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2023

ACG HEPATOLOGY SCHOOL & EASTERN

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JUNE 2-4, 2023 | RENAISSANCE HOTEL
WASHINGTON, DC





Register online: meetings.gi.org

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ACG Virtual Grand Rounds universe.gi.org

Participating in the Webinar

All attendees will be muted and will remain in "Listen Only Mode"

Type your questions here so that the moderator can see them.
Not all questions will be answered but we will get to as many as possible.

A handout with the slides and room to take notes can be downloaded from your control panel.

Exit

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ACG Virtual Grand Rounds universe.gi.org

ACG Virtual Grand Rounds

Join us for upcoming Virtual Grand Rounds!




Week 16 – Thursday, April 20, 2023
 Quality Indicators for Capsule Endoscopy and Deep Enteroscopy: An ACG and ASGE Joint Publication
 Faculty: Jonathan A. Leighton, MD, FACP
 Moderator: Carol E. Semrad, MD, FACP
At Noon and 8pm Eastern




Week 17 – Thursday, April 27, 2023
 Gut Directed Hypnotherapy for IBS: What Gastroenterologists and Patients Should Know
 Faculty: Olafur Palsson, PsyD
 Moderator: Megan E. Riehl, PsyD, MA
At Noon and 8pm Eastern

Visit gi.org/ACGVGR to Register

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ACG

2023

OCTOBER

20-25, 2023

VANCOUVER, CANADA

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Save the Date!



Be sure
your
passport
is up to
date!



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Dealing With Being Sued in Gastroenterology



Andrew D. Feld, MD, JD, FACP
Division of Gastroenterology, WPMG (Kaiser WA)
Clinical Professor of Medicine, University of Washington
Past ACG Governor for Washington State

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Disclaimer



“Your Honor, my client pleads guilty to having been
mislead by his advisors....”

**This lecture is for educational purposes only,
anddoes not constitute specific legal advice.**

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Overview

1. Preamble
2. Emotional Impact
3. Actions to Take-
contact risk management; get the best medical help for complication care, don't avoid family (but consider if protection occasionally needed), apology laws
4. Actions to Avoid-
arrogance, changing charts, speaking with peers about the case outside peer review
5. The process
working with your attorney- if synchronous goals
Request- deposition training, explanations, alternatives
Provide medical information, even expert witness referral
Nuances- Cumis counsel
6. Self/Family Care
Peer Support Programs

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Preamble:

- UW GI Grand Rounds
- After the lecture, a compliment on the content, and a question that has stuck with me:
 - Do you have to be so scary?

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Do You Have To Be So Scary?

- Reassuring Aspects
 - Big institutions often have protections, deep pockets, and you may not even be named!
 - Providers prevail 80%, roughly (old data)
 - Many docs, including me, have never been sued during long active careers
 - Knowledge may help avoid some situations
 - Bad luck happens through no fault of your own

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Do You Have To Be So Scary?

- Not reassuring aspect:
 - Unfamiliar territory:
 - the world of law is also a professional environment, but very different from the medical world in which we live, with often strange language and rules
 - Nature of the subject
 - Imagine a lecture on malignant ascites/peritoneal studding; important, but not joyful

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Med Student Query:
We have insurance, why should we care if sued ?

Since 80% of medical malpractice lawsuits settle,
and almost all doctors have malpractice insurance,
why do we need to concern ourselves about
preventing lawsuits?

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Implications of a Lawsuit

- Reporting
 - State Medical Commissions (MQAC)
 - Could limit your license
 - Public Searchable
 - National Practitioner Databank
- Credentialing/Hiring
 - Repeated explanations
- Financial
 - Settle within policy limits?
- Personal
 - Years of stress, unfamiliar surroundings depositions, increased rate divorce

