

To Print: Click your browser's PRINT button.

NOTE: To view the article with Web enhancements, go to:
<http://www.medscape.com/viewarticle/518000>

Ask the Experts about Legal/Professional Issues for Advanced Practice Nurses
From Medscape Nurses

How Do I Protect Myself From a Noncompliant Patient?

Question

How can I protect myself from a noncompliant patient who decides to sue because of a poor outcome related to his/her noncompliance?



Response from Carolyn Buppert, NP, JD
Attorney, Private Practice, Annapolis, Maryland

There is no easy answer to this question, as there are so many possible scenarios. In general, the clinician can decrease his or her risk by:

1. Understanding where the risks are greatest;
2. Fulfilling the clinician's responsibility for communication; and
3. Documenting all communications to the patient and lack of response from the patient.

Identify the High-Risk Complaints

In primary care, among the most commonly missed diagnoses that result in lawsuits are breast cancer, acute myocardial infarction, lung cancer, pulmonary embolus, appendicitis, colon cancer, and meningitis. So, when a clinician encounters a patient with breast mass, rash or discharge, chest pain, cough or hemoptysis (especially in a smoker), abdominal pain, family history of colon or rectal cancer, new diagnosis of anemia, change in bowel function, or severe headache with neck stiffness, the clinician's antenna for risk should go up. These are the patients with whom the clinician needs to be extra careful to follow recommendations #2 and #3 above.

Fulfill Your Responsibilities

It is the clinician's responsibility to inform the patient not only of the advice for treatment or follow-up, but of the importance and urgency of following the advice, and the consequences of ignoring the advice. For example, the clinician must inform the patient with a breast mass that a mammogram is needed, the timeframe when the mammogram should be done, that failing to get the test to rule out cancer could mean that a cancer will be missed, and that a delay in diagnosis could be a matter of life or death. It is also the clinician's responsibility to ask the patient what is keeping him or her from complying and address the answer. Sometimes it is useful to get a consultation from another clinician on the matter of the patient's noncompliance (if the patient will attend the

consultation).

Documentation

The most legally defensible way to prove that a clinician has fulfilled his responsibility for communication is to document all face-to-face, telephone, and written communication to and from the patient about the importance and urgency of following advice and the consequences of failing to do so. If face-to-face and telephone conversations have failed to persuade the patient to comply with advice, a certified letter (which states the importance, urgency, and consequences of noncompliance) with return receipt is useful in getting the patient's attention and is proof that the patient has received the communication.

Courts in some states apply the legal theories of contributory or comparative negligence. In states that adopt the principle of contributory negligence, the plaintiff who contributed to his or her own injuries will not recover any damages. In states that adopt comparative negligence, the plaintiff might be assigned a percentage of liability and the defendant a percentage of liability. However, it isn't wise for clinicians to count on either of these theories as *protection* from liability. Even in states that recognize contributory negligence, the defendant clinician has to prove that the patient contributed to his injury, and usually the clinician can't do that without the documentation described above. If the patient testifies that the clinician didn't tell him how serious the problem was, the clinician has to be ready to prove that he did.

As a last resort, clinicians may terminate their relationships with patients who are consistently and blatantly noncompliant. This should be done in writing, stating the reason for termination, and giving the patient time -- usually 30 days -- to find another clinician. Don't terminate a patient who is in an acute phase of illness or who is unstable. That may be deemed patient abandonment.

Related Resources

Santander D. When a patient is noncompliant, are you negligent? Available at: <http://www.ophtalmologymanagement.com/article.aspx?article=86450>. Accessed December 6, 2005.

Correia N. Adverse effects: reducing the risk of litigation. Available at: <http://www.ccjm.org/pdffiles/Correia102.pdf>. Accessed December 6, 2005.

APN Business and Law Resource Center. <http://www.medscape.com/pages/editorial/resourcecenters/public/apn/rc-apn.ov>

Posted 12/09/2005

Disclosure: Carolyn Buppert, NP, JD, has disclosed no relevant financial relationships.

[Back To The Top](#)

Medscape Nurses. 2005;7(2) ©2005 Medscape
