Medical malpractice is here to stay. It will not be significantly changed by any legislative efforts. It can bring harm to the patient. It can be demoralizing and devastating to the physician and his family. It can even result in the loss of medical license. I have known a couple of physicians who were the subjects of a medical malpractice suit who stopped practicing after the suit and the fear of subsequent suits.

Medicine is a very respected and noble profession. We spend many years in training. We and our families are proud of our achievements in Medicine. Our patients look up to us with admiration and respect. We should enjoy practicing our profession and not always be in the fear of malpractice suits.

Medical malpractice occurs not as much as the result of incompetence on the part of the physician but more so because of improper supervision of the secretaries and the technicians. Also because of not properly documenting things done. In our medical training, we are not taught to document everything important that we do. In legal parlance, if not documented, it was never done.

You are the captain of the ship. You are held responsible for any harm caused to a patient as result of secretarial or technician’s mistake or mistakes.

This lecture is better given by a physician than a lawyer. The physician understands the working of a medical practice better than a lawyer. He understands slip ups that occur in medical practice and how they can be avoided. The lawyer understands the legal aspects of medicine and not as much the stresses of running a practice. For example while seeing a patient with a sensory neuropathy, if a physician fails to obtain a B12 level, it would be considered gross negligence by many physicians. However, missing B12 deficiency can result in harm to the patient and a malpractice suit.

I have testified in court on many occasions mostly in car accident cases. I have also testified for and against in medical malpractice cases. I was also the subject of a medical malpractice suit many years ago. The case was never tried. However, I learned a great deal from that experience. I have attended many seminars on medical malpractice and have given lectures on how to avoid medical malpractice. I would like to share that knowledge and experience with you. Testifying in court about a medical matter is totally different from discussing the case at a medical conference.
Medical malpractice: neuro-imaging.

In this age of diminishing reimbursements and increasing costs of running a practice, the physician is forced to do things in a hurry just to keep the “head above water”. However, haste can result in mistakes and result in disaster. Do not read more tests in a given time than you have to. Take breaks. Reading many tests over a prolonged period of time can result in fatigue and missing things.

Most malpractice can be avoided by paying heed to simple steps.

Dangers in the waiting room:

- Broken chairs.
- Light fixtures or paintings falling on the patient.
- Spilled hot coffee.
- Debris or spilled drinks on the floor. Hazard for falls.

Dangers in the bathroom:

- Liquids on the floor: Urine, water, detergents.

Patient labeling:

- Make sure the right patient is called to have the test performed.
- Do not mix up patients.
- Make sure the right test is performed: CT or MRI.
- Make sure the right body part is performed.

Make sure there are no contraindications to testing. Know all the contraindications to testing.

Proper documentation is the key to avoiding many legal problems. On many occasions, a physician will discuss a matter with a patient or with another physician. If it is pertinent, document the conversation. If not documented, for legal purposes, the conversation never occurred.

Child bearing age: Make sure the patient is not pregnant. Have the patient sign a statement to that effect.
- Explain to the patient, the contraindications to testing.
- Have the patient sign a statement attesting to the fact that there are no:
  - Heart pacemaker.
  - Prosthetic heart valves.
  - Tattoos.
  - Metallic foreign body in the eye or aneurismal clips.
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Medical malpractice: neuro-imaging.

Cochlear implants.
Electronically, magnetically, and mechanically activated implants.
Nerve stimulator.
Insulin pump or similar devices.
Metallic objects: shrapnel, bullets near or around a nerve or a major blood vessel.
If not sure take an x-ray prior to MRI.

Contrast agents and sedation:

When doing CT with contrast make sure there are no allergies to contrast dye.
When doing MRI with contrast make sure kidney function is tested prior to contrast MRI.

If you give IV for contrast make sure the IV does not leak and there is no hematoma formation at the site of venepuncture. There have been suits related to nerve injury at hematoma sites related to venepuncture.

If you sedate the patient prior to the test, make sure the patient is not allergic to the medication given. Do not over sedate the patient. Make sure the patient is properly informed regarding hazards of sedation. Patient has to be driven home after the test by another individual if the patient was sedated during the test.

Make sure the right drug and the right dose is administered. Make sure there are no drug interactions.

In a New Jersey malpractice case a child was excessively sedated for an MRI test. The child stopped breathing during the test. At the end of the test it was discovered that the child had died.

