The Blame Game

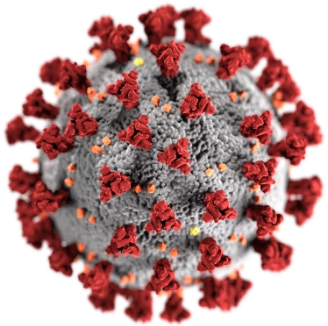
When Medical Professionals Point Fingers


BLAME GAME
I didn't say it was your fault. I said I was going to blame you.

Objectives

- Identify and recognize adverse events and incidents
- Recognize triggers for finger pointing
- Develop strategies for appropriately handling adverse events and medical errors
- Differentiate between negative, positive and neutral written and verbal communications

Introduction



- We live in a culture of blame
- Blaming others comes easily as evidenced by the recent COVID-19 pandemic and other crises
- The self-serving bias
- Blaming circumstances may be justified but blaming others may have negative consequences both professionally and personally

Adverse event or Incident?

- Definitions vary over time between and amongst patient safety organizations. Absent a jury determination of liability, however, there can be no determination of whether an incident is an “error” from a liability standpoint.
- When documenting incidents or adverse events, avoid the use of conclusory terms such as “error” since those intimate liability determinations that aren’t appropriate in the medical record.
- If you are concerned about an incident from a standard of care aspect, use established risk management policies and procedures to make incident reports to the proper risk management entity or appropriate licensing board.

Reasons why we blame others

- Pressure to provide an explanation
- Desire to make others “look bad” – either subconsciously or consciously
- Self-defense
- Attempt to be transparent and honest
- Insecurity and feelings of inadequacy
- “Heat of the moment”
- Feelings of anxiety and emotional discomfort

Negative consequences of finger pointing

- It erodes trust and confidence in the medical profession
- It adversely affects the health and wellbeing of the patient
- It negatively impacts team work, leads to dissension and hinders collegiality
- It discourages the sharing of skills and information
- It leads to increased incidence of litigation

Startling Statistics

- In a study by Beckman et al. 54% of plaintiffs deposed in medical malpractice cases responded affirmatively when asked if another health professional had suggested mal-occurrence.
- The post-outcome consulting specialist was named in 71% of the depositions in which mal-occurrence was allegedly suggested (Beckman, Markakis, Suchman, & Frankel, 1994).

Interacting with patients who have experienced adverse outcomes

- Refrain from passing judgment on other providers who have cared for the patient either verbally or via “chart wars”.

- *“It is unethical for a physician to disparage the professional competence, knowledge, qualifications, or services of another physician to a patient or a third party or to state or imply that a patient has been poorly managed or mistreated by a colleague without substantial evidence” (ACP Ethics Manual, 2019)*

Strategies to avoid placing blame

- Go to the source
- Gather the facts
- Manage your own stress & anxiety
- Be aware of your biases and triggers
- Remember to THINK

T H I N K

- T = Is it true?
- H = Is it helpful?
- I = Is it inflammatory?
- N = Is it necessary?
- K = Is it kind?

