LECOM
SUMMER PRIMARY CARE 2018 CME CONFERENCE

DOCTOR DASHERS: CASES THAT MAKE EVERYONE QUAKE

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RULES THAT GUIDE A PHYSICIAN'S PRACTICE

1. **State Practice Guidelines**
2. **Patients' Bill of Rights**
3. **HIPAA**
4. **OSHA**
5. **Fraud and Abuse Laws**
6. **Medicaid and Medicare**
7. **The Common Law of Malpractice**
8. **Accreditation Standards**
9. **Hospital Rules**
10. **Ethical Rules**

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KEY ETHICAL PRINCIPLES IN CLINICAL PRACTICE

1. **Autonomy**
2. **Beneficence**
3. **Fidelity**
4. **Justice**
5. **Non-maleficence**
6. **Paternalism**

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BELIEVE IT OR NOT!

1. **All of the following are actual cases from the last year.**
2. **Only the names have been changed.**
3. **Hopefully to make you smile.**
4. **The cases present real issues.**
5. **There is often not one good answer.**
6. **So, sit back, pay attention and think what went wrong.**
7. **You may be called on!**

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CASE 1: SUE ME AN SLAPP YOU!

1. **Two vascular surgeons became partners, Drs. Saul Good and M.T. Head. Dr. Good assigned one of this patients, Vic D'Mized, to Dr. Head to create a fistula in his left arm in order to receive dialysis.**
2. **The surgery went badly and Dr. Good was unable to correct the defect. He had to create a second fistula.**
3. **When Dr. Good confronted Dr. Head, the latter was defensive and in denial. Meanwhile, the patient was outraged.**
4. **Dr. Good told the patient that he was within his rights to complain to the Medical Board or even file a lawsuit. He also reported the matter to the Hospital's peer review committee.**

What happened next?

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SLAPP! (CONT.)

5. **The committee found that Dr. Head's technique was proper but his chosen *location* for the fistula did not meet the proper standard of care. His contract was cancelled and his surgical privileges were revoked.**
6. **The patient sued Dr. Head, but could not afford an expert and lost. Fresh off this victory, Dr. Head sued Dr. Good for defamation. He won at trial. Dr. Good appealed.**

How did the appeal go?

7. **The state where all this occurred had what is known as an anti-SLAPP (Strategic Lawsuit Against Public Participation) statute. Based on this law, the verdict against Dr. Good was reversed.**

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SLAPP! (CONT.)

8. **The Court found that everything that Dr. Good had said, to the committee and to the patient were protected by the law.**
   a. **The report to the Hospital Committee was privileged, as its proceedings were official and authorized by law.**
   b. **The statement to the patient was also protected as the statements were made in good faith and true.**
   c. **The fact that the patient lost his case was irrelevant.**
   d. **Keys to Good's success = actions in accordance with duty and in good faith.**

https://www.empr.com/features/malpractice-lawsuit-surgeon-arteriovenous-fistula-surgery-quality-assurance/article/673778/

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YOU MEAN I'M SUPPOSED TO READ MY EMAILS?

1. **Dr. Art Erial is a nephrologist with a very active private practice. One of his referral sources sends him a fifty year old patient, Ed Ema. Mr. Ema suffers from renal insufficiency.**
2. **Dr. Erial put the patient on an ACE inhibitor, but seeing no improvement, increased the dosage.**
3. **After a couple of examinations, the doctor discussed dialysis w/ Ema, who strongly opposed it, so the doctor again ordered an additional increase in the medication.**
4. **Dr. Erial left on vacation after seeing Ema. His nurse called in the increase dosage, but made the order for daily use, instead of every other day. Both the pharmacist and Mrs. Ema questioned this. The nurse was adamant and the script was dispensed as written.**

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EMAILS (CONT.)

5. **When he returned from vacation, Dr. [illegible] signature boxes under a number of emails, including one on Mr. Ema's medication and then deleted the emails w/o reading them.**
6. **Mr. Ema was now experiencing great discomfort, including tremors, esophageal burning, hiccups, stomach pain, and swallowing problems. The nurse emailed these symptoms to the doctor.**

What did he do with this email?

7. **He never read it and deleted it!**
8. **The doctor took him off the medication a week later.**

Then what?

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EMAILS (CONT.)