If the patient, feel dizzy or light headed after the test, please examine the patient and document. If the patient needs immediate medical attention, call the ambulance. Make sure the patient is driven home by another individual.

The patient may need assistance in getting onto or off the table. Make sure the patient does not fall.

A patient was excessively sedated. Felt dizzy when he got off the table. Fell and sustained a laceration over the forehead. Result: medical malpractice suit.

Make sure the test is properly labeled, name, sex, date of birth, date of test. Mix ups in reports can cause big problems.
Medical malpractice: neuro-imaging.

Many times the imaging prescription written by the referring physician is illegible. Call the referring doctor and get a proper history and document the conversation. Make sure the test is read promptly.

Make sure the images are of good quality. If not repeat the test or say so in the report. Know your limitations. If not sure of a finding on the image, get a second opinion.

Read all images including the scout images. There may be abnormalities in a scout image which may not be seen in other images. You are responsible for the entire test. Do not focus on the brain or spine abnormalities only.

Have a check list when reading images. Make sure you have looked at all the areas according to the check list. If you see an abnormality, give a differential diagnoses. I once testified in a case where the patient had embolic infarcts in the brain. The radiologist read it as metastatic disease. The patient received unnecessary radiation.

If necessary, mention that a contrast study, CT scan or plain x-rays are needed to clarify the abnormality.

Always make mention of clinical correlation and the need for a follow-up study if indicated.

If part of the test or the entire test is obscured by artifact, do mention that in the report and mention the need for a repeat study.

If you are unable to reach the referring physician, following a test which requires immediate attention, leave a message with the answering service or the office and document that you did so. Do not rely on your secretary to do that. Do it yourself. If the matter is serious, call the referring physician again and document. If unable to reach the referring physician after multiple attempts, give the report and the films to the patient and send the patient to the emergency room for immediate care. Document that you have done so.

Always mention all the abnormalities noted in the body of the report also in the impression. Most often, the referring physician reads only the impression and not the entire report. There have been instances where significant abnormalities were noted in the body of the report but not in the impression. Ignoring this important abnormality resulted in a malpractice suit against the referring physician and the radiologist.

When dictating, the report, make sure the dictation is on the right patient. Always view the report and sign it. There can be mix ups in the reports.
Medical malpractice: neuro-imaging.

A radiologist read the MRI of the brain on a child. He noted a pontine tumor. He sent the report to the resident who requested the test. The resident who was rotating through the neurology service, had left the service. His mailbox was never checked. The child returned to the clinic a few months later, barely able to walk.

As opposed to a history and physical, where no one at a later date challenge the accuracy of the history or physical findings such as that there was no weakness, reflex asymmetry or sensory loss. On the other hand, the imaging findings are a permanent record and can be viewed by another expert imager, at a later date and detect findings which were previously missed. Sometimes the imaging findings are clearer on a subsequent study and the imager who read the previous study can be blamed for missing the findings.

If you are doing tele-radiology, make sure you are licensed in the state where the test is done.

If you are the subject of a medical malpractice suit, get in touch with the lawyer assigned to you by the malpractice carrier immediately. Thoroughly study your chart and the subject matter. Do not alter your record. Read the report of the plaintiff’s expert carefully. You may detect inaccuracies or inconsistencies in that report. Bring them to the attention of your lawyer. In addition to the lawyer assigned to you by your malpractice carrier, you may hire your own lawyer to help you get through this ordeal.

Prepare for the deposition thoroughly. Do not take the deposition lightly. Go over the questions that may be asked at the deposition. If you do not know the answer to a question at the deposition say so. Do not guess and do not lie. If you do not understand the question, ask for the question to be repeated or reworded.

If the case goes to court, read the transcript of your deposition thoroughly prior to your testimony. Takes the transcript to court. Make notes if you need them. Dress appropriately. Not too flashy, not too casual. Act in a relaxed manner. Look at the jury when answering the questions. If you do not understand the question, ask for the question to be repeated or reworded. If the plaintiff’s lawyer, reads things out of context, say so. Say that the preceding pages or paragraphs have to be read in order to properly determine the answer to a question previously given. If the answer to a question is different from the answer you gave at the deposition explain why. You may have done further research and have come to know other facts which may alter your answer. You may also say “that was my best recollection then, this is my best recollection now”.