Three-Session Psychiatric Malpractice Curriculum for Senior Psychiatry Residents

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Psychiatrists are among the least frequently sued of all physicians, but in recent years malpractice claims have become more common against psychiatrists, and corresponding judgments have increased (1). Few events in a physician’s professional life cause as much anxiety as being sued in a medical malpractice action. However, U.S. general psychiatry residencies do not routinely instruct trainees about medical malpractice. Though there are many papers on psychiatric malpractice, including “Malpractice and the Psychiatrist: A Primer for Residents” (2), we are not aware of any papers on malpractice curricula in medical education. Furthermore, the Accreditation Council on Graduate Medical Education does not require any specific training on medical malpractice (3).

Given the importance of psychiatric malpractice in psychiatrists’ professional lives, psychiatric residency training programs could benefit from a brief course of study on the basics of medical malpractice as applied to psychiatry. At a minimum, increasing awareness of higher risk clinical situations and demystifying the legal process are anticipated to enhance residents’ sense of control and reduce their anxieties. Though the practice of medicine can never be entirely risk-free for patient or physician, instruction about malpractice may also serve a preventive goal when residents adopt some practices that make their future work more lawsuit-proof.

Here we propose a curriculum for PGY-3 or PGY-4 residents that consists of two 90-minute didactic seminars, facilitated by a faculty psychiatrist, followed by a 3-hour mock trial on psychiatric malpractice. Session 1 presents a basic overview of tort law as applied to psychiatric medical negligence. Session 2 delves more specifically into the reasons psychiatrists are sued and what legal responses are available to psychiatrists. Finally, session 3 consolidates and places the learned material in the courtroom context.

Resident physicians will need to research the literature to fully engage in some of the discussion questions. They might begin their investigation with one of two forensic psychiatry textbooks, such as Rosner’s Principles and Practice of Forensic Psychiatry (4) or Appelbaum and Gutheil’s Clinical Handbook of Psychiatry and the Law (5). The time spent in seminar sessions is built on the expectation of some outside preparation and designed to be interactive. Candid discourse about past clinical experiences and current or possible future conundrums is invited to contain residents’ undue anxiety about being sued and to assure residents that they are in the supportive company of others who very likely share similar concerns. This curriculum anticipates that lecture-style instruction will be minimal and the majority of each seminar will be devoted to discussion. Relatively long sessions, 90 minutes instead of 60 or 45, are suggested in the hope that there will be time for adequate discussion. Some questions designed to initiate discussion are suggested for sessions 1 and 2.

Session 1

Elements of Negligence

Residents should prepare for the first session by reading a primer on psychiatric malpractice such as “Malpractice and the Psychiatrist: A Primer for Residents” (2) or “A Basic Review of Psychiatric Medical Malpractice in the United States” (6). Residents will acquire a basic knowledge of tort law and learn that the plaintiff—in malpractice cases, the patient or a surviving family member with legal standing—must prove a psychiatrist’s negligence by the preponderance of the evidence of each of the four elements of negligence: the dereliction of a duty that constitutes direct causation of specified damages.
Residents will learn that upon establishing a professional relationship with a patient, the psychiatrist has a duty to provide due care. In medical malpractice suits, a determination must be made of the standard of care applied in that professional relationship, and expert testimony is almost always required to establish the standard of care.

Next, residents will learn that the plaintiff needs to prove that the deviation from the standard of care was a proximate cause of the injury. Finally, residents will learn about the three basic types of damages in tort law.

**Discussion Questions:**
1. Does the chart notation “No suicidal or homicidal ideation” constitute sufficient documentation that an assessment for dangerousness was conducted which met the standard of care?
2. What is the difference between an error of fact and an error of judgment by a psychiatrist in treating a patient? Which is treated more leniently from a legal standpoint?
3. Which element (duty, dereliction, direct causation, or damages) is usually the most difficult for a plaintiff to prove in completed suicide?
4. What impact does being sued have on malpractice insurance, hospital staff status, and state medical board and National Practitioner Data Bank standing?