Neutral versus negative communication

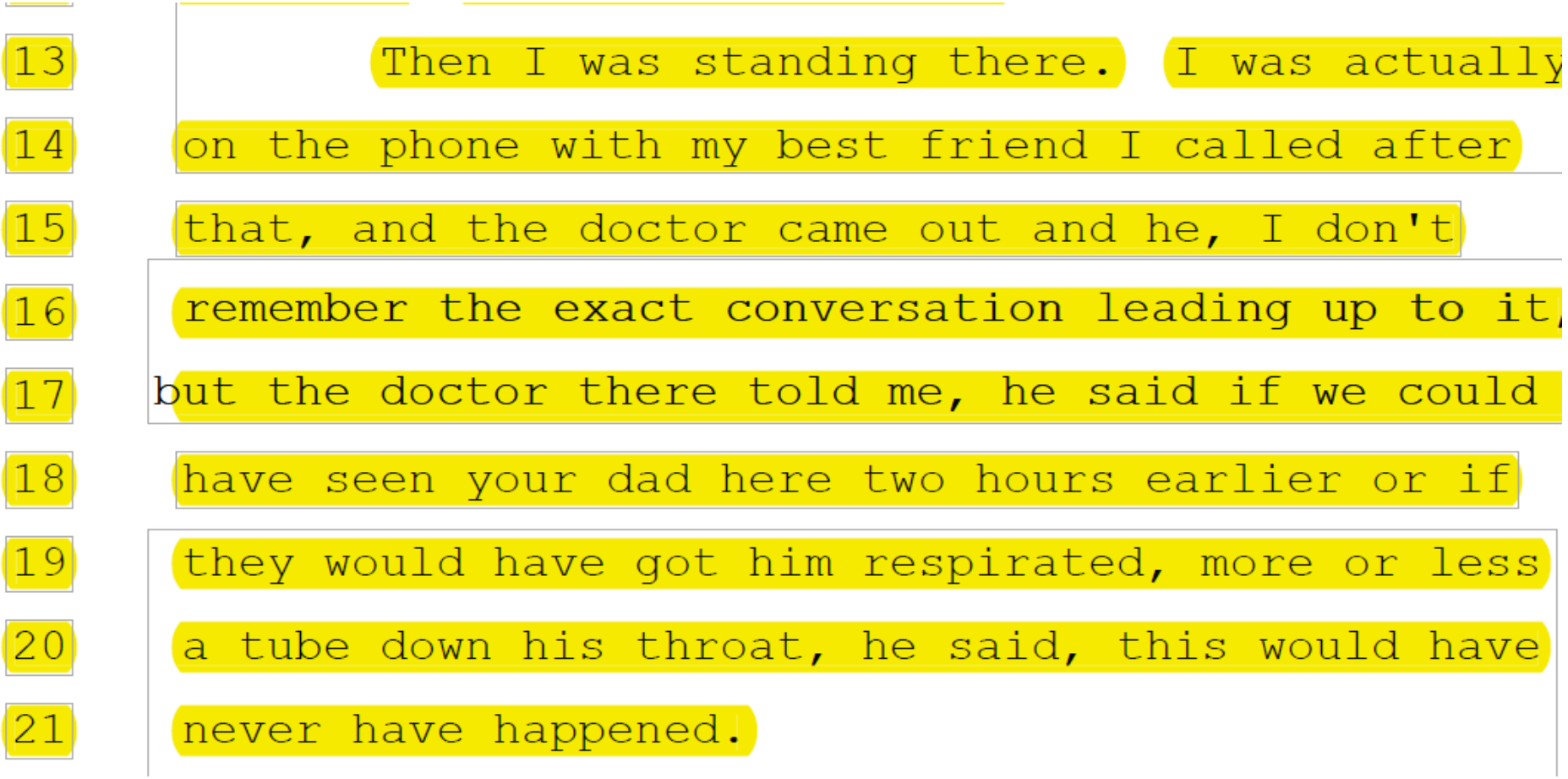
VERBAL

- Listen carefully to the patient and wait to formulate your response
- Avoid using inflammatory words
- Do not make assumptions until you have all the facts
- Treat every conversation like you are being recorded!
- Be mindful of nonverbal behaviors

WRITTEN

- When charting, use direct quotes when possible
- Stick to the facts and avoid opinions or judgments
- Use extra care when documenting
- Document telephone calls and other communication with the patients accurately and timely

Negative Communication



Then I was standing there. I was actually on the phone with my best friend I called after that, and the doctor came out and he, I don't remember the exact conversation leading up to it, but the doctor there told me, he said if we could have seen your dad here two hours earlier or if they would have got him respirated, more or less a tube down his throat, he said, this would have never have happened.

What if the patient pressures me?

- Patients occasionally pressure providers to criticize or find fault with other providers
- Use care when interacting with these patients
- Direct the patient back to the original provider for answers to their questions or further clarification
- Choose your words carefully and remember to THINK!
- If necessary, take the patient's concerns back to the provider for their input and explanation

Case Study – Patient A

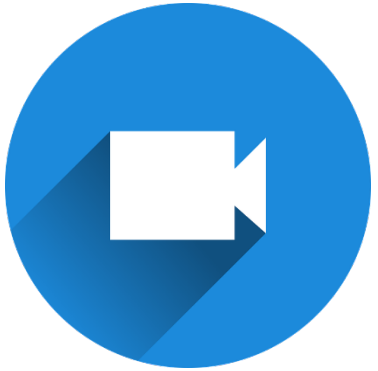
In a case recently taken to trial and defended by KAMMCO, an orthopedic surgeon performed an arthroscopic procedure on a patient with hip pain. The patient had a good outcome postoperatively until approximately 9 months later when he reinjured his hip kicking a ball. He presented to another orthopedic surgeon who specialized in revision surgeries. The patient asked the consulting physician several times if his previous surgeon “messed up”? The consulting surgeon felt pressured to provide an explanation after several consecutive visits in which the patient continued to probe. Even though the consultant carefully chose his words and did not directly blame the initial orthopedic surgeon, it prompted the patient to file a lawsuit against his original surgeon. The subsequent treating physician was subpoenaed to testify as a “non-retained” expert.

Excerpts from the consultant's deposition

Q. You made a reference in your post-op visit with him on June 22nd, 2016, in your note that says he again inquired today as to whether his previous surgery was done incorrectly. I'm going stop right there. Do you know how many times he inquired about that?

A. I don't know the specific answer, but nearly every clinic visit.

Q. All right. It goes on to say, I simply stated that in my opinion and based on contemporary peer-reviewed literature the leading cause for labral re-tear is remaining bony impingement. More extensive femoroplasty may have reduced his risk of requiring a revision surgery.



A. Another unusual thing about that clinic visit that day is that he had actually activated his iPhone recorder without permission while we were interacting. So he probably has a recording of that clinical interaction somewhere.