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Tort of Negligence

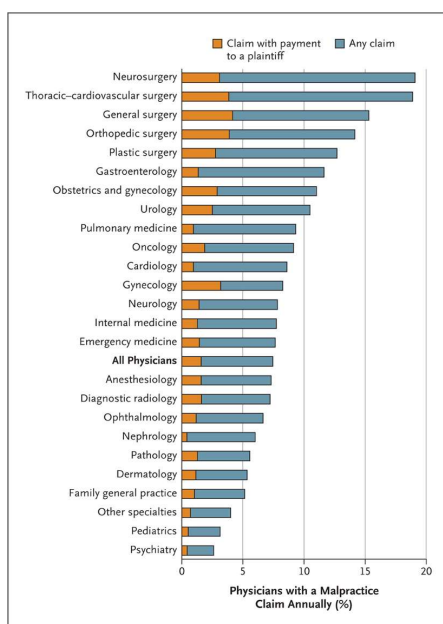
- Duty
- Breach
 - Standard of Care
 - Expert Witness Testimony
 - Guidelines
 - Informed Consent
- Causation
- Harm

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Other Ways Trouble Comes at You

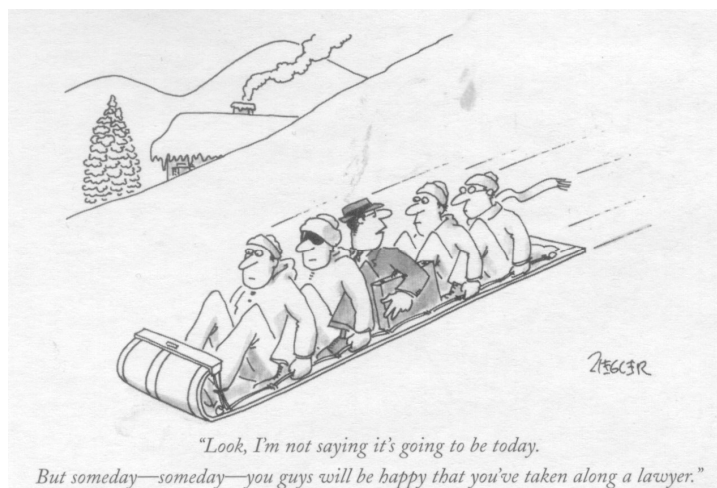
- State Medical Commissions
 - Get legal representation!
- National Databank
- Institutional Actions
 - Performance Improvement Plans
- Credentialing
- Digital Age Issues
 - Trashed on the web
- Business Issues (ex. non compete)

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Jena AB et al. N Engl J Med 2011;365:629-636.

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Emotional Impact

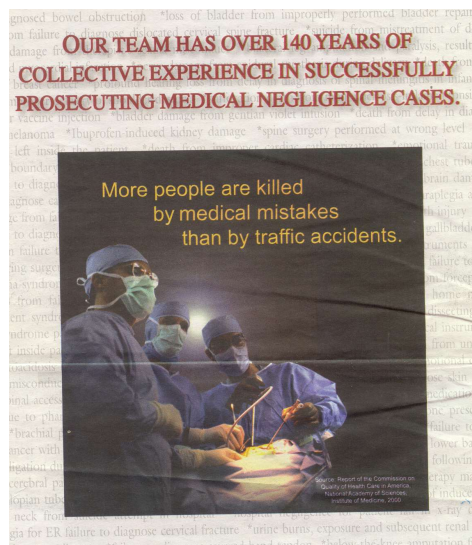
1. Entering a Different World
2. Duration of Lawsuit (years ..of Stress)
3. Viewing patients more defensively?
4. Institutional stress
 - Explaining to your chiefs
5. Family Stress
6. Can't discuss with anyone/colleagues
 - Can discuss w spouse, legal team, and in peer review
7. Peer Counseling

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Different Worlds

- The Language of Medicine
 - Epidemiology
 - Scientific method
 - Clinical Guidelines
 - Grand Rounds
- The Language of Law
 - Statutes
 - Regulations
 - Standard of Care
 - Expert Testimony, Depositions

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Actions to Take

- Contact Risk Management
- Don't speak with colleagues, despite the temptation; they can be deposed
- Your attorney works for you- give all the information, especially the bad, so the attorney can prepare to answer the difficult questions
- Help them find the best experts, and even the best literature
- Does your institution have a Communication and Resolution program? (can include removing bills, compensation) (Michelle M Mello JD)