**Session 2**

**Causes of Action**

A number of untoward clinical results can lead to legal causes of action against psychiatrists. The most frequent claims against psychiatrists deal with completed suicide (7). In session 2, residents are asked to discuss their perception of risk of medical malpractice suits arising from completed suicide or severe injury secondary to suicide attempt, medication side effects, adverse effects of ECT, and negligent psychotherapy. (Other actions against psychiatrists fall outside the realm of negligence, including, among others, sexual misconduct, failure to obtain informed consent for treatment, and breach of confidentiality.) Resident physicians are also encouraged to discuss a bad clinical outcome that occurred under their own or a colleague’s care that has raised concern about a possible ensuing malpractice claim.

**Defenses to a Malpractice Claim**

In addition to procedural defenses (for example, lack of jurisdiction or expiration of the applicable statute of limitations), several defenses to a malpractice suit are available to a defendant psychiatrist. The usual defense to a negligence suit is denial of one or more of the elements of negligence. The psychiatrist asserts that there was no duty owed to a patient; that even if there was a duty, there was no dereliction of the duty; or that even if there was a dereliction of duty, it did not directly cause the patient’s injuries.

Specific defenses to malpractice suits also exist, including asserting that the psychiatrist practiced in accordance with established clinical guidelines, protocols, or an accepted practice engaged in by a competent minority of psychiatrists, or contending that patients’ own mistakes or lifestyle choices caused or contributed to their damages. Residents are encouraged to volunteer clinical situations where these legal defenses might be most apt.

**Discussion Questions:**
1. In suits based on the completed suicide of a patient, what defenses by the patient’s psychiatrist are most likely to be successful?
2. In suits based on a patient’s development of tardive dyskinesia, what defenses by the patient’s psychiatrist are most likely to be successful?
3. In suits based on a patient’s allegation of sexual misconduct by a psychiatrist, what defenses by the patient’s psychiatrist are most likely to be successful?

**Session 3**

**Mock Trial**

Mock trials have long been used to educate health care professionals (8–10), including multidisciplinary psychiatry staff (11), about legal medicine. The mock trial proposed here is intended to illustrate some potential courtroom dynamics in a psychiatric malpractice case. In addition to introducing the contents and sequence of a trial to general psychiatric residents, the exercise provides exposure to interactions between psychiatry and the law outside of the courtroom, such as the management of the patient-physician relationship in high risk cases and the need to clearly document medical reasoning. Although fictional facts may be created and persons without a legal background invited to role play, the most educationally effective mock trials likely use real case material and practicing attorneys, perhaps law school faculty or in-house counsel for the medical school or teaching hospital, and experienced judges to help residents act out a condensed version of a malpractice trial.

The mock trial begins with opening statements from at-
torneys for both the plaintiff and defendant. This is fol-
lowed by direct and cross-examination of the plaintiff,
plaintiff’s expert, defendant psychiatrist, and defendant’s
expert by practicing attorneys. Psychiatric residents play
the roles of plaintiff’s expert, defendant psychiatrist, and
defendant’s expert. Both attorneys make closing state-
ments after all witnesses are examined. Then the judge
instructs the jury. When the jury completes its delibera-
tions, the verdict is read. This is followed by a question-
and-answer discussion period.

Conclusion

This proposed curriculum is a first step in educating gen-
eral psychiatric residents about psychiatric malpractice.
Two challenges are anticipated in implementing it. One
possible obstacle is the difficulty of obtaining adequate re-
sources for the mock trial. Unlike the first two sessions,
which one person can facilitate, the mock trial ideally in-
volves the participation of two attorneys and a judge. An-
other potential challenge is residents’ difficulty in talking
openly about medical malpractice. Apprehension some-
times leads to avoidance. If this occurs, an empathetic and
skilled facilitator can model forthright communication
about a feared topic. Alternatively, this curriculum can be
adapted to a problem-based learning format in which dis-
cussion questions become problems and resident physi-
cians and faculty engage as a team in self-directed learning
to gather the requisite knowledge and apply that knowl-
edge to solving a problem related to psychiatric malprac-
tice.

Because the curriculum is about negligence, intentional
torts and criminal acts have been de-emphasized. These
important topics, as well as the success of this proposed
curriculum in teaching the rudiments of malpractice law
to residents and empirical data determining resident and
faculty preferences for a malpractice curriculum, would be
fruitful areas for future study.

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interests.

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