9. **Within days, Ema was admitted to a hospital where he was diagnosed with severe dehydration, gastrointestinal bleeding, and symptoms of sepsis.**
10. **Two days after admittance, Ema was dead.**
11. **The doctor was sued for malpractice and the case settled.**

Why?

12. **His own expert told him he was negligent for:**
    a. **Not properly training and supervising his staff;**
    b. **Not reading his emails; and**
    c. **Not properly supervising the patient.**

https://www.empr.com/features/medication-email-prescription-error-prednisone-kidney-failure/article/704323/

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WETHERN'S LAW: ASS
THE MOTHER OF ALL

1. **Dr. Izzy Aware is a long time family care physician. One of his patients is an elderly Asian man whom he has regularly provided cared for over fifteen years.**
2. **In his *initial* patient questionnaire, the patient indicated that he had suffered from hepatitis over forty years prior, as a teenager.**
3. **In the current visit, the patient presented poorly with a yellowish tinge to his skin and abdominal pain. Dr. Aware immediately sent him to the hospital.**
4. **The patient was found to be suffering from advanced liver cancer, which had metastasized. His blood work showed that he was also positive for chronic hepatitis B.**

And then what?

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WETHERN'S LAW (CONT.)

5. **Within six months the patient was dead.**
6. **Dr. Aware was sued and he…**
7. **Settled for the limits of his malpractice policy.**
8. **Dr. Aware's own expert acknowledged that patients who are born in any Asian country should be tested for hepatitis B with the Hepatitis B surface antigen test, because people from those countries make up a very high percentage of hepatitis B cases.**
9. **Plaintiff's expert testified: "…the doctor seemed to have assumed that the hepatitis was resolved, and never ordered further testing to determine if the patient had chronic hepatitis B. Chronic infection of hepatitis B can be asymptomatic…"**

https://www.empr.com/features/malpractice-case-trial-settle-hepatitis-b-liver-cancer/article/640577/2/

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A NOVEL APPROACH TO MEDICAL RECORDS

1. **Dr. Farleigh Pore was a hospitalist in a major metropolitan hospital. He was barely proficient in his duties. He was put on probation.**
2. **Demonstrating no significant improvement, Dr. Pore was scheduled for a meeting before the hospital's peer review committee. In the meantime, he was relieved of most of his functions.**

So how did he spend his time?

3. **He accessed and started to read the medical records of his colleagues, starting with his supervising physician.**
4. **He then went to the records of some high profile patients for his edification. In all, he looked at 300 files!**
5. **Dr. Pore did not think he was doing anything wrong—he was neglecting nothing and he did not say anything about the records.**

So what happened to him?

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A NOVEL APPROACH

6. **He was fired! That was for incompetence.**
7. **But that's not all Johnny: he indicted for misdemeanor violations of HIPAA (which imposes a misdemeanor penalty on a person who knowingly and in violation of the act obtains individually identifiable health information relating to an individual).**
8. **He was convicted and got four months in the big house; a fine; and a year of probation.**
9. **He appealed saying the government failed to show that he *knowingly* violated the law.**

So…he won the appeal, right?

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A NOVEL APPRO

10. **The (normally ultra-liberal) N**
11. **The Court stated: "the misdemeanor applies to defendants who knowingly obtained individually identifiable health information relating to an individual, and obtained that information in violation of HIPAA." The key language, according to the court, was "knowingly and in violation of this part." Pore wanted it to be interpreted as "knowingly, in violation of this part."**
12. **Two takeaways:**
    a. **The government is very serious about HIPAA enforcement.**
    b. **Always read laws according to their plain meaning.**

https://www.empr.com/features/hipaa-personal-patient-health-records-criminal-law/article/654196/

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NEVER FORGET COOL HAND LUKE

1. **Dr. Seymour Malaise was a family practitioner with several partners who has seen his practice get much busier in recent years. Time spent per patient has been reduced as a matter of necessity.**
2. **One day as he is about to see his last patient, the office receptionist stops Dr. Malaise and tells him that the daughter of a patient, Heada Hertz, was calling about her mother's latest migraine attack.**
3. **The patient had been prescribed almotriptan in the past. Dr. Malaise took the call and the Ms. Hertz said that her mother needed something "new".**
4. **He quickly ended the call and called in an order for sumatriptan to the local pharmacy.**

All good, right?

