

Book Reviews

Adverse Events, Stress and Litigation. A Physician's Guide.

By Sara C. Charles and Paul R. Frisch; Oxford University Press, New York, New York; 2005; ISBN 0-19-517148-9; \$ 39.96 (hardcover), 272 pp.

Being sued is probably the worst professional fear and nightmare of all physicians. It has an enormous impact on physicians' well-being and I do not mean the financial one (even though that seems to be the initial biggest worry of many), as much as the psychological, physical, and functional ones. Yet, physicians, for whatever reasons, have a very poor understanding of malpractice litigation and law in general and are very poorly prepared for being sued. Most of the time, nobody says anything specific about being sued, just that it is a horrible experience. Besides the lack of any formal and informal (shared experience) preparation, physicians usually, for legal reasons, avoid talking to anybody but their lawyers about their experience during the entire litigation process.

The book *Adverse Events, Stress and Litigation* by Sara Charles, a psychiatrist, and Paul Frisch, a lawyer, is a volume written with the intention to help rectify this lack of preparation and experience with the medical malpractice process. The authors wrote the book to be "a resource for all physicians visited by bad outcomes in patient care, events fraught with stress that is often sharpened to an almost unbearable degree for all parties by subsequent litigation" (Preface). In the Preface the authors point out that a significant part of the physician's difficulties to cope with litigation is the fact that the world of law "speaks intrinsically adversarial language that is very different from the ordinary conversation between physician and patient" (Preface). In addition, the public offers "little, if any, sympathy to physicians when they are involved in catastrophic medical events or are sued for malpractice." No matter whether any *malpractice* really took place.

The book consists of thirteen chapters, two Appendices, Notes, Glossary, and Bibliography. The chapters go through the common stages of the entire process step by step, starting with adverse events as a basis for litigation and ending with the trial. The titles of each particular chapter are telling of their topics: "Adverse events: a basis for litigation; Adverse events: what we feel and why; Disclosure after an adverse event; Adverse events: what physicians can say about them; The interim: between the event and the lawsuit; The complaint: a prelude to litigation; Meeting the lawyers; Coping with stress; Discovery: gaining a foothold for defense; To settle or not to settle; and The trial."

The "process" of medical malpractice starts with an adverse event, which may or may not be an error. The authors point out that physicians may realize that error-free medicine is unattainable, yet trying to "achieve near perfect performance remains their psychological and ethical imperative" (p. 5). Adverse event should not be viewed only from a physician's perspective, but also from other ones, such as the patient safety movement's perspective, the insurer's perspective, tort law's perspective and others. As such, the adverse event should be dealt with and appropriate parties should be notified about it (e.g., risk manager at the hospital, professional liability carrier etc.). The authors also recommend that physicians deal with adverse events on an emotional level, as they do suffer emotionally. Possible debriefing (though controversial) and participation in the investigation of the adverse event (without finger pointing) is recommended.

A very complicated issue is the disclosure after an adverse event. Full disclosure means different thing to different people. Physicians are generally wary of apology, as apology may be misconstrued as an admission of negligence. The authors discuss the recent development regarding disclosure in the third chapter of this book. Full disclosure may be a double-edged sword. Not everybody realizes that only 21 states that require reports of adverse incidents also provide legal protection against disclosure of reported data (p. 33)! The authors thus review various scenarios for disclosure and recommend that disclosure to patients or families should happen as soon as possible, respects the patient's wishes, is communicated by the treating physician, should always reveal directly what happened, should be consistent, put in context, and without speculation or assigning of fault. This part of the book is well-written, thoughtful and very helpful.

Physicians should disclose adverse events. Yet they are told by the lawyers not to talk about them, which, especially from the emotional health point of view, could be fairly troublesome and unhealthy. The authors suggest that, "physicians can accept a literal interpretation of not discussing the specific facts of the case while still expressing their feelings about them" (p. 53). The book suggests whom to talk to and where to turn for professional help in these cases.

Worrying about the outcome of the adverse event and waiting for the possible lawsuit is also a quite stressful period. The authors advise that during this period, one should sort out important facts such as the statute of limitation, insurance coverage (occurrence vs. claims-made), other insurance considerations

such as the specter of nonrenewal, getting one's financial house in order, deal with flirting with retirement appropriately, control one's medical practice, live a balanced life and recognize the impact of stress.

