

Perception Can Be Everything

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"It takes a lifetime to build a good reputation, but you can lose it in a minute." - Will Rogers

In general, physicians are widely respected. They are perceived as "healers" with good intentions. Physicians are members of society with remarkable abilities to help others. Statistics show that the general public regards physicians as the most trusted profession. Professionalism is a core competency for physicians. The journalist Alistair Cooke once stated that, "A professional is someone who can do his [her] best work when he [she] doesn't feel like it." Physicians have taken a vow under the Hippocratic Oath to give and do their best at all times.

Fortunately, this is why jurors usually believe and support physicians in a health care liability case. They want to believe that an individual who has dedicated his or her life to helping others has not caused intentional harm. People want to trust physicians. Physicians are expected to care and show compassion. Conversely, if and when a juror's perception is changed, there may be no turning back.

This case involved a 58-year old-female^[1] who was admitted to the ICU due to shortness of breath, which required intubation. She was diagnosed with congestive heart failure, pneumonia, renal insufficiency, infection, and respiratory failure. Pulmonary medicine, cardiology, infectious disease, and nephrology were all consulted. The patient's condition began to deteriorate and her oxygen saturation level went down. It was believed that there might be a cuff leak. Neither the pulmonologist nor the respiratory therapist were readily available. The emergency room (ER) physician was contacted by the ICU nurse for assistance. The ER physician initially responded, "This is not my job." The pulmonologist was not on the premises but was able to persuade the ER physician to answer the call from ICU. The patient was then re-intubated and reported to be stable, but coded soon after. The patient was intubated again, but died within the hour.

The case proceeded to trial after unsuccessful negotiations to settle. As a constant in healthcare liability defense, the focus was on the medicine and expert support. There was strong expert support that the cause of death was unrelated to the endotracheal tube. In fact, defense experts opined that the patient was dying even before the ER physician became involved. This opinion was supported by the autopsy report, which identified the cause of death as pulmonary edema and heart failure.

However, one of the most important factors in any medical malpractice case is the defendant physician and how he/she is perceived and received by the jury. In the case at

hand, an ICU nurse contacted the ER physician and asked for assistance. Ultimately, the ER physician did eventually respond. The trial proof, supported by experts, demonstrated that there was no damage caused by any delay in the intubation of the patient and proved that the endotracheal tube was in the proper position. The ER physician in his clinical judgment, knowing this was not a “code” or emergent event and knowing the hospital policy for when an ER physician is to respond to the ICU, did not believe he should have been a “first responder” to the call. However, his initial response of “That is not my job” created a tense interaction between him and the ICU nurse, which was evident through the documentation in the medical record and in the nurse’s deposition and trial testimony.

Not surprisingly, some of the jurors were unable to put the ER physician’s comment aside, and several jurors were against the physician from the outset. When polled, some jurors adopted the defense case theory to the effect that the endotracheal tube was not the cause of death but were still not supportive of the physician. Others did not even consider the position of the endotracheal tube – they were hostile toward the ER physician primarily due to his comment. The statement painted the ER physician in a very unflattering light and the jurors believed that anyone who would make this statement lacked compassion and the ability to practice medicine, which is the antithesis of the Hippocratic Oath. They perceived the ER physician in a manner that did not represent the true or expected qualities of a physician. Despite the “defensible medicine” and expert proof, the unfortunate statement, “That is not my job” became a hurdle (negative perception) that the defense could not overcome. This case was settled during trial.

A physician must build trust with patients and with his/her healthcare team, and must remember that the patient is the “purpose” of their work and not an interruption. Trust is the foundation of any relationship and certainly the core foundation of service in healthcare. Trust promotes healthy interactions and cooperation among healthcare providers, which fosters efficient and effective healthcare and improves the patient’s experience. Trust builds a team, and a strong team is essential to success. It can reduce inter-professional conflict between nurses, physicians and other healthcare providers. In the event of a less-than-optimum outcome or emergent situation, the team players who respect each other are more supportive of each other and less likely to focus on anyone’s shortcomings. In today’s age of social media, it is more important than ever to stand firm in professionalism. Physicians should be steadfast in their resolve to remind society of the heroic efforts they make each day and not give reason for pause. If confronted with the unpleasant experience of a healthcare liability suit, a person’s perception of you may be more important than ever imagined.

“How you act is who you want to be. How you react is who you are.” - G. Mead

[1] Names and identifying details have been changed for confidentiality

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