



Dodging the Malpractice Bullet



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Definition of Malpractice

- Presence of a Patient-Clinician relationship
- Practice below the “standard”
- Practice caused injury
- By definition the occurrence was unintentional





Why Malpractice?

- Ordinary negligence will occur with statistical certainty.
- Citizens have a legal right to be compensated for injury.
- There is an adversarial basis for personal injury compensation.



Harvard Medical Practice Study

NEJM 1991 325:245-251



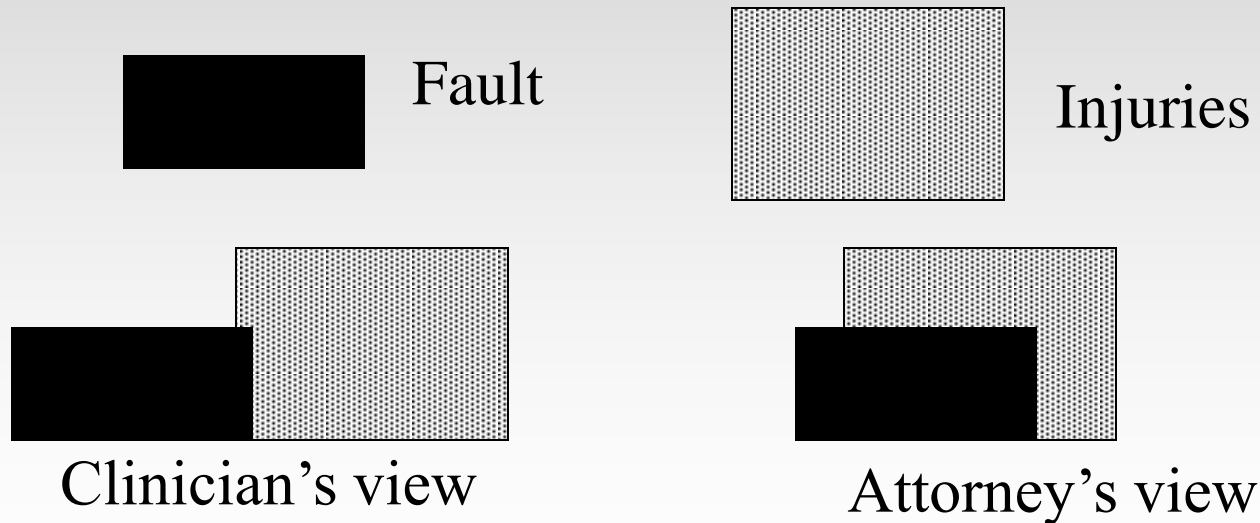
- 31,429 randomly sampled charts
- 27,179 adverse events due to negligence
- 14,180 with “strong” evidence of malpractice
- 5,396 with disability lasting longer than six months
- 415 malpractice claims



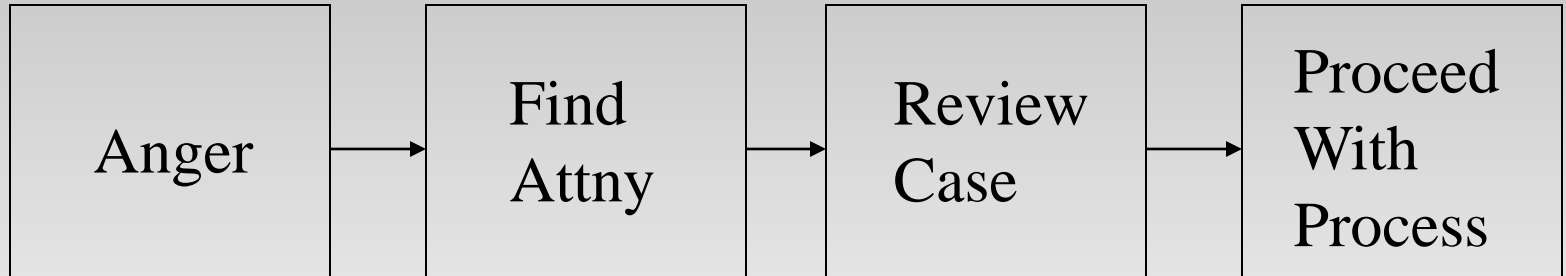
Legal vs. Medical Thinking



- Lawyers are trained to rationalize from landmark cases; clinicians are trained to generalize and accept deviations.