Each following chapter reviews further important issues and provides priceless advice. The chapter on complaint and prelude to litigation discusses why patient sue physicians, the fact that altering medical records before sending them is the single most damaging thing physicians can do (p. 86), what the elements of malpractice are, and that the insurance carrier has to be notified immediately after the papers are served. The following chapter makes suggestion as to what to ask about the lawyers defending the physician: are we comfortable with them?, are they competent?, are they experienced?, can we check their credentials?, will there be one attorney or a team?, whom does the lawyer represent (the physician or the insurance carrier!)?, are they willing to answer our questions? The chapter also makes suggestions about what physicians should do in their interaction with lawyers. The chapter on coping with the stress associated with litigation also makes numerous excellent suggestions. There is one note, which everyone should remember from this chapter: "The tort system is about compensation, not competence" (p. 133). One should also remember that the litigation will have an impact not only on the physician, but also on their marriage, children and others.

The chapter on discovery provides some excellent directions for the deposition and even suggests training for deposition. It states that the principal goal is to complete a deposition without making a major mistake. This chapter is full of specific examples and is very good reading. The following chapter on whether to settle or not is again full of excellent advice and food for thought. Only about 7% of cases nationwide are finally tried to verdict! (p. 158). Physicians have to realize that there are many parties interested in settlement (e.g., insurance company, court, plaintiff) which may be contrary to the defendants' best interest. The authors review some questions to ask before settlement, explain the pretrial settlement negotiations (settlement conference, arbitration, mediation) and also the ramifications of a settlement. The chapter on trial is again an excellent explanation of the entire process of trial and all the parties and elements of the trial. It discusses issues such as burden of proof, standard of care, motions, jury instructions, verdict, appeal and other issues. The following chapter reviews what to do after the trial (e.g., asset protection and how to stay emotionally and physically healthy). The last chapter makes two final points: that, 1) we must tame this dehumanizing experience by making it as human as we can, and 2) we must integrate, that is, make something whole of an experience that threatens to disintegrate our worlds and our work.

The appendices provide examples of case histories and selections from a contemporaneous diary of one case. The glossary of legal terms is easily understandable and useful.

The book is peppered with examples from actual cases, including the famous case of TV personality Mike Wallace (interestingly, some famous defendants, such as Mike Wallace,

Saul Bellow, and Norman Mailer reviewed drafts of this book!).

This book is a prime example of a book about which many will say, "I wish I read this book *before!*" It is well written, thoughtful, and full of practical advice. The chapters include a very useful feature—summary of recommendation for each particular topic discussed. The combination of authors—psychiatrist and lawyer—probably allowed for much more insightful writing (not forgetting Dr. Charles's previous personal experience on how to cope with a malpractice suit). I would recommend this book to all physicians and recommend it to be added to the reading list of all residency programs. It deals with a fear-provoking topic, which could, nevertheless, become part of everyone's life. As we know, good understanding and preparation is a salient part of coping. This book could be an invaluable part of everyone's coping with malpractice litigation.

One final remark: At one point, the authors remind us that the contemporary application of legal standards can appear arbitrary and fickle. Interestingly, there is evidence that "the twin goals of medical malpractice law—to compensate patients injured through negligence and to deter substandard medical practice—are neither sought nor achieved" (p. 36). Sad reality! Nevertheless, it underscores the need for understanding this complicated and adversary process and preparation for coping with it.

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Against Depression. By Peter D. Kramer; Viking (Penguin Group), New York, New York; 2005; ISBN 0-670-034053; \$ 25.95 (hardcover), 353 pp.

Books about mental illness, about medications for mental illness, and about experience with mental illness—either memoirs or reflections of a professional—have become increasingly popular. One of the flagships of this 'flotilla' of books has been Peter Kramer's *Listening to Prozac*, (1), published more than a decade ago. This hugely popular volume makes the readers of books about mental illness always expectant and curious about another Kramer book. Being a member of this readership group, I was attracted to the newest volume by Peter Kramer, *Against Depression*. I looked forward to immersing myself in it during a long flight and getting intellectually excited. I was curious, as the reader of this review probably is, what is this *Against Depression* all about?

Well, the book is what the title says, a discourse against depression, a devastating disease, which afflicts many people. It is divided into three parts, 'What it is to us,' 'What it is,' and 'What it will be.' The book mixes author's opinions, experience, case discussions and some recent research findings about depression. It discusses the widespread harmful effect of