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COOL HAND LUK

5. Mrs. Hertz took the new medicati
   suffered a stroke, which left her
   paralysis.
6. What Dr. Malaise did not know a
   Mrs. Hertz had taken any medication prior to his ordering the sumatriptan.
7. In fact, she took the last of her almotriptan.
8. Innocent mistake; harmless error?
9. The daughter did not think so and sued. A jury nailed the good doctor with a $4M verdict.
10. What we had here, was a failure to (effectively) communicate!

https://www.empr.com/features/physician-lawsuit-prescription-migraine-stroke/article/666574/

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IT MUST BE A CO

1. Dr. Les Cheatham, a Florida pa
   novel ways to make money.
   a. He would have a DME supp
      for referrals.
   b. He also took kickbacks from a compounding pharmacy for pain cream prescriptions.
   c. He took exorbitant speaker fees from a drug maker for writing scripts for their fentanyl product.
2. Dr. Cheatham was also busy in his own work, ordering numerous unnecessary tests and keeping CRNAs busy with work that he claimed was his own on his bills.
3. Naturally, he submitted claims to TRICARE and Medicare for all of this.

Do we have a problem?

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IT MUST BE A CONSPIRACY! (CONT.)

4. **The US Attorney and HHS saw no humor in all of this.**
5. **He was criminally indicted and sued civilly.**
6. **Cheatham pleaded guilty to two counts of conspiracy to receive healthcare kickbacks. He faces a maximum penalty of five years in federal prison for each count. He also faces a term of supervised release of up to three years for each count.**
7. **He settled a civil lawsuit under the False Claims Act relating to his billings for $2.8M!**
8. **He and his colleagues, who are already in jail, now have time to ponder if crime does pay.**

https://www.justice.gov/usao-mdfl/pr/fort-myers-pain-management-physician-pleads-guilty-healthcare-offenses-and-agrees-28

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I'M SHOCKED, SHO THERE IS AN OPIO

1. **Dr. Wyatt O' Currs, ran a Geriatric "Institute" in Florida with a heavy patient volume. The patient population was *not* age restricted.**
2. **Dr. O' Currs is a simple man, who prefers cash transactions.**
3. **He is also compassionate, in his own view, and routinely wrote scripts for such drugs as Oxycodone, OxyContin and Percocet. In fact, almost all his scripts were for narcotics.**
4. **As his patients were typically in a hurry, he did not want to bother them with needless examinations. Also, he provided non-clinical staff w/ completed scripts, done in advance.**

Nice doc; caring doc, right?

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OPIOID CRISIS (CONT.)

5. **The DEA and HHS had the temerity to audit Dr. O' Currs' records.**
6. **He was then indicted for conspiracy and drug trafficking.**
7. **On June 29, he was convicted in Fort Lauderdale by a jury of his *peers*.**
8. **His assistants have already been handed sentences of five years each.**

https://www.justice.gov/opa/pr/south-florida-doctor-convicted-participating-conspiracy-illegally-dispense-opioids-and-other

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I CALLED IN A S
THAT ENOUGH?

1. **Dr. Ivana Banter is a family p**
2. **One of her patients, Alotta P has been treated for many c hypertension, asthma, osteoporosis, COPD, urinary tract infections, and allergic rhinitis.**
3. **On July 7 of last year, Dr. Banter's receptionist stopped her as she was about to see another patient to tell her that Ms. Problemas was experiencing a burning sensation while urinating. Dr. Banter called in an order for Cipro.**
4. **On July 22, Ms. Problemas called complaining of a bad cough. Again, Dr. Banter called in a script; this time for Ceftin. On neither occasion did she talk to the patient.**

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I CALLED IN A SCRIPT (CONT.)

5. **On July 28th, Ms. Problemas called the office again, this time complaining that she was not feeling better and that she had developed a slight fever and a cough. Again, the patient spoke only to the receptionist.**
6. **Dr. Banter called in an order for Tessalon Perles and recommended that the patient continue the antibiotics, through the receptionist.**
7. **On July 29, the Ms. Problemas now had diarrhea and gas pain.**
8. **On July 31, the patient presented to the ER. She had an elevated white blood cell count and hyponatremia. The patient was admitted to rule out sepsis, colitis, or diverticulitis. Stool cultures revealed antibiotic-induced C. *difficile* bacteria. The consulting surgeon believed that the patient had pseudomembranous colitis secondary to C. *difficile* infection.**
9. **After exploratory surgery, the patient died on August 5.**

What do you think?

