How NOT To Be Sued For Malpractice

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Avoiding...

Optometric Malpractice Awards by Year

Optometric Malpractice Award Amounts

Why Doctors Get Sued

- Incomplete history
- Improper recordkeeping
- Failure to dx or manage ocular disease
- Poor communication
- Inadequate advice or warnings
- Failure to establish rapport
- Failure to obtain informed consent

Most Common Malpractice Allegations
LEADING CAUSES OF LAWSUITS AGAINST OD’S

- Negligence
- Product liability
- Informed consent

NEGLIGENCE

WHAT IS NEGLIGENCE?

- Failure to meet the standard of care that a reasonable and prudent practitioner would provide under the same or similar circumstances

TORT VS. CRIME

- Tort – Private or civil wrong or injury
- Crime – Act in violation of a law, which the government has determined is injurious to the public

UNLICENSED TREATMENT OF GLAUCOMA

- Tort
  - Patient sues doctor for injuries and damages
- Crime
  - State board files criminal charges against doctor for violation of Optometric Practice statute

CASE 1

- 4 year-old girl with accommodative esotropia. DFE not performed
- Initial Dx: amblyopia
- DFE after mother noticed leukocoria
- Actual Dx: retinoblastoma
- Tx: radiation
- VA: 20/300 due to cataract and RD
WHAT WENT WRONG?
- Failure to consider Dx contrary to prototype
  - Representative/Prototypical
- Tendency to stop searching once Dx is found
  - Satisfaction of Search
- Preference for Dx we hope is true
  - Affective

CASE 2
- 55 y.o. male arrives late, dirty and unwashed on Friday complaining of red eyes and blurry vision
- Hx of alcoholism. Denies drinking today
- High hyperope. No ocular discharge
- Initial Dx: bacterial conjunctivitis; red eye secondary to ethanol ingestion
- Actual Dx: angle closure glaucoma

WHAT WENT WRONG?
- CC is result of personality or “kind” of patient
  - Attribution
- Rushing examination at end of day/week
  - Haste
- Confirming the expected by ignoring conflicting information (“Cherry Picking”)
  - Anchoring/Confirmation
- Judging likelihood by prior experiences
  - Availability

HUMAN NATURE
- People overestimate their own competence
- People see success as a result of skill and failure as a result of chance
- Happy people make fewer mistakes
- Tired people make more mistakes

GOOD BOOKS
- Why We Make Mistakes
  - Joseph T. Hallinan
- How Doctors Think
  - Jerome Groopman, M.D.
- WRONG
  - David E. Freeman

DETERMINING THE STANDARD OF CARE
- Legislative
- Judicial
- Practice guidelines
- Community standards
CASE 3

60 y.o. POAG suspect comes to Texas optometrist for examination

LEGISLATIVE

Primary Care Examination
- Case history
- Visual acuity
- Biomicroscopy
- Funduscopy
- Tonometry
- Other tests
Optometric Glaucoma Specialist
- Held to same SOC as ophthalmologist

JUDICIAL

Routine dilation
- Keir v. United States
Informed consent
- Gates v. Jensen
Tonometry
- Helling v. Carey

PRACTICE GUIDELINES

American Academy of Ophthalmology
- Evaluation of structures situated posterior to the iris is best performed through a dilated pupil
American Optometric Association
- Dilation generally required for thorough stereoscopic evaluation of posterior segment, including macula and optic nerve, and peripheral retina

COMMUNITY STANDARDS

Goldmann applanation tonometry
Pachymetry

PRODUCT LIABILITY
PRODUCT LIABILITY

Definition
- Legal liability incurred by a manufacturer, merchant, or distributor because of injury or damage resulting from the use of their product

CASE 4
- Patient purchases sports safety goggles from you for racquetball
- Racquetball shatters lens, causing corneal laceration
- Lenses found not to meet ANSI standard

 STRICT LIABILITY
- Doctor in business of selling product?
- Product in same condition as when purchased?
- Defective product?
- Injury suffered due to reasonable use of product?

INFORMED CONSENT

"Every human being of adult years and sound mind has the right to determine what shall be done with his own body"
-- Benjamin Cardozo

CASE 5
- 56 y.o. female complained of blurry vision.
- IOP = 24mm Hg
- VF & DFE not performed
- Patient not informed of IOP finding and its significance
- Eventual vision loss and Dx of POAG
- Doctor found liable for failure to disclose abnormal findings
ELEMENTS OF INFORMED CONSENT
- Diagnosis
- Nature, purpose, benefits
- Risks, consequences, side effects
- Feasible alternative treatments
- Probability of success
- Prognosis in the absence of treatment
- Answer patient's questions

WHY OBTAIN AN INFORMED CONSENT?
- Patient education
- Compliance with the law
- Legal defense
- Ethical obligation

DOCUMENTATION OF INFORMED CONSENT
- Verbal consent
- Your written summary of verbal consent
- Your witnessed written summary of verbal consent
- Written consent signed by patient
- Video recording

OTHER LEGAL PITFALLS

EMPLOYEES
- Contact lens technician/assistant soaks patient’s lenses in peroxide rather than saline
- Staff person fails to order safety glasses for police officer patient
  - Respondeat Superior: “Let the master answer”

PARTNER
- Partner fails to diagnose retinal detachment
- Joint and several liability of partners
REFERRAL
- You refer your patient to LASIK surgeon who practices below the standard of care
- Negligent referral

PROPER PATIENT CARE
- Manage patient expectations
- Be sensitive to patient needs
- Double check important information
- Include patient in decision making
- Make sure patient understands treatment
- Don’t rush the examination
- Always ask yourself: “What is the worst possible diagnosis?” and eliminate that possibility

HOW NOT TO BE SUED
- Take a complete history
- Make the correct diagnosis
- Provide adequate advice & warnings
- Keep proper records
- Obtain informed consent
- Communicate findings
- Establish rapport with your patients

THE END!