



Malpractice: Watch your tone of voice It may account for more than you think. Here's why.

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Medical Economics

Malcolm Gladwell's Blink: The Power of Thinking Without Thinking was published in 2005 and has been on The New York Times' best-seller list for more than a year. In the book, Gladwell, a staff writer for The New Yorker, presents an interesting theory on why some doctors get sued more than others. This excerpt is reprinted by permission of Little, Brown and Co.

Why do some people follow their instincts and win, while others end up stumbling into error? And why are the best decisions often those that are impossible to explain to others?

Blink is about how we think without thinking, about choices that seem to be made in an instant—in the blink of an eye—that actually aren't as simple as they seem.

Blink reveals that great decision makers aren't those who possess the most information or spend the most time deliberating, but those who have perfected the art of "thin-slicing"—filtering the very few factors that matter from an overwhelming number of variables.

Listening to doctors

Imagine you work for an insurance company that sells doctors medical malpractice protection. Your boss asks you to figure out for accounting reasons who, among all the physicians covered by the company, is most likely to be sued. You are given two choices. The first is to examine the physicians' training and credentials and then analyze their records to see how many errors they've made over the past few years. The other option is to listen in on very brief snippets of conversation between each doctor and his or her patients.

The second option is the best one, and here's why. Believe it or not, the risk of being sued for malpractice has very little to do with how many mistakes a doctor makes. Analyses of malpractice lawsuits show that there are highly skilled doctors who get sued

a lot and doctors who make lots of mistakes and never get sued. At the same time, the overwhelming number of people who suffer an injury due to the negligence of a doctor never file a malpractice suit at all. In other words, patients don't file lawsuits because they've been harmed by shoddy medical care. Patients file lawsuits because they've been harmed by shoddy medical care and *something else* happens to them.

What is that something else? It's how they were treated, on a personal level, by their doctor. What comes up again and again in malpractice cases is that patients say they were rushed or ignored or treated poorly. "People just don't sue doctors they like," is how Alice Burkin, a leading medical malpractice lawyer, puts it. "In all the years I've been in this business, I've never had a potential client walk in and say, 'I really like this doctor, and I feel terrible about doing it, but I want to sue him.' We've had people come in saying they want to sue some specialist, and we'll say, 'We don't think that doctor was negligent. We think it's your primary care doctor who was at fault.' And the client will say, 'I don't care what she did. I love her, and I'm not suing her.'"

Burkin once had a client who had a breast tumor that wasn't spotted until it had metastasized, and she wanted to sue her internist for the delayed diagnosis. In fact, it was her radiologist who was potentially at fault. But the client was adamant. She wanted to sue the internist. "In our first meeting, she told me she hated this doctor because she never took the time to talk to her and never asked her about her other symptoms," Burkin said. "'She never looked at me as a whole person,' the patient told us.

"When a patient has a bad medical result, the doctor has to take the time to explain what happened, and to answer the patient's questions—to treat him like a human being. The doctors who don't are the ones who get sued." It isn't necessary, then, to know much about how a surgeon operates in order to know his likelihood of being sued. What you need to understand is the relationship between that doctor and his patients.

Recently the medical researcher Wendy Levinson recorded hundreds of conversations between a group of physicians and their patients. Roughly half of the doctors had never been sued. The other half had been sued at least twice, and Levinson found that just on the basis of those conversations, she could find clear differences between the two groups. The surgeons who had never been sued spent more than three minutes longer with each patient than those who had been sued did (18.3 minutes vs 15 minutes). They were more likely to make "orienting" comments, such as "First I'll examine you, and then we will talk the problem over" or "I will leave time for your questions"—which help patients get a sense of what the visit is supposed to accomplish and when they ought to ask questions. They were more likely to engage in active listening, saying such things as "Go on, tell me more about that," and they were far more likely to laugh and be funny during the visit. Interestingly, there was no difference in the amount or quality of information they gave their patients; they didn't provide more details about medication or the patient's condition. The difference was entirely in *how* they talked to their patients.

It's possible, in fact, to take this analysis even further. The psychologist Nalini Ambady listened to Levinson's tapes, zeroing in on the conversations that had been recorded

between just surgeons and their patients. For each surgeon, she picked two patient conversations. Then, from each conversation, she selected two ten-second clips of the doctor talking, so her slice was a total of forty seconds.

Finally, she "content-filtered" the slices, which means she removed the high-frequency sounds from speech that enable us to recognize individual words. What's left after content-filtering is a kind of garble that preserves intonation, pitch, and rhythm but erases content. Using that slice—and that slice alone—Ambady did a Gottman-style analysis. She had judges rate the slices of garble for such qualities as warmth, hostility, dominance, and anxiousness, and she found that by using only those ratings, she could predict which surgeons got sued and which ones didn't.

Ambady says that she and her colleagues were "totally stunned by the results," and it's not hard to understand why. The judges knew nothing about the skill level of the surgeons. They didn't know how experienced they were, what kind of training they had, or what kind of procedures they intended to do. They didn't even know *what* the doctors were saying to their patients. All they were using for their prediction was their analysis of the surgeon's tone of voice. In fact, it was even more basic than that: if the surgeon's voice was judged to sound dominant, the surgeon tended to be in the sued group. If the voice sounded less dominant and more concerned, the surgeon tended to be in the nonsued group.

Could there be a thinner slice? Malpractice sounds like one of those infinitely complicated and multidimensional problems. But in the end it comes down to a matter of respect, and the simplest way that respect is communicated is through tone of voice, and the most corrosive tone of voice that a doctor can assume is a dominant tone. Did Ambady need to sample the entire history of a patient and doctor to pick up that tone? No, because a medical consultation is a lot like one of Gottman's conflict discussions or a student's dorm room. It's one of those situations where the signature comes through loud and clear.

Next time you meet a doctor, and you sit down in his office and he starts to talk, if you have the sense that he isn't listening to you, that he's talking down to you, and that he isn't treating you with respect, *listen to that feeling*. You have thin-sliced him and found him wanting.

For your reference

To read the full text of psychologist Nalini Ambady's study on the quality of communications between physicians and patients, see "Surgeons' tone of voice: A clue to malpractice history," in the July 2002 issue of *Surgery*. If your library doesn't have a copy, the article is available for \$30 from the publisher. Visit journals.elsevierhealth.com/periodicals/ymsy, type Ambady into the Search field, and click on Go.