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I CALLED IN A SCRIPT (CONT.)

10. **An autopsy determined that the cause of death was C. *difficile* colitis.**
11. **Ms. Problemas' family sued. Both parties hired experts.**
12. **Experts on both sides found that Dr. Banter's conduct was well below the prescribed standard of care.**

Why was that?

13. **Two key errors were identified:**
    a. **Diagnosing and prescribing solely on the phone; and**
    b. **Delegating all communication to someone w/ no clinical training.**
14. **The case then settled for policy limits.**

https://www.empr.com/features/phone-diagnosis-prescription-medical-malpractice-c-difficile-bacteria/article/697146/2/

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SEE NO EVIL, HE
IS NO DEFENSE

1. **In 2008, Dr. Roman Hands was disciplined by his employer, Holy Dereamers Hospital for sexually inappropriate conduct with a subordinate. He was suspended and given a last chance agreement.**
2. **Eight years later, Dr. Hands began to make comments regarding the appearance of another clinician who did not report to him. He also inquired about her personal life, and allegedly invaded her personal space.**
3. **The clinician, Sue M. Alot, complained to co-workers and got a transfer. Her supervisor heard about it, but did nothing.**
4. **Then, last year, Hands again came into contact w/ Alot. At this point, the harassment of Alot escalated with persistent inappropriate emails and touching. On one occasion, Hands blocked the doorway, grabbed A lot's waist, pulled her close, and put his hand up her shirt.**
5. **Alot now went to HR. Dr. Hands was called in and resigned.**

End of the story?

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SEE NO EVIL (CONT.)

6. **Alot commenced an action against the Hospital for Hands's sexual harassment alleging gender discrimination and a hostile work environment in violation of Title VII.**
7. **The Hospital's main defense: that Alot had not made effective use till the end of Hands' tenure of the hospital's anti-harassment policy.**
8. **The jury did not have a problem with this and awarded 200K in damages.**
9. **The appellate court lowered the damages to 125K (Alot was still working at the hospital) but affirmed the verdict.**

Why?

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SEE NO EVIL (CONT.)

10. **For the Court, the law was properly set forth in an instruction to the jury:**

> ***"…the Defendant is liable if the Plaintiff demonstrates that the employer knew, or in the exercise of reasonable care, should have known, about the harassment but failed to take appropriate remedial action.***
>
> ***To determine whether the Plaintiff's response was reasonable, you must consider the totality of the circumstances."***

https://www.leagle.com/decision/infco20171219104

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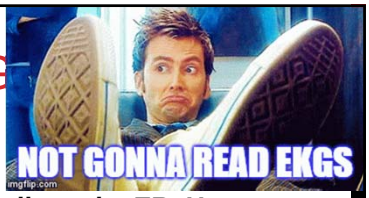
BUT I HATE READING EKG TESTS



1. **A disabled patient is brought by his family to the ER. He has had a brain cancer in the past. Now, he seems to be showing signs of a stroke.**
2. **The ER physician, Dr. Dunham Wrong ordered an EKG among other things. That test showed signs of a damaged heart.**
3. **Dr. Wrong put the test aside and did no further cardiac assessment. He did admit the patient.**
4. **The next day, the patient's PCP, Dr. Bea Hind came to see him. Dr. Hind was rushed through her exam and never looked at the EKG. Three days later, she signed the patient out of the hospital.**

All good?

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EKG TESTS (CONT.)

5. **Three days later, the patient suffered a cardiac arrest. He was resuscitated, but remained in a coma until his death, three weeks later.**
6. **After the cardiac arrest, it was discovered that one of his coronary arteries was completely occluded.**
7. **Both physicians were sued for wrongful death. Dr. Wrong quickly settled. Dr. Hind rolled the dice with a jury.**

Good roll or snake eyes?

