Living Through Litigation: Malpractice Stress Syndrome

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ABSTRACT: **Medical malpractice stress syndrome can cause a range of emotions and exacerbate physical disorders. The feeling of lost personal integrity cannot be appeased only by exoneration of those acquitted of charges, but the emotional toll of litigation stress can be mitigated by education in the legal process, developing trustful relationships with the legal team, using support teams or life coaches, and participating in regular physical activity. Sharing a personal story with other defendant nurses, learning effective ways of communicating, and developing healthy coping skills allow the nurse to heal emotionally and come to terms with the lawsuit as a learning experience as discussed in this article. (J Radiol Nurs 2015;34:35-38.)**

KEYWORDS: **Medical malpractice stress syndrome; Nurse defendant; Medical litigation.**

INTRODUCTION

No one arrives at work *planning* to make an error, especially an error that has the potential to cause patient harm. When a potentially harmful event results in litigation, the stress evokes strong, sometimes painful, emotional and physical responses for the nurse defendant. The often adversarial litigation process can be traumatic to all participants and their significant others (Jaray, 2012).

No matter what the outcome, the lengthy and uncertain process of litigation may cause feelings of shame and guilt, isolation, a sense of defeat, anger, tension, frustration, irritability, and fatigue (Tunajek, 2007). Medical malpractice stress syndrome (MMSS) is remarkably similar to post-traumatic stress disorder (PTSD). PTSD develops after a person experiences harm, the threat of harm to a loved one, or witnessed a harmful event. PTSD causes symptoms of re-experiencing (flashbacks, nightmares, and frightening thoughts), avoidance symptoms (emotional numbness, guilt, depression, and loss of interest in activities), and hyperarousal (easily startled, tenseness, and angry outbursts) (National Institute of Mental Health, 2014). A practitioner may feel that a lawsuit, meritorious or not, is an assault on his or her personal honor. A sense of loss of control, worry about loss of livelihood, potential for loss of assets, and lack of knowledge of how legal proceedings work exacerbate the situation (Gorman, 2013).

There are ways to mitigate the emotional impact of being sued, including education about the legal process and MMSS, developing a relationship with the defense attorney, peer support, and professional support (Sanbar, 2007). Although most of the available research literature concerns physicians' emotional reactions to malpractice, the information can easily be extrapolated to the nursing community.

CRITOGENIC HARM

Nurses employed by a facility may be subjected to litigation as either an agent of the facility or personally named in a lawsuit. On any level, having to participate in a legal situation can feel threatening and stressful. Being named in a lawsuit does not mean that misconduct has occurred, and injury does not necessarily indicate that a nurse made an error (Roussel, 2011).

In the current social climate in the United States, citizens regard the right to sue someone for a real or perceived injury as an inviolable duty. Although an attorney may advise the medical malpractice nurse

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defendant of the sequence of actions and expected outcomes of the litigation process, few attorneys prepare their clients for the emotional burdens manifesting from the process itself. Win, lose, or settle, the "critogenic" (law-caused) emotional harms are intrinsic and inescapable. Reasons exist for the lack of preparation for the emotional cost of litigation by the attorney to his or her nurse client. Attorneys may not acknowledge their duty to inform the defendant of the emotional toll of the litigation process, and that toll may deter a nurse defendant and move him or her to settle despite the merits of a case. Even a highly meritorious case is emotionally stressful to defend. Attorneys, because of their own comfort in the legal environment, may not recognize how disorienting, hostile, and intrusive the world of law is perceived to be by their clients (Gutheil, 2000). Strassburger (1999) states that "there is an inherent irony on the judicial system in that individuals … must then endure injury from the very process through which they seek redress, the legal process itself is a trauma."

Medical malpractice cases can take multiple years to come to trial. The ideal of a speedy trial has been obscured by the necessary coordination of schedules among courts, judges, and attorneys. The hope of a day in court rises only to be dashed when a continuance or postponement occurs. The delay, cyclical rise, and fall of hope can lead nurse defendants to become emotionally numb as a way of coping. The separation between the event and its legal resolution may prevent emotional healing even when the case is finally resolved (Gutheil, 2000).

The trauma of an event or poor outcome is experienced by both the patient and the caregiver. When litigation follows that trauma, each step in the litigation process reawakens the trauma and forces both sides to re-experience it (Larson, 2010).

Litigation causes a tremendous amount of personal exposure. Emotional wounds are kept open by the long and arduous litigation process, delaying healing. The profound loss of privacy and public exposure of personal information may alter relationships the nurse defendant has with his or her coworkers, supervisors, and family members (Gutheil, 2000). Most defendants feel that their families suffer as well. Spouses respond to a lawsuit with a pervading sense of loss, financial vulnerability, and social awkwardness. Often, nurses will not discuss their feelings with family members in an attempt to shelter them from the stress (AMASA, 2004).

MEDICAL MALPRACTICE STRESS SYNDROME

Charles (2001) is one of the foremost researchers in litigation stress. Although her work has been done with physicians, the emotional disequilibrium that physicians experience during litigation can be extrapolated to nurses as well. Throughout the legal process, many emotions surface including initial feelings of shock, outrage, anxiety, and dread when the complaint is first served. As the defendant nurse consults with an attorney, feelings of anger, denial, and panic may surface. Active attempts to suppress all thoughts of the case can be disturbed by automatic reminders when case-related activities intrude (interrogatories, depositions, and public testimony) and may precipitate excessive rumination. Unfortunately, no matter how often the event is replayed in the mind, the outcome remains the same (Charles, 2001).

Charles also notes that, although each medical malpractice suit is unique, health care givers are self-critical, have a tendency to doubt themselves, are vulnerable to feelings of guilt, and possess an exaggerated sense of responsibility. These personality traits render nurses susceptible to the demands of tort law because fault must be established to determine compensation value. Nurses are particularly sensitive to the suggestion that they may have failed to meet the standard of care. A nurse's personal integrity, his or her sense of honor, is at stake, and its loss would be devastating. The accusation of failure symbolizes a personal assault, a psychological event that generates stress causing emotional and physical responses. Charles (2001) found that the following disorders were reported by more than 95% of physicians during malpractice lawsuits: adjustment disorder (20%−53%), major depressive disorder (27%−39%), and the exacerbation or onset of physical illness (2%−15%). It is highly probable that the same reactions are experienced by all health care workers involved in litigation.

Larson (2010) states that the emotional stages of malpractice follow a common theme and are dynamic with the defendant moving back and forth on a continuum. Once the defendant realizes that the lawsuit is not going away, he or she may experience disorganization, including feelings of shame, anxiety and depression, or physical manifestations and stress. A feeling of shame is distinctive to the sued individual in the medical field and has nothing to do with the merits of the case. The limitation of "do not speak about the case to anyone" often results in emotional isolation when the defendant takes that instruction literally (Larson, 2010).

A nurse's well-being is threatened because of the stigma associated with a malpractice suit. Along with the feelings of shame and guilt, a sense of victimization may occur. Research on PTSD indicate that trauma causes neurochemical changes in the brain, which may effect psychological, biological, and behavioral health, including symptoms of isolation, negative

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