Resident medical liability lawsuits: Why and how often they happen

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The beginning of this year’s residency training year is unlike any in living memory, bringing to minds many new questions: Will I have the PPE I need? What will the training experience be like given the pandemic and the rise of telemedicine?

But there’s an older, yet still relevant question that may pop up for residents: Will I get sued?

Research is starting to shed light on that. Medical liability lawsuits in which either residents or fellows were involved in an adverse event are relatively unusual, say the results of a study published in the journal *Academic Medicine*.

Using data from the Comparative Benchmarking System—a Harvard operated national database—the study identifies medical liability claims closed between 2012 and 2016 at hospitals across the country.

Among a group of 3,191 claims that met the study’s criteria, 581 involved either residents or fellows in a harm event—471 involving residents only, 75 involving fellows only, and 35 involving both a resident and a fellow. More than 2,600 claims did not involve residents or fellows in a harm event.

“I think that we in academic medicine tend to be vigilant about what is proper supervision and the concept of graduated responsibility. That is, trainees are allowed to take on more responsibility each year if they demonstrate mastery of the previous year’s material.” said Laura Myers, MD, an AMA member and the study’s lead author. “Going into the study, we did think these events would be rare, hence why we knew we needed to use a large data source to capture enough events. But certainly, rare events are important to potentially prevent. One event can be devastating to both a physician trainee and a patient.”

Residents can learn with the AMA what they need to know about the anatomy of a medical liability lawsuit.

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Where highest risk lies

The most common final diagnosis for claims involving residents or fellows was puncture or laceration during procedure, which happened in 62 (11%) of the liability lawsuits involving residents or fellows. Other procedural complication including infection was the second most common final diagnosis, happening 34 times (6%). Nervous system complication was third most common, happening 30 times (5%).

When assessing the contributing factors of claims involving physician trainees, inadequate supervision was identified as a contributing factor in 140 instances (24%) and technical performance with a known complication was listed in 137 instances (24%). Failure to reconcile a relevant sign, symptom or test was listed as contributing factor in 88 cases (15%).

Among the claims involving residents or fellows, those “in surgical specialties were at higher risk of being involved in harm events that led to claims, and inadequate supervision was commonly a problem in these cases,” said Dr. Myers, lead author and a pulmonary intensivist at Massachusetts General Hospital. “We hope that residency directors focus specifically on procedural supervision and assess how trainees are receiving competency approval in order to perform them independently.”

Learn with the AMA about the legal challenges will affect patients and physicians in 2020.

No “July effect” seen

One nugget the study found that may be of note to incoming medical residents is that there was no evidence of the so-called “July effect.” This term refers to when the physician trainee workforce in teaching hospitals turns over in July. Interestingly, trainees were no more likely to be involved in a harm event than in non-July months.

“One some articles do detect a ‘July effect’ but we did not,” Dr. Myers said. “I attribute that to people in the hospital being hands on and engaged in July, making sure that physician trainees at all levels are supervised appropriately. We double-check orders and anticipate answering questions over the summer and fall until they feel more comfortable. And that is not just on the physician side,” she added. “The whole hospital rallies in July. There tends to be a lot of teaching and acculturation from other services like nursing, pharmacy and physical therapy to make sure that people are understanding the expectations that exist locally.”

How to avoid patient harm

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While this data, in total, may be encouraging to early career physician trainees, Dr. Myers advises residents and fellows to ask for help or clarification as much as possible in the beginning months.

“If I were a resident again, I would use these results to be aware that there’s a possibility of being involved in a harm event that could lead to a [medical liability] claim,” she said. “I would not be paranoid, but I would want to understand that certain circumstances, such as those relating to procedures and procedural supervision, might put me at higher risk of being involved in a claim. Having an extra set of eyes when you’re doing a procedure, especially in your first few years as a practicing physician, can be beneficial.”

Medical liability reform is essential to fix a broken liability system, ensuring that patients do not lose access to physicians and a full range of health care services. Together with state and specialty medical associations and other stakeholders, the AMA is pursuing both traditional and innovative medical liability reforms at the state level.

The AMA resource *Medical Liability Reform Now!* outlines the facts you need to know to address the broken medical liability system.