



Doctors, Lawyers,
and “The Talk”

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Helping your client to manage his or her negative emotions will empower your client to be a better self-advocate, which will only help his or her case.

The Emotional Impact of Being a Defendant

The financial and professional implications are front of mind in interactions between attorneys and their clients in litigated matters. In a medical malpractice case, an attorney focuses on defending and winning the case, and that

requires a lawyer to investigate and to develop the facts that support the medical provider’s decision making. The questions asked by a lawyer during the initial and subsequent interviews necessarily are the who, what, when, where, why, and how of the provider-patient encounter that led to the medical issue in the case. Accordingly, when a lawyer talks to a medical provider client, there are few questions related to how the provider feels and what the provider is doing to cope with those feelings. There are even fewer—if any—questions asked that would help the provider resolve or manage those feelings.

There can be no doubt that medical providers experience an emotional crisis when they are sued. Surprise, shock, anger, and fear are very common reactions to getting sued for malpractice. Minimizing—or completely ignoring—the emotional

implications of a lawsuit for a medical provider can not only leave the medical provider feeling alone and abandoned, it can ultimately have a devastating effect on the defense of your case.

Below we will outline some of the more common emotions that are experienced by providers and how to identify them. Then we will explore some techniques that you can use to help your providers navigate, cope, and even resolve the emotions that they are feeling so that your providers are empowered to provide the best possible testimony in a case.

Statistics

More than 95 percent of doctors experience some form of emotional distress in reaction to a medical malpractice lawsuit. (Charles, Sara C. Coping with a Medical Malpractice Lawsuit. *Western Journal of Medicine*, Jan-

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uary 2011). In a study of 1,400 physicians, three of four doctors experienced surprise and shock when they first learned of the lawsuit. (Kane, Leslie. Did They Deserve to Get Sued, July 2013, medscape.com.) Moreover, nearly four of every 10 doctors rate the experience of being sued as humiliating, or as one of the worst experiences of their lives. (Kane, *supra*).

The long-term effects of being sued cannot be underestimated. Three of 10 doctors report that being involved in a lawsuit changed the way they think and act as providers, with many treating their patients as adversaries. (Kane, *supra*.) This number should open some eyes, given that 93 percent of doctors had developed a good rapport with their attorneys and were satisfied with the representation that they received. (Kane, *supra*.) Even though the lawsuit may end well, being sued and the process that goes with it are changing how medical providers approach the practice of medicine.

The Range of Emotions

Medical providers can experience a wide range of feelings when they are sued. While some of these feelings are the result of misunderstanding their roles in the legal process, many providers have core character and personality traits that often trigger a severe and overwhelming emotional response. While the emotions felt by medical providers can vary in both type and depth, at the core are two base emotions: anger and fear.

Due to anger and fear, medical providers involved in malpractice lawsuits can have a variety of different concerns and other feelings. An attorney representing such a provider must help the medical provider identify what he or she is angry about, what he or she is afraid of, or both. The most common emotions that stem from anger and fear are feeling

- Unduly responsible for, or guilty about, the outcome
- That the provider tried to do good, but no good deed goes unpunished
- Ashamed about the incident
- That everyone is against him or her
- That the lawsuit is a personal attack against him or her
- Afraid of an adverse verdict
- That he or she is the victim
- Angry at the plaintiff patient for suing him or her

- That his or her reputation has now been damaged
- That his or her career is at risk
- That he or she could go bankrupt
- That the legal system is out of control
- That the judicial system is corrupt and unfair
- That huge verdicts are the norm
- That the public will see the lawsuit, and no one will want to hire him or her
- That he or she will be reported to a licensing board or other entity that could affect his or her reputation, job, and licensing status
- That no good can come out of the case
- That there is no hope.

This is not an exhaustive list of emotions. Moreover, a medical provider can be feeling many of these emotions at the same time.

How to Identify the Emotions

While some clients will freely share how they are feeling and what is bothering them, many of them will not share their feelings easily, and others may not even be prepared to admit that anything is bothering them. From the very first meeting with your client, there are clues that can help you identify the specific anger, fear, and anxiety that your client is burdened with. Here are a few clues.

