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Legal Aspects of Radiology

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“Residents can’t get sued!” were the inexperienced words from a former classmate during our first year of training. While it’s a novel idea to not be held liable for your actions as a trainee, it simply isn’t true. This misconception was the spark behind holding a “Legal Aspects of Radiology” session at RSNA 2012 for residents and fellows to grasp a better understanding of the legal issues we face in our profession. The RSNA Resident and Fellow Committee put together a group of accomplished speakers including attorney Mr. Thomas Greeson, Dr. Leonard Berlin and Dr. David Yousem to address this topic.

Contract Awareness

As we go through the residency training system, we exist in a relatively protected environment with a familiar transition from one level to the next. Making the jump to the working world may hold many surprises if you are not prepared. Mr. Greeson, an attorney and former general counsel to the American College of Radiology, gave us some advice on how to evaluate a practice before joining. He stressed the importance of examining the relationship that the practice may have with the hospital to provide services and coverage. Mr. Greeson also described the elements of a contract between the new hire and the group. While there are specific items such as salary and vacation, other things to look for include details about becoming a shareholder in a practice, noncompete clauses and tail coverage.

Medical Malpractice Pitfalls Your First Year Out: How to Avoid Them

Dr. Leonard Berlin, a Professor of Radiology at both Rush Medical College and the University of Illinois College of Medicine, accomplished speaker and author of the book *Malpractice Issues in Radiology*, guided us through some of the mistakes we are prone to make in our careers and how to avoid them. He started with a brief overview of the escalation of lawsuits, including the number of suits and the size of the payments. While it is a terrible thing to imagine your assets disappearing because of a lawsuit, he assured us that this is a very rare instance because of the tendency for the two sides to set limits. In addition, the vast majority of claims are either dropped or dismissed. This fear of being sued fosters the practice of defensive medicine and an increased number of studies being ordered to ‘not miss’ anything.

He further discussed the most common causes of lawsuits: failure to make the correct diagnosis and failure to communicate. Dr. Berlin gave a summary of some of the more common errors and stated that the average error rate may be about 3-4 percent. Errors may be perceptual in nature, such as an error to observe the actual finding. They may be cognitive, which is a misinterpretation of a finding. Satisfaction of search, after finding the obvious abnormality, is also a very common error. It is not the first or even the second abnormality that is missed, but usually the third. Dr. Berlin cautioned us that when reading a previous report to not accept the interpretation of findings to be true, thereby leading to an alliterative error. If there is an error on a previous report from yourself or a colleague, we have a tendency to accept that error as correct and perpetuate the mistake in subsequent dictations. We can reduce making these errors by getting a full history, interpreting prior exams with a grain of scepticism and using our disclaimers when appropriate (i.e. poor image quality).

Our second most common cause for lawsuits is failure to communicate a finding. We need to be familiar with practice guidelines (try reviewing the ACR Practice Guidelines for Communication). We know to call about the obvious emergent critical findings but not always the ‘incidentalomas’ that require non-emergent follow-up (e.g. the incidental pulmonary nodule on a chest x-ray that requires continued investigation). He encourages us to write a strong report and if something warrants further imaging, then state it. It’s neither legally protective nor useful to merely describe a finding and not give a meaningful interpretation of its significance. When you communicate a finding make sure you document it with the time and specific name of a person to keep a record that could prove valuable in court.

Lastly, Dr. Berlin left us with four questions to ask ourselves before signing any report: What do I see? What do I think it means? What do I think the physician will conclude? What do I want the physician to conclude?

You've Been Sued, Now What?

Dr. David Yousem, Professor of Radiology, Director of Neuroradiology and Vice-Chairman of Radiology at Johns Hopkins Hospital and author of the book *Radiology Business Practice, How to Succeed*, had even more to say on the topic of lawsuits. His insight stems from his years of experience and the unique situation of being married to a plaintiff malpractice attorney. His entire talk was given in a poetry format with the objective of maximising your legal defence, career and personal survival from a lawsuit.

Dr. Yousem gave advice as to the actions you should take when faced with a lawsuit. Once a lawsuit is filed, keep the details to yourself since any statement could be discoverable, including obtaining second opinions from colleagues. Discussion of the case should be restricted to your legal team, risk management and the insurance company. Above all else, never alter the original report.

He advised us to always evaluate the case thoroughly. Was there a breach in standard of care? If there was no divergence from the standard of care, you may have a contestable case. Maybe there was a breach, but it was not what caused the injury to the patient. If there was a transgression in care, it may be worth admitting the mistake and settling, instead of facing the drama of a courtroom. This explains why 95 percent of cases are settled and never make it to trial.

If you are faced with a trial, be wary of the plaintiff's choice in expert witnesses. The expert witness should testify to what a reasonably prudent radiologist would interpret. This person should be someone in their everyday practice and not necessarily the world's authority on the subject. The missed finding may be completely unusual for the average radiologist but common for a super-subspecialist. Attend all the briefings for the case because if you are the defendant and present, you can challenge what the experts are saying in their depositions. Alternatively, be cautious in your own deposition not to blame other physicians for your mistake.

If you do see the inside of a courtroom, maintain an even temperament throughout the trial. Arrogance or belligerent mannerisms can easily rub the jury up the wrong way. If the plaintiff's attorney makes an incorrect statement, calmly interrupt and correct them so that you are not led down the wrong path in your own statement. If you don't remember certain facts, just state, "I don't recall." Do not let yourself be cut short in your response. You have the right to give your full answer to the question, but remember to do so in a thoughtful manner.

Most importantly, Dr. Yousem stated that if you are sued, don't take it personally. Remember, the trial itself is not just about you. The patient experienced a bad outcome and the question revolves around a deviation from standard of care. The patient may deserve some compensation. Whether there is a settlement or a trial, it is still something that can weigh heavily upon any physician.

While this is a brief outline of the topics that were discussed at RSNA 2012, hopefully, it serves as a starting place to increase awareness of the legal issues we face in our profession. We will all sign a contract for work and we should understand it and know what to look for. If we do make an error in our readings that results in a lawsuit, we have a little more insight as to what we may confront and how to handle the situation.

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