



## Physicians can be first-line deterrents to suits filed by unhappy patients

By Ilya Petrou, M.D. | August 1, 2011

- It is partly the responsibility of physicians to reverse the trend of rising malpractice payments
- Many underlying issues in malpractice claims are based on unmet patient expectations
- Physicians should strive to spend adequate amount of time with each patient, explaining aspects of procedure in great detail, expert says

Medical malpractice claims have become an all-too-common trend in medicine today. But physicians can take some thoughtful, proactive steps to help stem the rising frequency of malpractice suits.

### Dr. Whiteside

In medicine as a whole — and particularly in plastic and cosmetic surgery — there is a global rise not only in the frequency of malpractice claims, but also in their severity in terms of the amounts paid to patients. The causes of the rise in malpractice payments vary, and it is partly the responsibility of the physician to reverse this trend, one risk management expert says.

"In the last two to three quarters, we are seeing a little bit of an uptick across the board in the number of malpractice claims filed. I believe that a lot of what goes on in the area of litigation is reflected by the socioeconomic undercurrents of the time," says Hayes V. Whiteside, M.D., senior vice president of risk management and chief medical officer at ProAssurance Company. "If you are seeing an increase in litigation, and particularly successful litigation, you will see a rise in frequency of it." Dr. Whiteside spoke on the topic of malpractice at Vegas Cosmetic Surgery 2011 in June.

According to Dr. Whiteside, some companies may be more settlement-oriented, which may only propagate the vicious cycle of litigation in the medical arena. In order to help reverse the increasing number — as well as the severity — of malpractice cases currently seen in medicine, physicians should try to work proactively to help avoid such claims in the first place, Dr. Whiteside says.

### ANALYSIS, ANTICIPATION

ProAssurance collects information from the Physician Insurers Association of America (PIAA), which pools data from most of the medical malpractice companies in the United States and Canada. One of the central tasks Dr. Whiteside and his staff perform involves looking at the claims and the underwriting issues and assessing where and how these issues arise — and how they can be remedied.

"Being intimately involved with the claims, I see a lot of these on an individual basis. After a careful assessment of the facts involved in a given case, we then formulate and suggest strategies aimed at preventing these claims from ever being made," Dr. Whiteside says.

"It is in part an anticipation of potential claims but also keeping a sharp eye for current trends of malpractice claims, and accordingly, we will try to adjust our loss-prevention strategies for physicians," he says.



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### ISSUES WITH EXTENDERS

In very busy plastic and cosmetic surgery practices, it is not uncommon for physicians to delegate certain tasks and authority to their licensed providers (such as nurse practitioners). Suture removal, bandage change or follow-up consultation may be delegated to capable office staff, but often, patients feel sidelined after the actual procedure, particularly when cosmetic results may be viewed as less than optimal.

"Patients may feel that their physician did not spend enough time with them before, during or after the procedure, and in the eyes of the patient, the suboptimal results achieved as viewed by the patient are possibly a direct result of a lack of (or less) care by the physician. This assumed lack of care on behalf of the physician may lead to a malpractice claim," Dr. Whiteside says.

As every patient and their specific needs vary, Dr. Whiteside suggests that surgeons treat every patient individually, catering to each patient's specific needs. Perioperative care and the numerous aspects and tasks involved with that care can then be delegated to office staff accordingly — again, depending on the particular patient's needs or requests.

### EXPECTATIONS OUTLINED

According to Dr. Whiteside, most of the underlying issues seen in malpractice claims are based on patient expectations that weren't met, either because the expectations were unrealistic or the physician did not communicate clearly what the outcome was going to be.

Though physicians are always reminded of how crucial establishing realistic expectations and obtaining informed consent are, informed consent remains one of the key issues of many malpractice claims, Dr. Whiteside says.

"It is my contention that informed consent is not a document with the patient's signature on it, but instead, it is a process where the physician sits down and really discusses in the greatest detail what the outcomes could be — including the potential adverse events," Dr. Whiteside says. "Face time can be as important as going through the motions of the technical surgical procedure itself."

It is not uncommon for physicians to over-promise when discussing the potential outcomes of a given procedure, Dr. Whiteside says. This approach could lead to a dissatisfied patient, however, should the expectations of that patient not be met.

Moreover, some physicians do not strictly adhere to certain protocols, such as not performing a facelift in a patient who is a smoker. In the end, the physician will be held accountable for all of the good — and bad — outcomes of a procedure, Dr. Whiteside says.

"In such cases, physicians are pushing the envelope a little bit and ultimately take a chance that the patient will be satisfied with the aesthetic result, even though smoking is considered to be a contraindication for facelift procedures, as aesthetic results can be less than optimal in this patient population," he says.

According to Whiteside, physicians should strive to spend an adequate amount of time with each patient, explaining in great detail all aspects of a given procedure.



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"The ailing economy has put a lot of pressure on physicians, and there is a growing tendency to try to accomplish more work in the same amount of time, but by doing so, standard routine may suffer in terms of informed consent and even the perfect execution of standard surgeries," Dr. Whiteside says.

Physicians must try to find ways to better communicate with their patients in order to ameliorate their losses in terms of malpractice suits, Dr. Whiteside says. The filing of a malpractice suit will cost the physician money (win or lose), and it will also cost much valuable time away from the ongoing day-to-day practice.

"Just because a physician may win a malpractice suit, it doesn't mean that there hasn't been a significant expenditure of capital," Dr. Whiteside says. "Clearly, it is best for all that such claims are not filed in the first place. Physicians should be aware of the issues that may contribute to and generate a malpractice claim and accordingly take steps to avoid them."