- Is your client afraid of testifying at deposition or at trial? This might reveal itself in subtle ways. For example, does your client come up with last minute excuses to postpone the deposition?
- Is your client angry about being sued? This may manifest in your client repeatedly casting blame on the patient. Your client may express to you that the lawsuit is “frivolous” or that he or she “went the extra mile” to help the patient and the family.
- Does your client feel guilt or shame about the incident? Does your client second guess his or her decision making? Does your client consistently review the case through the lens of hindsight? Does your client cry or become quiet when the substance of the case is discussed? These behaviors can indicate that the client feels guilty or shame.
- Does your client refuse to participate in his or her own defense or have a poor relationship with you, the defense attorney? Avoidance is likely evidence of

some level of fear about the case and uncertainty about how to handle it.

- Does your client express shock and disbelief that the plaintiff is allowed to go forward and sue? The client may ask you, “How is the plaintiff or the plaintiff’s attorney allowed to get away with this?” These questions can indicate that the client is experiencing shock and disbelief.
- Does your client consistently express uncertainty about and a lack of understanding of the legal process, what is

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happening in the case, and his or her role in it? These expressions can all signal anxiety. Perhaps your client is new to the litigation process?

Sometimes the anxiety, fear, or anger is hidden deeper and only shows in the way that a client answers your questions. When these problems become evident, a defense attorney should explore the underlying source of the problem. Some of the more understated clues include the following:

- Does your client ramble on and on in response to simple, direct questions?
- Does your client interrupt you or answer questions too quickly?
- Is your client unwilling to stand up and defend his or her own actions?

Identifying these issues is not always easy. Above all, it requires skillful listening. The listener must pay attention not only to the words but to the manner in which they are said. Moreover, it requires the listener to ask more probing questions so that the etiology of the emotion can be revealed.

Tools That You Can Use to Help a Medical Provider Manage Feelings

Most lawyers and claims representatives working with medical providers all too often lecture them on what to say and how **Emotional Impact**, continued on page 93

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to feel. How many times have you told a client, “Don’t take this personally; it’s just the cost of doing business,” or “Don’t feel guilty; you didn’t do anything wrong.” These statements may certainly be true, but they do little to nothing to help a medical provider overcome his or her anger, fear, and anxiety.

Instead, let your client come up with the answers. This starts by asking an open-ended question that can help you identify the emotional state of the client.

- “How did you feel the moment that you learned that you were being sued for medical malpractice?”
- “How do you feel about the upcoming deposition?”
- “When you walked into my office you said, ‘I just want this to be over with.’ What is it that you are feeling that caused you to say that?”

Once you identify the specific emotion, the next step is to guide your client witness down the path—with questions—to learn what is driving the emotion and to resolve it.

For example, what if your client is fearful of an adverse verdict? It is easy to say to your client, “Don’t worry,” but that is typically not effective. Instead, you can guide the client to deconstruct the problem and to resolve the issue on his or her own. So after your client tells you that he or she is afraid of an adverse verdict, you might ask the following:

- “What if jury finds against you?”
- “How does this change your life?”
- Do you know of doctors who have lost their practice because of a lawsuit?
- What are the important things in your life? (family, friends, job.)
- “Will you lose any of these things because of this lawsuit—even if you lose?”

You will know that your objective is achieved when your client realizes—in his or her own mind—that life will not change because of adverse verdict.

For every emotional issue and concern, you will continue to explore the source of the emotion and feeling and resolve it with reason, logic, and evidence. Each client is different, which means that the questions and approach that you use will also be different.

What about more difficult issues? For example, many medical providers express

guilt about the outcome that resulted in the lawsuit. One approach is to explore whether guilt—a very powerful and damaging emotion—is really what the client is feeling.

- “What does it mean to be guilty of something?”
- “Since to be guilty of something requires that you act with the intent to harm someone, tell me, did you intentionally hurt anyone?”
- “So what is it that you are really feeling?”
- “When we feel bad for what has happened to someone, what do we call that?” (Sympathy or empathy.)
- “Is it ok to feel sympathy or empathy?”
- “What does it say about you that you can feel sympathy and empathy?”

The Result

Going through this process of identifying and resolving these emotions and concerns will help your client witness release the negative emotions that burdens him or her. The most important benefit is that the medical provider will feel better about him- or herself as a provider and as a human being. It will, perhaps for the first time, give him or her an ear that will listen. Moreover, it will also empower your client to be a better self-advocate.

When the negative emotions are gone and their concerns are addressed, your medical provider clients will be more confident. They will learn that they are powerful, knowledgeable, thoughtful, and capable of taking control of their own case, deposition, and trial testimony. **FD**