

# The nightmare of litigation: A survivor's true story

After being sued, David dreaded seeing patients and felt always on guard. He was ready to quit obstetrics.

A physician mentor explains how David reclaimed his life.

*"I was stunned, bewildered, and disoriented. Surely this wasn't happening to me. I felt cornered like a trapped animal and just had to escape so I spent most of the day wandering around in a daze. It was like living a dream—no, more like a nightmare."*

**T**he victim of an accident, criminal assault, or terrorist attack? No, this was David, an obstetrician describing to me his reaction on being sued for medical malpractice. A day that started off as hectic but routine suddenly turned into a nightmare. Later, colleagues would tell him not to worry, that he'd be OK and that litigation was a "normal" part of medical practice. But it didn't feel normal to him, as the memories of that day continued to replay in thoughts and dreams.

Malpractice liability may be omnipresent, but that doesn't mean getting sued is a "normal" everyday hazard that Ob/Gyns should be able to take in stride. Litigation is frequently unfair, abusive, and traumatizing, and can cause acute stress disorder and even posttraumatic stress disorder (PTSD) in both physicians and patients.

## David's story

In this true story, an obstetrician suffering disabling litigation stress reclaims a sense of empowerment and control as he becomes

aware of the nature of litigation stress. In the process, he learns how to listen, understand, and support patients, employees, and colleagues in times of stress.

During one-on-one telephone sessions, his trauma was acknowledged and named; his losses were identified and mourned in safety; and his isolation was relieved in a healing supportive relationship.

## The initial shock

This was his first. "I was a litigation virgin," he sardonically commented. "You know, when you're jumping the waves in the ocean at high tide and then you become confident, you turn your back, and this big one hits you? It felt like that. I had just begun to relax, believing it wouldn't happen to me. Then the lawsuit hit. It was a patient I've known for years. I delivered her other children and regarded her almost as a friend, someone I liked and trusted.

"I've made mistakes in the past but this wasn't one of those times. It's so unfair—instead of being grateful that I saved her 9.5-pound baby, she hunted down a lawyer on the Internet. The Web is full of them just waiting to pounce."

## The aftershocks

David recounted the journal articles<sup>1</sup> he'd

## FAST TRACK

**A physician's life is a set-up for acute stress reaction. All too often, a lawsuit is the last straw**

### Loner? Perfectionist? Burned out? 9 factors that raise your risk for litigation stress

Sociable persons who have a thoughtful, active coping style and a strong sense of their ability to control their destiny have more capacity to resist stress.

#### Ask yourself:

1. Am I a loner?
2. Do I assign control of my destiny to others?
3. Am I a perfectionist?
4. Do I tend to beat up on myself when I miss the mark?
5. Is my primary identity that of physician?
6. Do I lack a community of support?
7. Do I lack stress reduction practices?
8. Do I suffer from burnout?
9. Do I have a history of serious trauma?

If you answer yes to any of these questions, you are probably at greater risk of litigation stress. Begin attending to your personal needs and well-being now.

**Expand your resilience.** You have invested time and money in your education; now invest in yourself.

#### FAST TRACK

### PTSD symptoms:

#### 1. Memories

Flashbacks, dreams

#### 2. Avoidance

of patients, detachment, numbness

#### 3. Arousal

Insomnia, difficulty concentrating, irritability, hypervigilance

looked up, which recommended that he share his feelings with a trusted colleague. Other articles cautioned against a possible “discoverable” confidence.<sup>2</sup> Colleagues’ attempts at reassurance did not really comfort him.

His wife was mostly supportive, but it was difficult for her to stay calm and objective since the lawsuit upset her, too. In fact, their relationship was quite strained.

David contacted me when it became increasingly difficult for him to see patients. He said that he felt he had to be constantly on guard, watching every word and action as if patients were an enemy waiting to ambush him. He dreaded going to work and wondered if he should quit obstetrics.

No, he did not want to see a psychiatrist or a psychotherapist. He wasn’t crazy, he wasn’t thinking of suicide or anything like that, he said, and the last thing he needed was the credential committee of his local hospital breathing down his neck.

His spoke in a a lifeless monotone,

reciting the facts of the case as he had told and retold them many times. He sighed often and used negative expressions such as *can't, but, should, have to, if only*. He was articulating a lament—an expression of suffering and loss, which is not uncommon among physicians<sup>3,4</sup> and patients.<sup>5</sup> Within his narrative ran an unbroken thread of helplessness, grief, despair, and absence of meaning and hope.

