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Can MDs Recover from a Mistake?

Physicians who are involved in an adverse event or medical error have some ongoing vulnerabilities. Whether or not the event leads to a lawsuit, the provider's ability to work through the emotional aspect of an unexpected bad outcome can have serious consequences. The quality of future patient care may depend on how well the provider assesses his or her own psychological and emotional response to a previous bad outcome. Issues around coping can also affect the success of the doctor's legal defense against a malpractice claim if one is brought.

Unfortunately, the necessary introspection is not stereotypically one of the profession's strong suits. Dr. Luis Sanchez is the director of Physician Health Services in Massachusetts. Physician Health Service provides confidential assessments and coordination of counseling services for physicians who are referred for behavior, emotional, or substance abuse problems.

> "We are trained to heal others. We are not trained to heal ourselves, so what we promote is self-awareness, taking care ourselves, ensuring that we have primary care physicians ourselves that if we have a problem that we get it treated. And often a physician is reluctant to do that, so we are sort of hopefully a stepping stone that ensures that the physician gets the appropriate care and treatment they need."

Dr. Sanchez says doctors in the past tended to refer themselves to the physician health service, but a more recent trend is toward referral by colleagues. The nature of the referrals has changed as well.

> "We are seeing many more physicians around what we call behavioral issues because it is becoming increasingly more important for doctors to be able to interact in the workplace in the hospital and medical practice in a reasonable and respectful manner with the patients, with nurses, with colleagues. That has not always been emphasized."

Dr. Sanchez describes what the problems may look like for a doctor struggling to cope with a bad patient outcome or lawsuit.

> "Symptoms can vary. It could be that a colleague has picked up that the doctor is acting differently, is less communicative, is more irritable, gets upset easily, is sad, appears depressed, missing work, not coming in on time, not treating the patients respectfully as he or she had been or the colleague might know more about the details of what the traumatic event was, might know the physician's family and spouse and has gathered information that could be seen as red flags. We are hoping that doctors get better at that because that might be the first avenue of reaching out."

At CRICO/RMF, which manages the professional liability program for the Harvard medical system, Beth Cushing is a claims manager who has helped defendant physicians recognize a problem that could hinder the defense of their case. Cushing says defendants most often will know they are having difficulty, with clear outward signs, such as weeping or expressing suicidal thoughts.

> "What's more difficult is when you are not getting a lot of feedback from someone. They are tossing it off. They are acting as if this is nothing but a nuisance and a bother, and they don't seem at all connected with the event or with helping you deal with the claim or the suit. Then you have to ask yourself why?"

Cushing says the opposite can also be true when a physician is not coping with a lawsuit. Trying to over-manage their own legal defense is another sign of trouble. The key is for providers and colleagues to recognize a problem as early as possible and take some action.

> "We see it, I would say, in almost every instance, there is going to be some emotional reaction. But like any event in a person's life, people handle stress differently… Sometimes there are

> things going on in their personal life, a divorce, small children, other stress factors that make this event take on greater significance, so we try to be sensitive to that, see where people are at. If they don't seem to be able to put it into a perspective that we think is helpful for them as they go through the process, we might suggest that they seek some professional help and we pay for that and we recommend certain people that they can go to and speak freely and not worry about any of their conversation being discovered through the course of the claim or the suit."

Research has shown that once a physician is sued, there is an increase in the likelihood of being sued a second time. Dr. Sanchez says that once physicians address their emotional state, they can often respond very well to focusing on something active that they can control. Rather than harboring feelings of powerlessness or fatalism about being sued, providers can find reassurance that they are doing all they can to reduce risk. Sometimes that may also require self-examination. At Vanderbilt University, Dr. Gerald Hickson has studied the link between patient complaint data and a physician's risk of being sued for malpractice.

> "One hypothesis is that physicians who have difficulty establishing and maintaining rapport always have difficulty establishing and maintaining rapport and when adverse events occur, then families are more likely to go to an attorney. An alternative hypothesis would be that I get sued and that suit has a profound effect upon me as an individual that in some way changes the way that I relate to my patients. …And so it is a very reasonable notion that somehow the effect of litigation could make me prone to subsequent suits. All that said, we shouldn't lose sight of the fact that we know that patient dissatisfaction with practice drives litigation."

Dr. Hickson has pioneered the use of patient complaints as a proxy for malpractice risk. In his studies, doctors with more complaints were more likely to be sued. Dr. Hickson has shown that some behavior patterns by physicians can create the kind of patient dissatisfaction and bad rapport that leads to lawsuits after an adverse event. Instead of getting a copy of one complaint at a time, doctors at Vanderbilt get aggregated and analyzed data from a fellow physician.

> "What we do is that we have learned to take those complaint stories, tease out the elements of the complaints that are in those stories because all complaints are not equal in terms of prediction of risk but to then provide information in a professional peer-protected way that allows individuals by discipline to see where they stand in relationship to their peers. That's very powerful data… … We find that the vast majority of professionals take the data to heart, interpret what it means for their own practice system and they act, and we find that somewhere between 65-70% of physicians that we share this data fundamentally reduced the sources of dissatisfaction that can lead inappropriately to the courtroom."

At Physician Health Services, Dr. Sanchez says part of the challenge is to give doctors something to focus on that can make a real difference.

> "We have had referrals of physicians that have had a bad outcome, of physician, a surgeon, whose patient unexpectedly died after the operation. Best we can tell and the physician could tell, it was no error, but the physician was so upset about that outcome and was able to come to us and talk about it, not only how the physician was feeling but also review areas of concern, getting along with other colleagues, the way the practice was set up, and long hours of working, and other items going on in the physician's personal life that I think we were helpful to that doctor in allowing the doctor to talk about it and to think through some other means that might lessen that kind of an outcome happening again."