

## WHAT TO DO WHEN YOU'RE PATIENT THREATENS TO SUE

It's no secret among the medical community that there are patients whose only purpose is to find fault with everything the physician, nurse and health care team are doing. These patients are rarely seriously ill but want to make their living by filing frivolous lawsuits against anyone involved in their care. It is unfortunate that as care givers trying to help, we are rewarded with the impending threat of lawsuits by patients whose only goal is to achieve a monetary reward. Any nurse or physician who has direct contact with this type of patient may become the target of a patient's lawsuit. Even the most mundane clinical situation may become an issue for litigation against you by the patient. Make no mistake, these patients are savvy about medical malpractice and know how to manipulate attorneys, doctors and the health care system. They are very aware that most cases settle out of court with the hospital allocating some type of monetary agreement as opposed to preparing for a trial where witnesses will have to be subpoenaed and so forth. If you are clinically active, it would behoove you to keep in mind no matter how nice the patient may act or appear the possibility of a lawsuit can happen during every patient interaction, so with that in mind let's examine your liability risks.

**YOU'RE LIABILITY RISKS:** Your liability risk really depends on the mistakes you make; this includes the often overlooked aspect of proper charting for every situation including patients who threaten to sue you. A mistake can take many forms from giving the wrong medication at the wrong time to something as small as forgetting to chart an event. Remember if it's not charted on paper or your notes it never happened. Most nursing and medical errors occur when we are overworked and tired perhaps you just did a double shift a full 24 hours without sleep. Studies on nursing errors have shown that most errors occur on night shifts and when nurses pull double shifts or work 4-5 nights in a row. As a former critical care nurse who has worked 4-5 12 hour shifts in a row for years, I can attest to the fact your body never gets used to the change in circadian rhythm. I personally was never able to get the same quality of sleep during the day as night. Many nurses have been killed driving home by falling asleep at the wheel after being up all night, your overworked, and overtired and it's a recipe for mistakes and errors. Omissions and failure to act promptly are common problems for some who work nights. If you feel this shift interferes with your quality of care, you should consider a move to days; it just may save your life and keep you out of court. Most patients that threaten to sue are seeking or perceiving a potential or maybe actual threat to their health, safety and rights. In order to deal with this type of patient you must become familiar with the lawsuit prone patient and how to respond to that threat and how to document that threat in a way that will reduce liability on your end.

**HOW TO SPOT LAWSUIT PRONE PATIENTS:** This type of patient is usually always angry, never satisfied and threatens to sue-sound familiar? From the time of admission to discharge they seem to have resentment towards everyone in the health care team, possibly they fear loss of control and want to control those around them. The anger, fear, resentment and frustration of losing control can turn a non-issue into a major event and use this as an excuse to sue you, the hospital and the physician. Here are some tips to identify the lawsuit prone patient. First off you should be objective and document these characteristic behaviors such as getting angry at

you for asking health information questions such as refusing to give you information because it has been asked before. Constant criticism about your care, your colleagues, the doctor's care and the hospital. Making up stories about colleagues for example "the night nurse was mean to me" or he/she "hit me" all of these things are ploys designed to turn you against a colleague. Making comments like if you can't start that I.V. I will call your supervisor or threaten to report you for any little thing. These types of patients usually exhibit angry and even violent behavior, they may threaten to hit you or throw things. A red flag for me has always been if I know the patient can do things for themselves and see them do it, for example dressing, bathing, oral care etc. but they want others to do it for them even though they are perfectly capable themselves, watch out because they will criticize you and push your buttons hoping to get a negative reaction from you they can use against you such as nurse X refused to turn me every 2 hours and complain about it. They are non-compliant with treatment but blame you for their medical condition such as because of you my diabetes is getting worse. If you make a harmless comment, it is taken out of context and becomes offensive all of a sudden. These patients are mentally and physically exhausting so in order to deal with these patients you must know how to respond to them in a proper fashion. While most of these patients have psychological issues or are just plain mean looking to make money at your expense you must take these implied or actual threats of lawsuit most seriously. Always assume that the patient intends to sue and could have a legitimate case, never try to determine yourself if the patient is "borderline personality" or the threat is just talk. All lawsuits start by filing a claim, a written or verbal complaint of perceived physical or emotional harm resulting from a health care provider's actions. If a claim is filed, NEVER admit wrongdoing to the patient, the patient's family or friends or any attorney's because ANY statement that you make could become the basis for a lawsuit, also if the patient's allegations involve you directly the best thing to do is have another nurse provide the care, if this is not possible then don't try to make amends by being overly nice or changing your level of care. Changing your level of care may imply you're guilty of something. If you carry individual malpractice insurance, notify your carrier immediately as soon as you learn you have been named in a suit. Depending on the carrier, failure to notify about a suit could reduce or make your coverage null and void.