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Actions To Avoid

1. Arrogance
 - Plaintiff attorney sizing you up during deposition re settle or trial
2. Speak w colleagues about the case outside peer review
 - You will be asked, your colleagues could be deposed
3. Deposition Missteps
 - “Teaching” and “explaining” so the suit will go away
 - Just yes/no and as limited as can honestly answer
 - Underestimating the opposing counsels knowledge of medicine
 - Being lead down the garden path (couch answers with it depends where possible)
 - Not practicing with your attorney ahead of deposition

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Programmatic Approach to Medical Mistakes

(that may avoid a lawsuit)

- Disclosing Mistakes: Integrity, Trust, Learn from Mistake, patient fears.
- Involve Others in Disclosure
- VA Study , Michigan Program and others re Decreased Liability Risk
- Apology Laws
- Bernard Lo Resolving Ethical Dilemma's chap 36
- Kohn “To Err is Human:Building a Safer Health System” Nat Acad Press 2000
- Studdert et al NEJM 2008
- Mello MM Health Affairs 2018

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Summary

- Lawsuits Happen
 - Even to excellent physician
 - Often not really your fault, just a bad outcome can trigger a lawsuit
 - Or financial need of plaintiff to meet medical expenses
 - But, even if your fault, “To Err is Human”
- Lawsuits do end (eventually)
- Your family and career continue- keep perspective and take care of them

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Lawsuits Happen

- Don’ t Beat Yourself Up
- Don’ t Neglect Post Complication Care
- Settlement question “within policy limits”
- Expect a long drawn out process, during which opposing counsel will trash you
- Doctors win about 80%

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Surviving a Lawsuit

- Stressors
- Handling Depositions
- Keeping Confidential/Peer Review
- Working with your Attorney
 - Expert Witness
 - Medical Knowledge
 - Don't withhold the bad
- Programmatic Approach to Disclosure and Compensation
- Sequela

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My (old) reference from red section AJG- will be available

- RISK MANAGEMENT
- Most Doctors **Win**
- **What to Do If Sued for Medical Malpractice**
- Feld, Andrew D. MD, JD¹; Moses, Richard E. DO, JD²
- *American Journal of Gastroenterology* 104(6):p 1346-1351, June 2009.
- Abstract
- **All gastroenterologists are at risk of being accused of medical malpractice; few have received much training about what to do should a lawsuit occur. This article details what one can expect in a typical medical malpractice negligence claim and reviews basic relevant legal terminology. The timeline of a lawsuit is described, particularly noting the physician's role in discovery and trial. Cautions and suggestions for successful navigation of this unfamiliar and uncomfortable world are dispensed.**

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References

Most doctors win: what to do if sued for medical malpractice

[Andrew D Feld](#)¹, [Richard E Moses](#)

Am J Gastroenterol. 2009 Jun;104(6):1346-51, PMID: 19491847,
DOI: [10.1038/ajg.2009.215](https://doi.org/10.1038/ajg.2009.215)

Abstract

All gastroenterologists are at risk of being accused of medical malpractice; few have received much training about what to do should a lawsuit occur. This article details what one can expect in a typical medical malpractice negligence claim and reviews basic relevant legal terminology. The timeline of a lawsuit is described, particularly noting the physician's role in discovery and trial. Cautions and suggestions for successful navigation of this unfamiliar and uncomfortable world are dispensed.

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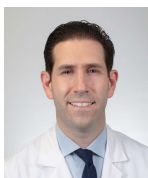
Questions?



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Douglas G. Adler, MD, FACP

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CONNECT AND COLLABORATE IN GI



ACG & CCF IBD Circle



ACG GI Circle
Connect and collaborate within GI



ACG Hepatology Circle



ACG Functional GI
Health and Nutrition Circle



ACG Women in GI Circle

ACG's Online Professional Networking Communities
LOGIN OR SIGN-UP NOW AT: acg-gi-circle.within3.com



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