

The Poisoned Well: A Missing Aspect to the Defensive Medicine Debate and Its Impact on Medical Trainees *An Information Paper*

One of my favorite attending physicians in residency was thoughtful, compassionate, dedicated, and thorough. He spent hours documenting his medical decision-making and following up on his patients after each shift. In short, he was everything that a good emergency physician should be. Unfortunately, being a good doctor was not good enough. Merely two years out of training, and he had already been sued. His patient had presented with flank pain, and he diagnosed her with a kidney stone. She had normal vital signs, including heart rate and 100% SpO₂, blood in her urine, and small stones in her kidney on a non-contrast abdominal and pelvic CAT scan. She was discharged home but came back to the hospital the next day with a massive pulmonary embolism (PE). He was sued, and his group settled the case. It did not matter that under the Pulmonary Embolism Rule Out Criteria, she had less than a 2% chance of having a PE. As my mentor would later recount, 2% is not zero, and our country has no tolerance for mistakes. Guidelines do not protect us from being sued. He is now liberal with scanning for pulmonary embolism, and when asked about radiation exposure, he has quipped rather cynically that no one has been sued yet for a cancer from one CT scan ordered out of the ED. He now sees zebras every time a patient has flank pain, and he asks himself “could this be another lower lobe pulmonary embolism?” And he is not the only one. His trainees ask themselves this question, too. The best teachers have a lifelong impact on their students, but this impact can be a “poisoning of the well” when the mentor’s/teacher’s experiences are negative ones, as in often the case with medical malpractice complaints. Long after my mentor retires, his legacy may live on in the way I practice and the way my trainees practice.

An ACEP in 2011 showed that more than 50% of emergency physicians ordered tests because they fear being sued,¹ and a recent study from BMJ in 2015 showed that physicians who ordered more tests were sued less often than the physicians who ordered fewer tests.² Defensive medicine now costs an estimated 56 billion dollars per year and is the reason for 20-44% of imaging tests ordered including 44% of all ultrasounds.³

With crucial victories in several states, including Texas, researchers examined the impact of reform on testing and admissions. Changing the malpractice standards from negligence to gross negligence did not change the number of CT scans physicians ordered or the number of patients that physicians admitted to the hospital.^{4,5} The authors concluded that defensive medicine does not change even when the threat of being sued is markedly diminished.

So why don’t we see immediate change when the standard for malpractice is changed?

Medical decision-making is an extremely complicated process that can be influenced by a number of factors, including the threat of being sued, patient satisfaction, resource allocation, etc.

One area that has not been well-researched is the impact of our mentors’ experiences and teaching during our medical training. Like many apprentice-based careers, medicine places new trainees under the guidance of older more experience providers. These older physicians have the benefit of more years of experience and in emergency medicine, have seen thousands of more patients but have also developed set practice

patterns and approaches to managing their patients. They may also have experienced malpractice cases first-hand before any changes to tort reform were promulgated. These practice patterns can impact the views of the next several generations of physicians. Additional research is needed to assess the impact our mentors have on our ordering practices.

Created by members of the Medical Legal Committee, August 2016

Reviewed by the Board of Directors, November 2016

References

1. American College of Emergency Physicians. Medical Liability Fact Sheet. http://newsroom.acep.org/fact_sheets?item=30030. Accessed July 27, 2016.
2. Jena AB, Schoemaker L, Bhattacharya J, et al. Physician spending and subsequent risk of malpractice claims: observational study. *BMJ*. 2015;351:h5516.
3. Li S, Brantley E. Malpractice liability risk and use of diagnostic imaging studies. *J Am Coll Radiol*. 2015;12:1403-12.
4. Waxman D. Threat of malpractice lawsuits may not be driving defensive medicine. *ACEP Now*. Jan 20, 2015. <http://www.acepnow.com/article/opinion-physicians-may-be-slow-to-change-behaviors-even-with-threat-of-malpractice/>. Accessed July 27, 2016
5. Waxman DA, Greenberg MD, Ridgely MS, et al. The effect of malpractice reform on emergency department care. *N Engl J Med*. 2014;371:1518-25.