



When a Surgical Trainee Is Sued: Supporting Residents Through Interactions With the Medicolegal System

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Roughly 1 in 5 residents is targeted by medicolegal action during training, and almost all practicing surgeons will face suit by the time they are 65 years old.¹⁻⁴ Despite this, there is a widespread perception that surgical trainees do not receive adequate preparation in medicolegal aspects of surgical practice. Previous studies have focused on interventions aimed at preventing legal action against residents or preparing residents for their potential defense after being named a party to a lawsuit but have not examined how to preserve their ongoing training in a residency program.^{5,6} Here we provide a framework for how a surgical program can preserve the training experience and promote a resident's best interests during interactions with the legal system.

Being the named party in a lawsuit is disruptive to training in several ways, particularly as the average length of legal action from incident to case completion is 4 years.⁷ After being informed of the medicolegal action, residents are often instructed that they are not to discuss the case with anyone secondary to legal concerns. This leaves them unable to express concerns regarding their standing in the program and other potential ramifications on their future career. Institutional or media gossip surrounding the circumstances of the case may lead to rumors that trainees are thus unable to address or correct, which can deepen an already present sense of isolation. Last, residents may suddenly find themselves with new demands on their already limited time as they are forced to attend meetings related to evidence review, deposition, and possible testimony.

There is a current lack of guidelines for residency programs on how to best protect a surgical resident's training when that resident is named in a lawsuit. After

ensuring that a resident is a safe member of the clinical team, we suggest the following set of principles and best practices to guide programs in this situation.

DESIGNATE AN ADVOCATE

When a trainee first has an interaction with the medicolegal system, he or she will require guidance and support from a trusted advocate. In most cases, this should be the residency program director. There must be clear communication between the trainee and the program director regarding standing in the program and, among other practical matters, the need to miss or make up clinical time. In this regard, we recommend that program directors collaborate with hospital or university counsel and the designated institutional officer (DIO) to create guidelines for how to approach these issues in an institution-specific or appropriate manner. Whether or not the specific details of the pending action and their potential legal discoverability need to be discussed should be determined by the DIO and university counsel prior to meeting with the trainee. Notably, the trainee should be instructed what methods and types of communication fall under the quality improvement legal exception by counsel.

It should be openly acknowledged that individuals who are the subject of legal action may experience significant psychosocial stress, distraction, and isolation. They may perceive that colleagues question their clinical skills as a result of the legal action. The resident's advocates, and the program director, must keep a keen eye on the well-being of the trainee and his or her ability to perform the assigned clinical duties. We recommend that in advance of legal action, trainees should be familiar with the program's procedures for how to deal with interactions with the medicolegal system. Last, in recognition that medicolegal actions can have impacts beyond

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the training period, this advocate should also be prepared to help the trainee with navigating future issues such as credentialing, licensing, and disclosure to future employers.”

PROTECT THE TRAINEE’S PRIVACY AND MINIMIZE DISRUPTIONS TO TRAINING

As with any other aspect of medical education or employee-employer relations, the privacy of residents navigating the medicolegal system should be protected. This can be difficult if the case is publicized by either news media or by word of mouth. Protecting trainee privacy ensures that residents can continue their training with as little disruption as possible. Assuming the trainee is safe, competent, and appropriate for his or her level of training, we advocate minimizing modifications to the training schedule. Particular care should be given when considering whether the trainee should avoid the service or rotation associated with the legal action. Likewise, when complex relationships exist between residents named as codefendants and attendings, residents may feel a sense of either blame or a responsibility to defend said attending. It should be clear that these issues should be treated independently of the trainees’ training and rotation. Legal proceedings in and of themselves should not affect assessments of the trainee’s competence or clinical skills. That is, clinical evaluations should reflect the trainee’s skills as observed by the evaluator without regard to an ongoing legal matter. This is supported by research demonstrating the difficulty in ascribing responsibility for a medicolegal action to the negligence of a sole provider and instead often finds co-occurring fault due to systemic issues and overall institutional practice.^{8,9} Training schedules, responsibilities and autonomy should not be altered unless indicated by the trainee’s performance.

ENSURE FLEXIBLE SCHEDULING AND SUPPORT

Being named a party to a legal action often requires meeting with legal counsel and other healthcare administrators to review documentation, discuss medical decision making, and prepare for deposition. These meetings may be time consuming, sporadic, and are rarely scheduled to accommodate a trainee’s busy schedule. All efforts should be made to avoid scheduling these meetings on a resident’s postcall day when he or she may be fatigued and vulnerable to missteps or lapses of memory. Whenever feasible, training

programs should ensure that trainees have adequate time away from clinical duties to respond to important legal issues. If necessary, collaboration with the DIO or the American Board of Surgery should be considered if absence requires significant alterations in clinical training time.

CONCLUSION

Surgical programs have a responsibility to defend the training of their residents regardless of extenuating circumstance. We believe implementation of the above guidelines ensures programs are able to continue to meet this responsibility in the face of medicolegal suits. Furthermore, as support of the faculty in medicolegal actions is equally as important as supporting trainees, development and advancement of such a framework on the faculty level should be pursued.

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