Malpractice Progression



Avoiding Malpractice



- Patient satisfaction
- Technical competence
- Documentation
- Informed Consent
- Consultation



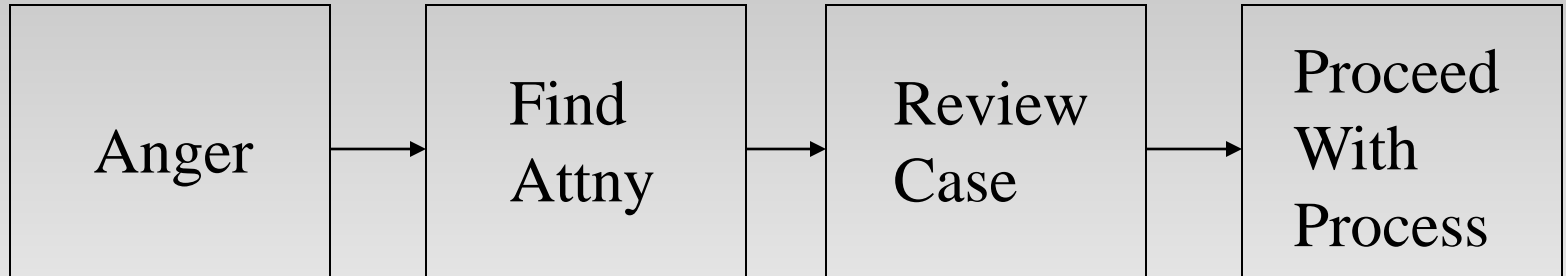
Patient Satisfaction



- Customer vs. patient
- No smile, no satisfaction.
- Communication with family members.
- Informal remarks.
- Common courtesy.



Malpractice Progression



Technical Competence



- Absolutely assumed by patients and third parties
- Maintain up-to-date skills
- Practice guidelines
- Knowing when you've exceeded your skills
- Preventive care
- Carelessness



Documentation



- Not documented, not done.
- 1/3 of suits involve inadequate records
- SOAP is standard of care
- Excellent records can prevent action
- No personal comments!



Informed Consent



- Duty to disclose ALL relevant information.
- Legalistic fiction that is not applicable to a large segment of the population, destroys good patient care, and paralyzes the conscientious clinician.
- Appropriate documentation and use of consent forms is always important.



Certainty v. Informed Consent



- We all desire certainty.
- Denying all certainty actually leads to wanting it all the more.
- Balance between total certainty and hope.
 - “I will stick with you.”
- If properly done, will lessen feelings of abandonment in the event of a negative outcome.



Consultation



- Duty to consult if something not proceeding as expected or out of the scope of practice.
- Consider appropriate consultation if situation is high malpractice risk.
- Never refuse a request for consultation!
- Risk management consultation.



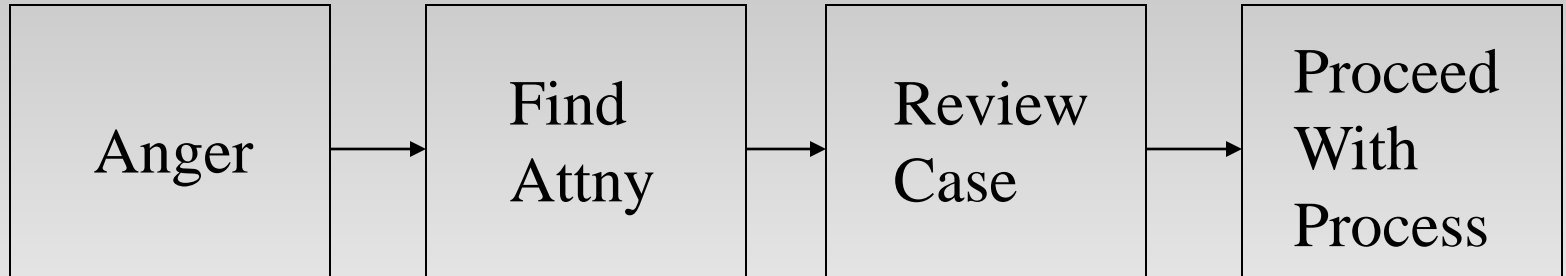
Other Areas of Liability



- Non-clinical personnel.
- Employees under supervision.
- Telephone triage & communication.
- On-call coverage.
- Communication with consultants and on-call.



Malpractice Progression



If you are accused...



- Never alter records!
- Talk to no one outside of QI or Risk Management process.
 - Beware of “friendly” attorney conversations.
- Work closely with assigned attorney.
- Take all hearings and depositions seriously.



If you are accused...



- REMEMBER, THE TRIAL HAS NOTHING TO DO WITH JUSTICE OR GOOD CLINICAL PRACTICE, IT IS A THEATRICAL PERFORMANCE DESIGNED TO INFLUENCE THE THINKING OF NON-CLINICIAN JURORS.



There is no such thing as reality, only perceptions.

