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A Medical Malpractice Trial where the Residents and Faculty are the Judge and the Jury

Kelly A. Rabah
Wright State University, kelly.rabah@wright.edu

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Medical Malpractice Mock Trial Presentation
For Wright State Medical Students, Residents, Program
Directors & Faculty – *Where the audience is the Judge and the*
Jury...



Kelly Rabah, MSW, LISW-S, CPHQ, CPHRM,
Six Sigma Greenbelt in Healthcare, Director of
Patient Safety Quality Improvement for GME
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RISK MANAGEMENT AND MALPRACTICE ...

What every physician needs to know

Kelly Rabah, Director of Patient Safety Quality
Improvement for GME

OBJECTIVES

- ❖ Name 3-5 most common reasons for a medical malpractice claim
- ❖ Describe and compare negligence, types of error, and recklessness
- ❖ Explain 3-5 steps that should be taken to minimize risk for malpractice suit
- ❖ Discuss the emotional toll of litigation and personal and professional risks that result.

HISTORY

- ❖ Residents and fellows often unaware of behaviors that put them at greatest risk
- ❖ Unaware of the process once a claim has been made
- ❖ Unable to articulate levels of culpability
- ❖ Lack knowledge of emotional and professional toll



OPPORTUNITIES

- ❖ Reframe the relationship with risk management
- ❖ Implement a preemptive strategy
- ❖ Collaborate with your multi-disciplinary team
- ❖ Examine policies, procedure, and protocols often and utilize quality protected processes to improve



WHEN YOU ASK PATIENTS AND FAMILIES
WHY THEY FILED A LAWSUIT, THEY SAY:

- ❖ The doctor didn't care about us
- ❖ The doctor didn't listen
- ❖ The doctor knew "X" and didn't "Y"
- ❖ He or she didn't tell us ...

MOCK TRIAL EXERCISE

- ❖ Actual case, real attorneys, residents played the defendant and the prosecution, and a program director played the expert witness.
- ❖ Exercise was sponsored by the legal firm who defends the hospital, the medical school, and the risk management department
- ❖ Almost 200 attended


THE CASE

- ❖ Delay of diagnosis and treatment of acute compartment syndrome, (4 days), resulting in permanent loss of mobility in right leg- 53 y/o active female patient.
- ❖ First year orthopedic resident, third year EM resident, and orthopedic attending. Multiple nurse witnesses.



SOME KEY FACTORS IN PLAY

- ❖ Supervision
- ❖ Communication
- ❖ Documentation
- ❖ Culture of joint accountability-those concerned said little and did not engage
- ❖ Case can be made key findings may have been minimized (ex. Pain the 5th vital sign)



NOW LET'S WATCH SOME
EXCERPTS

Kelly Rabah, Director of Patient Safety Quality
Improvement for GME



DISCUSSION

- ❖ The experience from the residents' perspective
- ❖ The attorney's insight
- ❖ Was it negligence, error, or recklessness?
- ❖ What could have been done differently?
- ❖ The emotional and personal toll

REACH

REACTIONS FROM PARTICIPANTS AND OBSERVERS

- ❖ More powerful than Expected – “It felt real.”
- ❖ It’s not easy to decide guilt - many factors and players
- ❖ Didn’t realize these cases often go on for years
- ❖ Didn’t anticipate the scope of disruption emotionally or professionally
- ❖ Never thought about facing the plaintiff

NEXT STEPS

How can you use what you've learned here today in your own settings?

- ❖ Develop your own mock trial exercise
- ❖ Utilize student legal service attorneys
- ❖ Network with community partners to co- sponsor the event
- ❖ Abbreviated “Lunch and learn” exercise

REFERENCES:

- ❖ <http://wrightstatephysicians.org/training>
- ❖ Freund, Freeze and Arnold Law Firm
- ❖ Premier Health Risk Management Team
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- ❖ “Patient Complaints and Malpractice Risk.” *JAMA* June 12, 2002- Vol. 287, No. 22, pps. 2951-57.