Anatomy of a lawsuit: What medical residents need to know

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The possibility of becoming entangled in a professional liability lawsuit is a fact of life for all physicians and medical residents are no exception. Just like other aspects of medicine, knowledge acquired before stepping into a situation is decisive in handling it correctly and with confidence.

A 19-minute, resident-focused training module teaches the basics of when medicine and liability law intersect. It covers the standard process and terms, as well as practical advice.

The module, “Anatomy of a Lawsuit,” is one of the AMA GME Competency Education Program offerings, which include more than 30 courses that residents can access online, on their own schedule.

Among the program’s experts are several who contributed to the AMA’s Health Systems Science textbook, which draws insights from faculty at medical schools that are part of the Association’s Accelerating Change in Medical Education Consortium.

Modules cover five of the six topics—patient care, practice-based learning and improvement, interpersonal and communication skills, professionalism, and system-based practice—within the Accreditation Council for Graduate Medical Education’s core competency requirements. The sixth requirement, medical knowledge, is one that is typically addressed during clinical education.

Speak up at first sign of trouble

Before describing the legal process, the module advises residents what to do at the first indication of an event or patient complaint signaling a claim.

“If you work at a hospital or medical group, report it as soon as possible to the appropriate person or department,” so preparations for a defense can begin. “Be sure your malpractice insurance carrier is
aware of the situation. If they aren’t notified immediately, they may not support you in the claim.”

A patient may signal wanting to file a lawsuit based on dissatisfaction with the outcome of treatment, but the legal standard for medical malpractice is stricter.

Medical malpractice is when a physician or facility fails to provide a patient with an appropriate standard of care to a patient. The legal claim typically entails an allegation of negligence, at any point during the course of diagnosis and care, which results in injury or death to a patient.

See you in, and out, of court

In practical terms, only about 7% of medical malpractice cases ever end up in a trial. The module notes that it can take a case two to four years to go to trial. Here’s what to expect.

**Before a trial:** The physician or facility will receive an official complaint. It will claim a physician or facility—the defendants—are liable and ask for compensation. The defendants’ attorney will typically deny the allegations and a process called pre-trial discovery will begin. That’s the exchange of information from both sides of the case, including medical records, written and in-person statements from witnesses and other evidence relevant to the case.

At the conclusion of discovery, the court may decide that there is insufficient evidence for a case to go to trial, the case may be settled or dropped by the patient, or a trial will begin.

**In the courtroom:** Medical malpractice cases are civil, not criminal, and are mostly tried before a jury in a state court.

After closing arguments from both sides, the judge will instruct the jury on how to consider the evidence. The jury will then deliberate.

Provided they reach a verdict—if they can’t, another trial may be held—the losing party can ask the judge for a new trial or to make a judgment instead of accepting jury’s verdict. The losing party can also request an appeal based on the allegation of an error in the proceedings. An appeal can add up to two more years to a case.

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