

## America Is a Litigious Society - Overview



In the United States, remedies for perceived ills or injustice (such as post-operative complications) are commonly pursued through the legal system. People in the United States are probably more inclined than people in other countries to file lawsuits against physicians or hospitals when outcomes are poor or do not meet expectations. You may even see billboards or television advertisements from malpractice lawyers soliciting patients! High litigation rates and large settlements have dramatically increased the cost of U.S. medical care. An unfortunate result of this is the increase in “defensive medicine,” whereby questionably indicated diagnostic tests and treatments are conducted in an attempt to decrease the likelihood of a “missed diagnosis” and/or potential lawsuit. This practice represents “bad medicine” and is not to be condoned. Nevertheless, physicians must be appropriately thorough in the diagnosis and treatment of patients, taking into account regulatory guidelines and evidence-based medicine as well as the local community’s “standard of care.” It is important to keep in mind that, while medical errors or incompetence may be a contributing factor in lawsuits, it is well documented that physicians who communicate poorly or have trouble establishing a rapport with their patients are far more likely to be sued or sanctioned by state medical boards.



### America Is a Litigious Society - Scenario Script

*A man and a woman are sitting in waiting area; after a few minutes, a doctor enters.*

Doctor: Mr. Stone, Mrs. Stone...your mother has just left the operating room.

Mrs. Stone: Is she going to be alright?

Doctor: Well, there were some problems...

Mr. Stone: Problems? What do you mean?

Doctor: Well, her heart wasn't as strong as we thought it was, and we couldn't keep her blood pressure where it needed to be and....

Mrs. Stone: And?

Doctor: She didn't get enough oxygen to her brain for a while...

Mr. Stone: Oh my God!

Mrs. Stone: What does that mean? Did she have a stroke?

Doctor: Well, it may be too early to call it a stroke...but she may have some residual deficits...

Mrs. Stone: [looking at Mr. Stone] Residual deficits? [looking back at the doctor and getting frustrated] What does that mean? Stop with the double talk!

Doctor: [very hesitantly] Your mother may have some difficulty speaking.

Mr. Stone: Oh my God...

### America Is a Litigious Society - Discussion Questions

1. What did the doctor in this scenario do well?
2. What could she have done better?
3. What is an example of medical jargon that she used, and what better term(s) might she have used?
4. Did the doctor convey any nonverbal communication? If so, what and how?
5. What might the doctor have discussed with the family members after the scenario ended?
6. What are some of the factors that might encourage or discourage the patient or her family from bringing a lawsuit against the doctor or the hospital?
7. What should the doctor do to protect herself and the hospital from a legal standpoint?

## America Is a Litigious Society - Scenario Analysis

In this scenario, a couple is awaiting news regarding the wife's mother's surgery. The surgeon arrives, sits down, and informs them that the patient has just left the operating room. In response to the daughter's anxious questions, the physician gradually indicates that there were adverse events during the surgery and that the patient may have suffered some anoxic brain damage. When the daughter asks if this means a stroke, the doctor is a bit evasive and uses the term "residual deficits." This term is clearly unintelligible to the daughter, and she reacts angrily, demanding that the doctor "stop with the double talk!" The doctor finally explains that the patient may suffer some loss of her ability to speak.

One of the principles of delivering bad news is that it be given gradually. This is what the doctor is doing in this scenario. However, when the bad news relates to a probable medical error, the family members may perceive a prolonged explanation as evasiveness. The doctor should have avoided medical jargon like "residual deficits" and been more forthright in explaining the complications and the potential outcomes.

Adverse outcomes and complications will occur at some point in any medical practice, especially those involving procedures or surgery, and do not necessarily represent medical error. Nonetheless, American patients and their families are probably more inclined than those in other countries to sue physicians and hospitals when outcomes are bad.

Recent experience has shown that when complications occur, whether due to error or not, the honest presentation of accurate information to the patient or family in a timely manner is not only appreciated but often averts baseless legal action. This practice demonstrates professionalism and good communication, factors that have been shown to decrease the incidence of lawsuits brought against physicians.

This scenario ends somewhat abruptly, and it is expected that there would be additional conversation between the physician and the patient's family. During that time, the physician would hopefully express regret and offer some sort of sympathy for the patient and her family. Too often, such expressions are withheld in the mistaken belief that to offer them acknowledges responsibility for a medical error and that such statements could be used subsequently as part of litigation. Again, recent experience indicates that this is not necessarily true. In fact, legal provisions are being developed to prevent expressions of sympathy and regret from being used against physicians.

Whenever bad outcomes occur, senior medical and administrative staff, particularly risk managers, should be notified, and all related events and conversations should be meticulously documented. This includes cases in which patients or their families simply express dissatisfaction with outcomes.