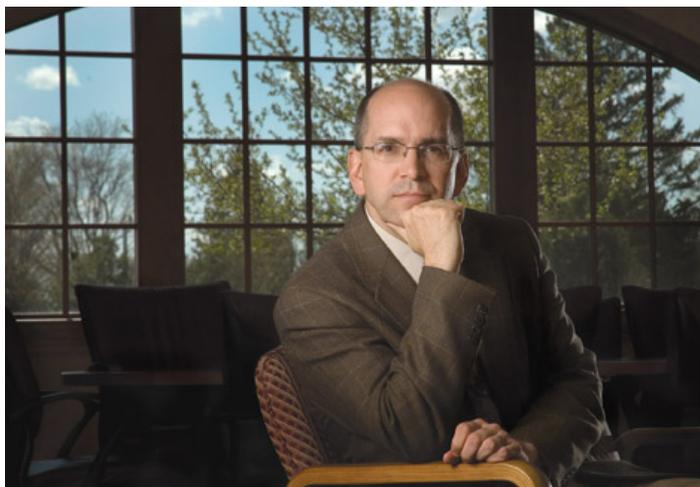


PROFESSION



Radiation oncologist Stephen Lutz, MD, feared he would have to leave Findlay, Ohio, after going through a medical liability lawsuit. But after he was found not liable in the 2008 court case, he continues to practice in the small town and holds leadership positions in the community. "If you know in your heart that you did your best and refuse to capitulate who you are, then you win," he says. "It's that simple." [Photo by Mike Elicson / www.elicson.com]

Life after lawsuit: How doctors pick up the pieces

Physicians often experience depression and alienation after being sued. The way they practice medicine also is affected.

By **ALICIA GALLEGOS**, amednews staff. *Posted May 16, 2011.*

Before dawn, nearly every morning in the days leading to his trial, Stephen Lutz, MD, woke abruptly, his mind filled with thoughts of the looming witness stand.

He would spend the next few hours lying in the darkness, going over the case again and again.

"I awakened many mornings rehearsing what I would say to explain myself. It's almost as if I was giving testimony every morning at 4 a.m.," said Dr. Lutz, a radiation oncologist in Ohio who was sued in 2008.

Experts say such stress associated with a medical liability lawsuit manifests in different ways, often affecting all aspects of a physician's life.

From the start of the lawsuit to its end and beyond, doctors are impacted emotionally, mentally, physically and financially, said Marvin Firestone, MD, a psychiatrist and attorney in California.

Six in 10 doctors are sued by the time they reach age 55, said a 2010 report by the American Medical Association.

The average cost of resolving a medical liability case in 2009 was \$324,969, a rise of 13.9% from 2000, according to AMA data. Defense payments in 2009 averaged \$47,937, an increase of more than 65% since 2000.

Physicians who have been sued must note the lawsuit when applying for liability insurance and medical privileges. Referrals can go down, and managed care panels also might be affected.

How long a case weighs on a physician depends on the individual, the emotional support he or she receives and the outcome of the case, experts say. Being sued is life-altering, and many doctors are never the same.

"It's frequently a death note to a doctor's practice and to his career," Dr. Firestone said. "The doctor either feels like, or is treated like, a leper in the medical community."

Whether to settle or fight

In 2008, Dr. Lutz's life in Findlay, Ohio, was upended by a court summons. A patient he treated the previous year sued him for negligence.

The woman, who had a history of breast cancer, showed signs of cancer in her spine, Dr. Lutz said. She declined to have a biopsy but agreed to radiation therapy, which she underwent for 10 days, court documents show. An unrelated spinal surgery shortly afterward showed no cancer. The patient claimed the radiation was unnecessary.

During a three-year court battle, Dr. Lutz experienced emotions that included anxiety and helplessness, and he was concerned about his future in medicine. In a small town like Findlay, accusations alone can hurt a practice.

"I made no plans in terms of career or life beyond the [trial] date," he said. "I knew I might have to consider going elsewhere."

As he tried to balance his job with the disruption of court dates and legal filings, Dr. Lutz struggled over whether he should settle the case. He knew other doctors who had agreed to settlements to avoid a stressful trial. But he didn't think he could live with settling when he felt he did nothing wrong.

"There has to be a point where you did what you did and you would do it again," he said. "It took me three years to accept that there was a process going on outside of my control, and [the jury] might come to a conclusion that was different from the perception I had of myself."

In August 2010, a jury found Dr. Lutz not liable. Regardless of the verdict, he said the court journey made him stronger and more confident that he was meant to practice medicine.

"I said out loud to myself many times, 'I've only enjoyed this. This is all I was ever meant to do, being a doctor,' " he said. "[The verdict] would be what it was going to be. I would continue living my life either way."

An emotional roller coaster

When Frankfort, Ill., emergency physician and attorney William P. Sullivan, DO, was sued a second time, he knew he faced a long and exhausting road.

In 2000, he was among eight physicians sued by a family who claimed that hospital staff had not properly treated a woman after a car crash. She died a few days later. The only interaction Dr. Sullivan said he had with the patient was inserting an intravenous needle in her.

Dr. Sullivan eventually was dismissed from the lawsuit. But he sued the plaintiff's attorney and a trauma surgeon for malicious prosecution. The surgeon had given an opinion to the court saying the plaintiff's case had merit.

In 2004, the Illinois Appellate Court affirmed the trial court's decision, dismissing Dr. Sullivan's lawsuit.

"It was hard, because I felt like I did a lot of work and didn't get a chance to get all the issues out," he said. "We just had to let it go."