8. **It took the jury just under four hours to find liability against the physicians for $6M—three of which was attributable to Hind.**
9. **She tried to blame Wrong, but the jury would have none of it as she had a clear chance to reverse his error and utterly failed.**
10. **Another example of the danger of assumptions.**

https://www.empr.com/features/medical-malpractice-cardiac-arrest-stroke-sue-ekg/article/631911/

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BABY, YOU CAN DRIVE MY CAR

1. **Dr. Parker Carr had a long ti**
2. **Naps suffered from a variety of health conditions including chronic bronchitis, hypertension, emphysema, asbestosis, and lung cancer. He was a frequent flier w/ Dr. Carr.**
3. **A couple of years ago, Dr. Carr ordered a course of chemotherapy for treatment of Naps' lung cancer. He advised the patient not to drive. For the one-year period of the therapy, Naps grudgingly gave up driving.**
4. **Now, Naps while not in the best of shape, has no complaints, despite being on numerous meds, including metolazone, prednisone, potassium, furosemide, paroxetine, oxazepam, oxycodone, and tamsulosin.**
5. **Naps lives a fairly normal life and does drive. OK?**

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PLEASE DON'T DRIVE (CONT.)

6. **One day, while driving to run a few errands in the neighborhood, Naps passes out at the wheel, jumps a curb and runs over a nine year old, killing the child.**
7. **Two months later Naps dies.**

So, who gets sued for the child's death?

8. **That's right Johnny---Dr. Carr: for failing to warn Mr. Naps not to drive.**
9. **Dr. Carr had good lawyers who got the case thrown out. The parents of the deceased child went all the way to the state Supreme Court, which ruled in their favor.**

Why?

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PLEASE DON'T DRI (CONT.)

10. **The key elements of the Court's decision were:**
    a. **The doctor had a duty to warn his patient that the medications he was being prescribed could make him faint, drowsy or disoriented.**
    b. **Further, "a physician owes a duty of reasonable care to everyone foreseeably put at risk by his failure to warn of the side effects of his treatment of a patient."**
    c. **Clearly, the foreseeable risk of injury in an automobile accident is not just to the driver.**

https://www.empr.com/features/medical-malpractice-third-party-sue-sued-road-traffic-death-drowsy/article/687926/2/

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CULTURAL AND DR AWARENESS

1. **Dr. Les Heedful is a veteran primary long time partner just retired. For a variety of reasons, he could/would not keep that suburban practice going.**
2. **So, Dr. Heedful went to the city to practice in a large walk-in family medicine clinic. The patient volume and time demands were much greater than was the case at his prior practice.**
3. **One day a minor Asian girl (age 15) presented with stomach pain and vomiting. She was accompanied by her father, who spoke no English.**
4. **The girl was not only sick but seemed sad. She told Dr. Heedful of problems at home and the impending divorce of her parents.**

What should the doctor do?

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AWARENESS (CONT.)

5. **Dr. Heedful wrote out two prescriptions for the patient, one for an anti-nausea medication and one for fluoxetine for depression.**
6. **There were no translators present and the father did not speak a word of English, so Heedful tried to explain the drugs as best he could to the teenager.**
7. **Three week later, the girl hung herself and she later died.**
8. **Dr. Heedful was sued for malpractice. He was adamant that he did nothing wrong and would not settle.**

Smart move?

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AWARENESS (CONT.)

9. **Actually, the family's lawyer had a few of good arguments and he lost at trial to the tune of $3M:**
   a. **The child never showed signs of *clinical* depression.**
   b. **There is a black box warning for fluoxetine regarding the risk of suicidal behavior in adolescents. The doctor should clearly have told the patient to be aware of this, and should have made the parent aware of it as well.**
   c. **He could have done so by using the girl as a translator for the father.**
   d. **A different choice of antidepressant might have been made.**
   e. **The doctor should have considered referring the patient to a psychologist or psychiatrist for an assessment.**

https://www.empr.com/features/fluoxetine-lawsuit-trial-language-barrier-anti-nausea-physician/article/679227/2/

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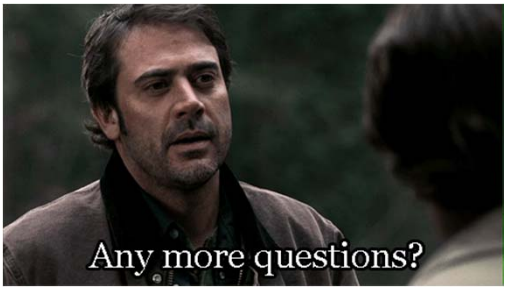

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