**WHAT TO DOCUMENT:** This is why it is crucial for you to document everything because if the case goes to trial your nursing notes, documentation and flowcharts become the core of your testimony, if nothing is charted or left out it is assumed it was never done, even though it was. Sometimes patients wait months or years to file a claim, you should be aware of your state's statutes of limitations for malpractice. I know of some nurses who keep journals for personal on the job reasons so they can recall what happened during the care of the patient who filed a claim. You must understand the ramifications of keeping a journal before even thinking about starting one, and it's only for the types of patients in question. A journal could just as easily be a hindrance as well as help. I suggest you research the risk to benefit ratio of keeping a personal on the job journal. I may address that issue in a later post but it's up to you to protect yourself from lawsuits as a side note you should carry your own malpractice insurance, I know that most hospitals will tell you that you are covered under their insurance. This may be so, but you never know which way the lawsuit will go and your hospital will only cover you up to a certain dollar amount, this is another thing you should be aware of, do you know how much your hospital will

cover you if you are involved in a lawsuit? If not, find out and get your own as well. According to your facilities policy, you should document the following in your nursing notes, or other forms you use: The physical and mental status of the patient before, during and after the threat to sue. Your actions, in response to your physical and mental assessment findings. Use EXACT words (in quotes) used by the patient, the family members, or attorney during your discussions about overt or implied threats to sue. Document the statements that you and other participants made during discussions. Document the names (if known) and relationships to the patient of people who either witnessed or overheard your discussions about threats to sue. Document dates and times of specific events that the patient has threatened to sue over. Document the names of other staff members who the patient said were involved in the supposed incident. Document the names of people you notified of the patients threat to sue and time of notification. Document the patients actions that may have contributed to the incident, such as drugs brought from home, refusal to be compliant in providing information about the medical history, treatment refusal, noncompliance, throwing things, berating staff. Document the presence of any unauthorized item's in the patients room, such as drugs, weapons, syringes and any contraband your facility deems unfit or illegal. After you notify the appropriate staff that the patient is filing a claim, DO NOT document anything related to the investigation. For example DO NOT mention any interviews you had with insurance investigators, attorney's or risk managers. Find out if your facility requires you to fill out an incident report. The personal journal- There is disagreement as to whether a journal is helpful or a hindrance involving a lawsuit, some nurses use it in case there is a lawsuit they can refer back to it to help them recall important details. I personally would err on the side of caution and not keep a journal due to the fact that an attorney could easily discredit you by your journal not matching your medical records, I think it is more of a hindrance than help. A good attorney can make the journal look like you have embellished things as well as making an issue of having a journal in the first place for instance an attorney could say "are you such a poor nurse that you feel you must keep a journal for fear of a lawsuit?" "Do all nurses keep journals like this?" In my opinion it's just an opening for an attorney to make you look stupid and that won't help your case. If you decide to keep a journal keep it factual, objective and truthful. You must also tell your attorney about it as well. In conclusion it is unfortunate that in a area such as medicine where the bottom line is trying to help people there are a few people who try to manipulate and take advantage of the system in order for them to make a living by lying and cheating their way to court, that's reality and so is advocating for yourself by practicing these defensive charting techniques and learning how to deal with these "so called" patients. Know your facilities policy if a patient files a claim against you, get personal malpractice insurance and document everything when you are faced with these people, you never know when they may strike, just like a snake.