In a second suit filed in 2000, a family alleged that Dr. Sullivan had failed to diagnose a patient with necrotizing fasciitis, leading to the patient's death. At his 2005 trial, jurors found Dr. Sullivan not liable in the patient's death.

Having been through one lawsuit didn't lessen the burden of the second suit.

"You go through a phase where you question everything. You really question your worth as a doctor," he said.

Talking about feelings associated with a lawsuit is especially difficult, because legal troubles are perceived as private issues, experts say. Complicating matters is the fact that doctors are advised by attorneys not to talk about case details.

"It makes you feel like keeping it to yourself," Dr. Sullivan said. "You just feel like you're alone, and there's not a lot of help out there for you."

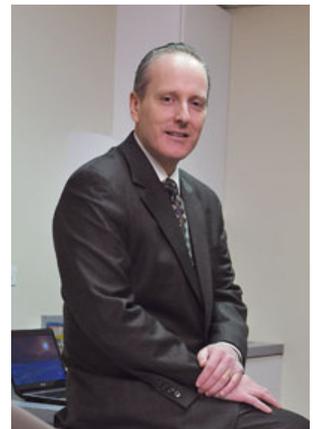
Having a strong social support network is essential when enduring litigation, said John-Henry Pffifferling, PhD, director of the Center for Professional Well-Being in Durham, N.C. "You need to talk about your anger or your symptoms of depression. There's suffering, and then there's suffering *alone*."

Dr. Sullivan's wife was his strongest supporter and confidant during his legal ordeal.

"I was fortunate that my wife is a doctor, too, and she would say to me, 'Stop it. You did the right thing,' " he said.

The need for preparation

After he was sued in 2005, Lebanon, Va., based family physician S. Hughes Melton, MD, focused on his busy practice and



Illinois emergency physician and attorney William Sullivan, DO, changed his law specialty after undergoing two legal battles. He now represents doctors in medical liability lawsuits. "You don't really appreciate the emotions somebody goes through until you've been in that position," he says.

[Photo by Ted Grudzinski / AMA]

After he was sued in 2003, Lebanon, Va.-based family physician S. Hughes Melton, MD, focused on his busy practice and refused to let pending court dates distract him. Looking back, it was a huge mistake.

"I had no sense of what I was walking into," he said. "For me, the case did very little damage as it was going on. It did all of its damage afterward."

S. Hughes Melton,
MD

Dr. Melton was sued by a family alleging wrongful death. The doctor had treated the patient for a pinched cervical nerve, he said. The day after treatment, the patient died of an apparent cardiac arrest, according to court records.

The suit took five years to reach trial because of court delays and a new plaintiff's attorney who took over the case.

Before the trial, Dr. Melton said he didn't have adequate trial testimony training. When the April 2010 trial arrived, his experience on the stand turned out to be grueling.

"I didn't have the benefit of telling my story the way I wanted to tell it," he said. "There was this little voice inside my head saying, 'Well, maybe you are guilty. Maybe it is your fault.' When you're getting grilled by the plaintiff's attorney, that little voice talks to you, and you start to lose your conviction."

Jurors found for the plaintiffs, awarding the patient's family about \$100,000, significantly less than sought. "I was mentally prepared for a guilty verdict, but when they said it, it was like someone had sucked the soul out of my heart," Dr. Melton said.

He went back to practicing medicine, but the joy of his work diminished. He slept more and had less energy for his church and the community projects he once enjoyed. Friends and relatives noticed he was quieter.

Surviving a lawsuit is akin to overcoming a death, said Dr. Firestone, the California psychiatrist and attorney. Doctors go through phases of denial, grief and acceptance. "[The impact] varies from individual from individual, but it could last a lifetime," he said.

Moving on

A year after his verdict, Dr. Melton still feels as if he is recovering, but his zest for life and family activities has returned. His advice for other doctors fighting a lawsuit is to seek the guidance of medical professionals who have been through similar experiences.

Drs. Lutz, Sullivan and Melton said their perception of patients has changed since their legal battles. They practice more cautiously.

"You tend to view patients somewhat as adversaries. It's difficult to reconcile," Dr. Sullivan said. "It destroys the collaborative nature of physicians and patients."

Dr. Lutz said: "It used to be a point of pride that I would take on the difficult patients. ... I am far less likely to take on those challenges."

Documentation is almost an "obsessive-compulsive" habit now, Dr. Lutz added. He writes down even minor conversations with patients for fear that the information might be necessary someday in a legal setting.

Despite his legal ordeal, Dr. Sullivan believes he is a better doctor now. He takes more time with patients to explain the little things and is more sympathetic to their concerns.

"There are wounds during a lawsuit that heal and scar over," he said. "And you learn from it."

ADDITIONAL INFORMATION:

Where to find support during litigation

Experts recommend that doctors seek mental and emotional assistance during and after legal battles. Here are starting places where doctors can turn for resources:

Contact your local medical society: Many have assistance programs for doctors going through medical liability lawsuits. Some offer mentor-type programs that match defendant doctors with physicians who have been through similar experiences.

Seek help from your liability insurer: Insurers such as The Doctor's Company offer programs to help physicians manage the stress of lawsuits (www.thedoctors.com). Each year across the country, the insurer conducts about 20 Litigation Education Retreats, which include lectures from attorneys on what to expect from the legal process and tips on how to be an effective witness.

Consider counseling: Experts say counseling and psychiatric assistance enable doctors to recover more quickly after lawsuits. The Center for Professional Well-Being, for example, offers services for management of litigation stress (www.cpwb.org).



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