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Education

PREPARING EMERGENCY PHYSICIANS FOR MALPRACTICE LITIGATION: A JOINT EMERGENCY MEDICINE RESIDENCY-LAW SCHOOL MOCK TRIAL COMPETITION

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☐ **Abstract—Background: Fear of malpractice affects the daily life of many emergency physicians. Educational programs to prepare for litigation are lacking. Objectives: An educational collaboration between an emergency medicine residency and a law school, whereby a medical malpractice mock trial competition is used to teach residents basic skills for testifying in legal proceedings. Methods: Ten residents in an academic emergency medicine program volunteered as witnesses in a malpractice mock trial competition at a law school. Residents testified two or three times and, after each appearance, were provided feedback to prepare them for subsequent rounds of testimony. They were also given access to videotaped testimony. Judges rated each resident using a nine-question survey scored on a 10-point Likert scale. Scores were compared as a group between rounds of testimony. Results: Participants demonstrated significant improvement in seven of nine measured categories. *p*-Values reached significance in: Worked Well on Direct Examination ($p < 0.001$), Demeanor/Body Language ($p < 0.001$), Was Not Arrogant/Did Not Lose Poise on Cross-Examination ($p = 0.001$), Convincing Witness ($p = 0.001$), Appeared Knowledgeable ($p = 0.012$), Courtroom Attire ($p = 0.012$), and Expressed Themselves Clearly ($p = 0.017$). In addition, residents anonymously reported broad educational benefit. Conclusion: This novel educational collaboration taught residents about the process of litigation. It improved their communication skills and expanded their knowledge of documentation pitfalls, problems with staff interaction, and consequences of medical errors. This mutually beneficial partnership between a medical residency and a law school solidified it as a permanent feature of the residency program.** © **2014 Elsevier Inc.**

☐ **Keywords—malpractice; mock trial; graduate education; legal liability; legislation; jurisprudence; medical errors**

INTRODUCTION

For many physicians, the fear of medical malpractice litigation affects their daily practice (1). This is not surprising considering the current state of medical malpractice in the United States. In 2010, 9497 medical malpractice claims were filed, and the total U.S. dollars paid for these claims amounted to $3,177,305,000 (the average award per claim was $334,559) (2). Although the average yearly risk of a lawsuit among all physicians in all specialties is 7.4%, and the average risk of a claim leading to payment is only 1.6%, the chance that a physician will be sued by age 65 skyrockets to 75% in low-risk specialties and to 99% in high-risk specialties (3). Of those percentages, 19% of physicians in low-risk specialties will make a payment on a claim by age 65, and 71% in high-risk specialties will do so. Even low-risk specialty physicians have a high probability of paying a medical malpractice claim at some time during their careers; for those practicing in high-risk specialties, it is almost inevitable.

Physician organizations advocate for medical malpractice reform. We propose measures such as capitation of noneconomic damages, shorter-term statutes of limitations, pretrial screening panels, certificate-of-merit requirements, and higher thresholds for liability (4). To

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justify these efforts, we cite examples of astronomical verdicts and nonmeritorious claims (5). This begs the question, why are physician educational programs to prepare for and navigate the current legal system either lacking or deficient?

The timing of such training is certainly an obstacle. Though many medical schools offer some medical-legal lectures, students at this early stage in their education are understandably focused on learning the basic principles and concepts of the practice of medicine. Later, in residency, physicians are directing their attention to their specialties—a phase of medical training known to be all-consuming. Once physicians become attendings, their medical-legal education is largely limited to brief continuing education venues.

Historically, physician-defendants have been forced to become educated on the subject of medical malpractice first hand, some during residency (6–9). Between 1990 and 2004, the National Practitioner Database reported 1530 claims awarded in suits involving residents, a number regarded as low due to underreporting (10). Many residents involved in lawsuits are not named and do not make the National Practitioner Database due to sovereign immunity. According to one large Northeast malpractice insurer, from 1994 to 2003, in the graduate medical education setting, residents were named in 22% of medical malpractice lawsuits.

Residency programs recognize the need for more in-depth medical-legal education. Some programs invite hospital attorneys to discuss such topics as pitfalls inherent to charting, and explain the format of a medical malpractice trial and the pretrial litigation process (11). However, using traditional didactic formats to teach legal principles in medical care is akin to expecting students to learn how to play a musical instrument by listening to a concert.

An innovative joint educational collaboration between the University of South Florida Emergency Medicine Residency in Tampa, Florida and Stetson University College of Law in St. Petersburg, Florida was designed to bridge the lecture experience with the litigation experience whereby students from both institutions participate in a medical malpractice mock trial competition.

METHODS

Study Design

This educational collaboration was carried out by the University of South Florida Emergency Medicine Residency at Tampa General Hospital and Stetson University College of Law, with emergency medicine residents serving as volunteer research subjects. All tools used for the study—the protocol for the mock trial competition, the research questionnaire, informed consent forms (which described the use of data for publication), and the videotaped testimonies to be shown publicly—were approved by the University of South Florida Institutional Review Board.

Study Setting and Population

The research subjects were 10 emergency medicine residents from all levels of a 3-year accredited emergency medicine residency program. They were solicited via e-mail and by announcement at the regularly scheduled weekly educational conference. The mock trial was held at a law school, as one of its annual scheduled mock trial competitions, with law students acting as the attorneys.

Characteristics of Study Subjects

Of 30 residents eligible, 10 participated; 4 were female and 6 were male; 5 were from the second-year class, 4 were from the third-year class, and 1 was from the first-year class (Table 1). The study objective was to enable each resident to testify on at least two occasions.

Study Protocol

The case involved a professional tennis player requiring amputation of his dominant hand after developing gangrene following the injection of promethazine. This drug, and its possible side effects, has been the subject of coverage in the mainstream media (12). Residents were given a set of documents a few weeks prior to their testimony. The documents contained both background and clinical information about the events that had transpired leading up to the malpractice lawsuit, including the emergency physician's chart, emergency department nursing notes, and a sample copy of the defendant-physician's deposition. Also provided was the U.S. Food and Drug Administration black box warning about promethazine, a *Tarascon Pharmacopoeia* entry on the drug, the curriculum vitae of the defendant-physician, and a photograph of the gangrenous hand.

To more accurately simulate direct and cross-examination questioning, the proceedings were held in

Table 1. Class and Gender Breakdown

Level	Frequency	Percentage
Status		
PGY-1	1	10.0
PGY-2	5	50.0
PGY-3	4	40.0
Gender		
Male	6	60.0
Female	4	40.0

PGY = postgraduate year of training in the current residency training program.