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Tipping the scales: educating surgeons about medical malpractice

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ABSTRACT

Background: In Pennsylvania, medical malpractice premiums are a major cost to surgeons. Yet surgeons often have little if any education in the basics of tort litigation or how to manage their risk. This work describes one approach for educating academic faculty surgeons on current concepts of medical malpractice and provide some guidance on how to "tip the scales of justice"; or minimize the risks of being named in a malpractice claim.

Materials and Methods: The course had five parts: the basics of medical malpractice, the cost of malpractice insurance, current departmental claims experience, strategies for decreasing the risk of being named in a claim, and an overview of malpractice reforms. An anonymous seven question survey was cast in a five-point Likert scale format. A weighted average of 4.5 or above was considered satisfactory. Two free text questions asked about positive and negative aspects of the course.

Results: Eighty of 95 (84%) faculty attended either in person or by reviewing a web-based video. Quantitatively, five of seven questions had a weighted average of more than 4.5 ($n = 48$, response rate = 60%). Qualitatively, the course was reviewed very favorably.

Conclusions: The high percentage of participation and overall survey results suggest that the course was successful. This course was one facet of an approach to decrease the risk of malpractice claims. Unique aspects of this course include an emphasis on state law, department-specific data, and strategies to minimize risk of future claims. Given the state-specific nature of malpractice claims and litigation, individual departments must particularize similar presentations.

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Introduction

Medical malpractice has been—metaphorically—described as Moby Dick, the whale; "evil, ubiquitous, and seemingly immortal."[1] At the least, malpractice is a persistent worry for physicians, affecting the cost and delivery of health care. General surgery is considered a high-risk specialty, with 15.3% of its physicians facing a malpractice suit annually.[2] In 2014, the last year for which the National Practitioner Data Base was available, malpractice payments totaled $2.59 billion.[3] One estimate of annual medical liability system costs (including indemnity payments and administrative costs) in 2008 was

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$9.84 billion.[4] We hypothesized that a short course in medical malpractice could be provided to surgery faculty that would enhance understanding of malpractice as a legal concept, give specific information on how premiums are assessed, provide strategies for avoiding lawsuits, and be well-received by participants.

This course was intended to help "tip the scales of justice" in favor of surgeons and as a response to a suggestion by the Clinical Practices of the University of Pennsylvania Professional Liability Subcommittee that faculty should know more about the topic of medical malpractice. In Pennsylvania, as elsewhere, medical malpractice premiums are a major cost to individual physicians and academic departments.[5] Physicians fear being named in malpractice claims but often have little if any education in the basics of tort litigation or how to manage their risk creating a "hidden curriculum" in defensive medicine.[6,7] The purpose of this work is to describe one approach for educating academic surgery faculty surgeons (cardiac, colorectal, emergency surgery, endocrine and/or oncologic, gastrointestinal, plastic, transplant, thoracic, urologic, and vascular) on current concepts of medical malpractice and provide some guidance on how to minimize the risks of being named in a malpractice claim.

Methods

Curriculum development

The course content was created and assembled by the primary author (S.E.R.) in conjunction with staff from the University of Pennsylvania Health System (UPHS) Office of General Counsel and conversations with individual faculty who wished to understand in greater detail the malpractice enterprise, the method by which malpractice premiums are calculated, and some strategies on how to decrease the risk of malpractice claims. The challenge was trying to condense a semester's worth of education in the principles of medical malpractice into about 90 min. The course had five parts: (1) the basics of negligent torts, the special case of medical malpractice, and the role of expert witnesses; (2) the cost of malpractice insurance; (3) divisional and individual risk rating based on experience points; (4) current departmental claims experience, strategies for decreasing the risk of being named in a claim; and (5) an overview of malpractice reforms designed to make compensation for medical error more efficient. The in-person presentation was administered as a slide presentation by a content expert (S.E.R.) and recorded. The web-based version was the recorded presentation uploaded to the UPHS intranet. Additional readings were referenced on the slides but not distributed to course attendees.

Survey development and analysis

Eighty percent participation was arbitrarily set as a successful attendance rate. Continuing medical education credit was offered, and a portion of the annual at risk salary was awarded for attendance.[8] An anonymous survey consisting of seven questions related to content was distributed, and the results tabulated to assist in improving future courses. Weighted average or rating average is based on the weight assigned to each answer choice. In the five-point rating scale question used in the Faculty Malpractice Course Evaluation tool, the following weights were assigned to each answer choice: strongly disagree (1); disagree (2); neither agree nor disagree (3); agree (4); and strongly agree (5). After collecting the responses to the survey, the weighted average was calculated using the following equation:[9]

$$\overline{X} = \sum W_i * X_i \Big/ \sum W_i$$

Where $\overline{X}$= weighted average of the responses; W_i = weight of answer choice; X_i = response count for answer choice A weighted average of 4.5 or above was considered satisfactory. Seven questions (Table 1) were cast in a five-point Likert scale format with anchors of strongly disagree and strongly agree. Two free text questions about positive and negative aspects of the course were also included for "hot comments." This work was deemed exempt from institutional review board review; all surveys were anonymous, and the activity was not designed to contribute to or develop generalizable knowledge but only to assess the course for further improvement.

PARS data

UPHS is one of a number of healthcare institutions across the United States that has contracted with the Vanderbilt University Center for Patient and Professional Advocacy (CPPA), which maintains the Patient Advocacy Reporting System (PARS), a database consisting of physician specialty and patient complaint data for more than 25,000 physicians.[10] The intent is to develop a predictive marker for physicians who may be at increased malpractice risk.[11] Unsolicited patient complaints are coded and analyzed by CPPA, a PARS score is generated for each physician and compared with that of other medical group members.[12] For this course, deidentified, aggregate data were presented for illustrative purposes.

Results

Survey results

Ninety-five clinical faculty members were eligible to attend. Eighty attended either in person ($n = 38$) or by reviewing a web-based video ($n = 42$) for an overall participation rate of 84%. The course was offered for 21 days after the presentation. Attendees were asked to complete a survey on their experience with the course ($n = 48$, response rate = 60%, see Table 2). Quantitatively, five of seven questions had a weighted average of more than 4.5. Qualitatively, free text space was provided so individuals could comment on those areas felt most valuable or where improvements could be made. Of the positive comments, the information on malpractice premiums and insurance had the most comments, followed by approval of the overall course material (Table 3). Of those who chose to comment on suggested improvements, the majority thought the course needed no additional material. The next most

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