend wouldn't do this; I can't trust you; we're done." That was very stressful. So she and I met and we didn't exactly resolve it but at least she resolved to be my friend. And so it was touch and go, a little tentative, tense for the next year but it's behind us now. I wouldn't say we're back as close but we're back as friends.³⁵

Such rifts and estrangements in the medical community are among the unintended, but very real, consequences of the litigation explosion. On the other hand, the support of colleagues who, on principle, willingly serve as expert witnesses on our behalf is heartwarming. None of us could successfully defend our case without the testimony of colleagues who are willing to study the case and place themselves and their reputations on the line to stand by us.

Personal physicians constitute unique resources for physicians who have been sued, as mentioned in Chapter 5, offering not only support but also sensible advice on managing our health and minimizing the stress associated with a lawsuit.

We must manage our relationships with the office staff in our own way. When we tell our staff about our situation, their knowledge of the stages of litigation and what it demands of us makes them supportive, solicitous, and protective.

Dr. White still wonders what his staff thought about the noisy summons delivery. Now that his case is successfully dismissed, he thinks about asking them what they thought of him during those hectic years of legal involvement.

Our relationships within our church or faith community can also give us significant support. We can pray and share our predicament with our priest, rabbi, or minister, with our Bible study group, or with other members and leaders of our religious community.

Others of us, especially obstetrician-gynecologists, tell our patients of our lawsuits, especially when they are highly publicized, and offer them the option to choose other physicians. Such informed patients almost overwhelmingly appreciate knowing about the lawsuit, express confidence in us, and respond with their support.

Dr. West reflects about her recent loss at a highly publicized trial.

If I lose some patients, I'm too busy anyway. I tried to be an example, actually for my younger physicians, and show them life goes on. I'm sued, I'm humiliated, and I'm on the nightly news, the radio and the newspaper. But, guess what, I'm still earning a living, I still have my family, my patients are sending me flowers and writing me sweet notes. Some left. But I don't know who they are. My partner got the same thing. So, it didn't in the long run make any difference other than I think we're both a little embittered, I maybe more than she is, in that we like to practice medicine, even though you say to yourself, "I'm not going to care about these people anymore," but you still do.³⁶

Seeking Consultation: When We Can Do It Better With Help

Sometimes we may be overwhelmed by our involvement in litigation, and the stress is intensified if we are preoccupied with other personal or professional problems. We may observe changes in our behavior, our mood, or our ability to focus and concentrate or are gradually drinking more after we arrive home, angrier and more isolated. We are unpleasant company, irritable with our spouses and children, and we cannot miss the way our staff seems to be giving us "plenty of space." Our pleasure in our work and our life in general is greatly compromised because our case is not moving toward resolution. We find that our once reliable means of reducing our irritability and stress, such as jogging, taking naps, reading, listening to music, or working out, now fail us. Can we possibly do anything about this situation? In fact, we are the only ones who *can* do something about it.

We may, however, finally need to face the truth: We must become, at least temporarily, a patient, a person who both suffers and endures. We generally perceive this state as being one of dependency, with its implications that we lack control and that we are, in some measure at least, failures.³⁷ It is not uncommon

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