Q. Did you notice him trying to record your conversations before?

A. It happened twice.

Epilogue:

5 day jury trial

Unanimous Defense Verdict

Case Study – Patient B

This patient in his seventies was admitted for placement of a dual-chamber pacemaker for bradycardia. The pacemaker was inserted via left subclavian approach with atrial and ventricular electrodes. The procedure was technically difficult according to the procedure report dictated by the doctor. The pacemaker leads were checked and the thresholds were appropriate with sending and capturing as would be expected. An AP chest x-ray obtained post-procedure revealed no acute abnormality. He was discharged home the same day and followed up with the doctor in his office at 1 week, 7 weeks and 10 weeks at which time he was doing well with no cardiac related complaints.

A year and two months later he presented to the hospital with symptoms of a possible stroke versus TIA. As part of the stroke work-up he underwent an echocardiogram which revealed a pacemaker lead coiled on itself in the left ventricle.

Excerpt from the deposition of Patient B's son

- 16· · · · · · · · · But I remember one of the cardiac
- 17· ·nurses came and had to do some type of heart test or
- 18· ·whatever, and I remember she came back and said you
- 19· ·might want to talk to somebody about this because
- 20· ·I've never -- there was something that was she'd
- 21· ·never seen before, and I can't remember, in the
- 22· ·ventricle that I hadn't seen in 20 years, in my
- 23· ·20 years of doing, you know, nursing, cardiac stuff.

Portion of demand letter from Patient B's attorney seeking compensation $$$$$

Shortly after we [the plaintiff's attorneys] consulted with B's treating cardiologist – a highly respected local physician – who described the doctor's negligent conduct as akin to amputating the wrong leg; stating there can be absolutely no excuse for causing Mr. B to suffer a permanent brain injury.

Given the local doctor's willingness to serve as our expert, along with the forcefulness of his criticisms, we believe this is a case that merits pre-suit resolution.

Epilogue:

This case was resolved

Case Study – Patient C

A female patient with a history of chronic neck/back pain, leg pain/weakness, falls, and bladder and stool incontinence presented to the ER with complaints of weakness, inability to ambulate, and inability to care for herself. She could not lift either of her legs and again reported loss of bladder control, but stated this was a chronic problem, which had been ongoing for a year.

She was admitted to the hospital and was scheduled by neurosurgery to undergo a T1-T3 laminectomy and L2-L5 laminectomy. The surgery took about 6 ½ hours. During the surgery, there were periods of time in which her BP dipped, which corresponded with periods of increased blood loss from the surgery being performed. Because of the length of the surgery, three anesthesia "teams" participated (which were made up of a supervising anesthesiologist, CRNAs and a resident). Shortly after the surgery, she became paralyzed from the chest down and did not have bowel or bladder control.

The patient alleged her family was told after surgery, by the neurosurgeon (a dismissed co-defendant), that her paralysis and loss of bowel and bladder control was due to the anesthesia providers allowing her to become severely hypotensive during surgery and failing to follow his instructions to avoid hypotension during the procedure which the surgeon alleged the anesthesia team did not communicate to one another during handoffs.

Epilogue:

- **Resolution:** There were 6 defendants at trial. The resident defendant was dismissed during trial and the *Jury unanimously found in favor of the remaining 5 defendants.*
- **Damages Claimed:** $8,455,597.41
- **Length of Trial:** 23 days
- **Length of Jury Deliberation:** 20 minutes

Case Study – young child

The young child was carried through the doors of small hospital at 11:20 p.m. An X-ray revealed her colon was impacted with stool — a known complication of the medications she was taking for behavioral problems. The child's vital signs were stable and she was admitting for monitoring, treatment of her constipation and hydration. At 7:40 a.m. the next morning, the child stopped breathing. The doctor managed to resuscitate her although she coded twice more. It was apparent she required emergency surgery, but the modest hospital in this small town wasn't staffed for the procedure. A medical helicopter was called to transport her to a tertiary care hospital specializing in pediatric care. Before the helicopter crew departed, a flight member hugged the girl's parents and whispered the following words — '"Get an attorney. There were things done wrong here."

Epilogue:

This lawsuit was dismissed.

Conclusion

Unanticipated outcomes cause emotional distress for both the patient and provider. Thoughtful and constructive communication helps to mitigate the distress and may decrease the likelihood of liability claims. Maintaining quality of care and seeking clarification of how the outcome may have occurred can benefit both patients and providers.

References

Beckman, H. B., Markakis, K. M., Suchman, A. L., & Frankel, R. M. (1994, June). The Doctor-Patient Relationship and Malpractice. *Archives of Internal Medicine, 154*, 1365-1370.

Physicians Criticizing Physicians to Patients. (2013). *Journal of General Internal Medicine, 28*(11), 2499-9. doi:10.1007/s11606-013-2499-9

Snyder, L., & Bledsoe, T. A. (2019, January 15). American College of Physicians Ethics Manual: Seventh Edition. *Annals of Internal Medicine, 170*(S_Supplement), S1-S32. doi:10.7326/M18-2160

Thirumoorthy, T. (2012, July). The Professional Role of the Doctor as a Colleague. *SMA News*, 18-21.

When Doctor's Criticize Other Doctors. (2016, December 29). Retrieved from MAGMUTUAL Practice of Medicine: https://www.magmutual.com/learning/article/dont-make-your-patient-victim-when-doctors-criticize-other-doctors/