



BY JEFFREY SEGAL, MD

Need help? Ask your patients

Having your patients sign a contract promising to be fair just might alleviate some of your headaches.

IN THE MOMENTS BEFORE comes at night, try hard to remember how much and why you wanted to be a physician.

Still want it? Many of you have decided against direct patient care, have cut back on the time you spend practicing, or have moved to another specialty or another state because of the problems associated with practicing medicine and frivolous malpractice suits.

If you are like most physicians, you are spending too much of your time negotiating the minefields of modern medical practice. There are hospital or group practice politics to consider; there are increasing patient loads as the baby boomers age, and you are forced to see more patients per hour to bring home the same amount.

Big pharmaceutical companies regularly advertise on television. There are patients who download and print data, often of dubious quality, which leads them to come into your office fully convinced that they know more about their

conditions—and the treatments that should be prescribed—than you do.

Worse yet, there are the patients who get mad and then vow to “get even.” Maybe they had a bad outcome or maybe they had unrealistic expectations. But they decide that you’re at fault and they are going to take their frustrations out on you. They might go so far as to file an unfounded medical malpractice suit. Or they might outline their view of their experiences, with your name and a low rating, on one of the ubiquitous ‘Rate Your Doctor’ Web sites. They might start their own blog, with you as Exhibit A. Or they might dispute their bill and haul you into small claims court, where you will lose by default if you fail to appear and defend yourself.

Now, just reading that litany is depressing enough. Living it is another matter. The good news is I would not present a problem without outlining a solution. You can resuscitate the passion that you must have had at some point. You can rekindle the earlier enthusiasm,

the curiosity of figuring out what is wrong with the patient—and the dogged persistence to fix the problem, or at the least, to alleviate suffering.

What if you could decrease some of the headaches? What if you could, virtually overnight, be more secure in your practice?

What you need is an ally. And every day, right in front of you, you’ve got one.

Your patient. Ask them to help you by signing a contract.

Ask them to agree:

- Not to sue you for frivolous reasons. I’ve found that virtually all patients who are asked are willing to sign exactly such an agreement. Include within the contract the term that, should a genuine dispute over their care later arise, they will use only board-certified expert witnesses from the same specialty as you, the treating physician, and that those experts will abide by the same code of ethics as your specialty medical society.

- To respect your privacy the same way you respect theirs. Ask them not to release information about your treatment into the public domain without your prior written consent. Further, get them to agree that they will not “denigrate, defame, disparage, or cast aspersions” about you.

☛ Not to seek a refund, (especially as it pertains to out-of-pocket deductibles or treatment rendered in cash-pay specialties) by making a claim in small claims court. In this contract, doctor and patient jointly agree that the losing side will pay the reasonable attorney's fee of the winning party should an attorney be needed to represent a party in court.

Is it legal? Absolutely. While you should have any contracts that you enter into, whether personally or professionally, reviewed by your lawyer, the law leaves anyone free to enter into a contract with anyone else, as long as the contracted activity is legal and not against public policy.

It is against public policy—and indeed, against the statutory law—to bring meritless claims of any kind into the court system. The contract against frivolous medical malpractice lawsuits is not intended to stop legitimate claims in cases where a person has been injured through negligence and deserves compensation. Instead, it limits lawsuits to those in which there is a well-founded dispute.

Similarly, it is a “tort” (def: a wrongful act for which a civil suit can be brought) for one person to defame another. Unfortunately, the Internet has made it easy to transmit false and damaging information to millions of people with the click of a mouse, which can effectively ruin the reputation that you’ve spent years building. Historically, a person who was defamed could find a remedy through the courts by suing the defamer. But recent case law has made it practically impossible to address defamation of physicians on the Internet after the damage has been done.

Asking for a promise that patients won’t participate in such behavior—and requiring them to acknowledge that they can be stopped by a court order if

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they do—is the best solution right now to such a vexing problem.

For some physicians, especially those who specialize in “cash-pay” specialties or those practices that see more and more out-of-pocket payment by patients with high deductible insurance policies, unrealistic expectations can lead to demands for a refund. It is best to have a written policy on refunds and spell it out in plain English. Sometimes that’s not enough and a patient will file a claim in small claims court. Agreeing beforehand that the winner of such a case will pay the loser’s attorney fees will generally stop such litigation in its tracks. The proper place for a medical malpractice suit is not in small claims court. Public policy and the law favor only those cases filed with probable cause to be heard in court.

Contracts can perform a great deal of heavy lifting. They can set out expectations, right at the beginning, for both you and your patient. Your intent, after all, is to provide them the best health care that you are capable of providing. Your patients should, at the very least, be willing to promise to act reasonably and to commit to constructively resolving any legitimate disputes that do arise.

Almost no patient starts out intending to sue her physician, or to drag the doctor’s name through the mud. You can keep it that way by attending to details at the beginning.

Keep in mind that the best and most effective health care is a partnership in

which both patients and physicians have a stake and trust in each other. It might seem that a contract defining the rules of engagement does little to support trust. The reality is the opposite. The reason: a key part of trust is effective communication.

Doctors are interested in providing good patient care. Patients are interested in receiving good care. The best way to get there is for the two sides to talk to and understand one another, early and often. Contracts can buttress that process by defining how and why the terms are needed and why the terms are eminently fair to both sides.

And if you follow these guidelines, your regained sense of security will translate into the image you had of practicing medicine when you started out. ■

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