

## IdeaLab: Top 10 Ways to Keep Lawyers at Bay

Steer clear of plaintiffs' lawyers with these simple suggestions

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Nothing's worse than having the first appointment of your day interrupted by an unexpected — and unpleasant — surprise.

Instead of the child who is running a fever or the middle-aged man who's concerned about his blood pressure, you are faced with a sheriff serving a summons. And instead of speaking with a patient about what he can do to feel better, you are faced with a lawsuit.

Not good. Now, you need to do something to feel better.

Try these simple, easy-to-implement methods for reducing your chances of being sued — an “eat-right-and-don't-smoke” model for risk management. Here are 10 suggestions that we've gathered from the trenches:

**1. Return pages from your answering service with your cell phone.** Plaintiffs frequently allege that the doctor did not call them back in a timely fashion, or at all. If you call from a land line, there is no record of the call being made. Call from a cell phone and a record is created. Won't patients abuse the privilege and call you directly on your cell? Generally not.

**2. Document what was said during the call.** You should document every relevant (and many seemingly irrelevant) communication with your patients. After-hours calls are no exception. Use your EMR and/or call-in transcription service, if you have these. If not, create a separate voice mailbox on your office phone to be used for transcription of after-hours messages.

**3. Guarantee patients that they will receive lab and radiology results in a specified time period or their office visit is free.** That's right. If you tell patients that they will hear from you regarding their results, then they expect to hear from you. This is a frequent source of litigation, particularly if the test reveals something such as cancer. The doctor often assumes the staff sent information to the patient. The patient assumes the absence of information is positive. Tie your office manager's bonus to how frequently such refunds are tendered, and you will find information gets transferred with near 100 percent fidelity.

**4. Document what you did *not* do.** Although it sounds counterintuitive, there are times it makes perfect sense to document what was not done. Sometimes, there is extensive literature explaining the merits of following a particular algorithm for a particular condition, but, for perfectly good reasons, you might choose to pursue a different course. You should document your reasoning in such cases; otherwise, plaintiffs' lawyers will assume you were “unaware of such standards for treatment, and you didn't even think about it.” It takes two minutes to document. If you address it upfront, it's an explanation. If you address it after the fact, it's an excuse.

**5. Think twice before you send a patient to collections for small unpaid balances.** If the patient's insurance carrier has already paid you hundreds or thousands of dollars, and the patient had an unhappy result, threatening to send the patient to collections for a balance of, say, \$22 might not be the best way to engender good will. You'll never collect it, anyway.

**6. Speak ill of your colleagues and patients at your peril.** It's easy to take a verbal swing at a colleague — and tempting, in a competitive environment — but remember: what goes around comes around. Obviously, if a colleague is truly a danger to the public, the correct thing to do is speak up. But only to the appropriate authorities, not in an exam room with a patient present. Moreover, resist the temptation to pepper the chart describing your patient as “hysterical,” “histrionic,” or “crazy.” If you are wrong, you will pay dearly. Even if you are right, you may pay dearly. Keep it professional.

**7. Beware patients who speak ill of their previous doctors.** When a patient talks about all the “incompetent” physicians he has seen previously, it's a red flag. You could very well be the next “incompetent” physician.

**8. Never alter the record.** If you alter the record after you have been served with the lawsuit, your defense

attorney will develop an ulcer. Resist the urge to “clarify” the record. As noted earlier, documentation before there is a problem is considered an explanation. Documentation addressed after there is a problem is considered an excuse.

These last two tips are especially for surgeons like me — who are sadly among the most-often sued physicians.

**9. Check the patient.** Surgeons, this may seem elementary, but it must be said: Make sure the patient you are about to perform surgery on is indeed the correct patient. Verify the side with the pathology is indeed the side that will be prepped and draped. Have another person go through the same drill. Protocols should be in place at every facility where you work. Perform these protocols religiously. If you do not, and surgery is performed on the wrong patient or the wrong side, you will burn.

**10. Don’t take patients’ word for it.** It is well-known that smoking interferes with wound healing. Surgeons, don’t assume that patients who have a history of smoking have kicked the habit, even if they tell you they have. Explain the risk before the operation, then have the patient sign a document that addresses the risk, and that affirms that the patient has indeed stopped smoking. Then, before surgery, perform a urine cotinine test with the rest of the lab work. If they’ve kicked the habit, the test will be negative. If the test is positive, think about rescheduling.

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