Rather than premature reassurance and comfort, what David needed was to have his trauma named and acknowledged. Choosing my words carefully, I summarized his story and asked whether I had heard and understood him correctly. He verified that I had. Going a step further, I reflected back his underlying emotions as I had heard them—his feelings of fear, helplessness, sadness, isolation, betrayal, violation, anger, and injustice. Then I paused to create space for his response. Soon, the silence was interrupted by the sounds of his sobbing. When he regained his composure, David apologized for losing control. This lawsuit had been a huge strain, he explained.

#### Symptoms of acute stress reaction

I agreed, pointing out that he had probably experienced an acute stress reaction: feelings of intense fear, horror, and helplessness in response to an unusually traumatic event threatening death or serious physical injury to self or others.

This explained his fright and dazed disorientation on the day he learned of the litigation.<sup>6</sup> While the lawsuit was not life-threatening, it threatened his identity, career, and survival as a physician.

#### Symptoms of PTSD

Usually acute stress reaction settles down, but sometimes it progresses beyond a month into posttraumatic stress disorder, a pervasive chronic anxiety disorder characterized by 3 clusters of symptoms:

- Recurrent, intrusive recollection of the events; recurrent flashbacks and dreams.
- Persistent avoidance of stimuli associated with the event; numbness, detach-

ment, avoidance of patients.

- Persistent symptoms of increased arousal; insomnia, hypervigilance, irritability, difficulty with concentration.

I suggested that some level of post-traumatic stress disorder was the explanation for many of his symptoms.

### **"I am a rock" mentality may predispose to PTSD**

Litigation, because of its protracted nature, is particularly retraumatizing. David concurred: "This explains why just opening a lawyer's letter now causes my heart to pound."

Unlike the military, physicians do not enter a stressful environment organized into teams. Should trauma and acute stress reaction occur, most physicians continue working despite their intense physical responses. There is little community support, so withdrawal and isolation is the norm, and this "norm" may predispose to posttraumatic stress disorder.

As a result, some physicians manifest behavioral problems such as being hyper-reactive, aloof, or disruptive, or they abuse alcohol and drugs. Ironically, these behaviors probably lay groundwork for additional lawsuits.<sup>7</sup>

### **Counting up the losses**

David asked what I meant by "losses." I explained that the nature of trauma is to create loss.

Together we listed his loss of:

- trust
- safety
- peace of mind
- sense of justice
- integrity of personal boundaries
- control
- self-esteem
- self-confidence
- passion
- idealism

Mourning these losses and releasing pent-up emotions of anger, grief, disappointment, frustration, shame, and guilt was essential.

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## What if you have symptoms of litigation stress?

If you notice that you are stunned, bewildered, and feeling overwhelmed, even disoriented, accept that you may not be able to think clearly for a while. Avoid complex tasks and major decisions.

**Take care of your physical health.** Obstetricians take sleep deprivation, lack of exercise, long hours, and irregular eating habits for granted. This, however, is not the time to neglect your basic needs. If necessary, take time off (though many prefer to keep to a regular, albeit moderated, familiar schedule).

**Do not isolate yourself.** Share your feelings with those you can trust. Consider seeing an individual, such as a psychotherapist, who is trained to listen therapeutically. Do not use your lawyer for this purpose.

**Limit use of substances** (such as sedatives, hypnotics, alcohol) **and limit activities** (burying yourself in work or exercise) aimed at numbing your emotions.

**Conserve your energy.** You have limited control over legal proceedings. You can, however, apply your energy to improving your well-being.

**If you develop symptoms of depression,** do not hesitate to seek psychiatric help and certainly do not attempt to self-medicate.

For many reasons, not the least being shame, physicians avoid consulting a mental health professional and repercussions can be serious.<sup>16</sup>

**Remember your life partner, children, and others** around you may be affected too. Be gentle with them.

### FAST TRACK

**Do not share your feelings with your lawyer. Consider seeing a psychotherapist trained to listen therapeutically**

### The power to choose how to respond

While he could not stop the lawsuit, he did have the power to choose how to respond to it. It was his choice whether to be demolished by this lawsuit or to use it to grow personally and professionally. If he agreed, I would partner him in transforming his suffering into growth. On the other hand, should his symptoms not recede, he would need to see a psychiatrist.

By now I had:

- validated his trauma, losses, and suffering
- provided him a cognitive framework
- interrupted his lament
- created safety for him to express his emotions
- emphasized he was not helpless, and that he had choices
- offered to partner with him, thereby relieving his isolation
- role-modeled listening
- offered him hope and a sense of some control.

### A set-up for litigation stress

Surveys reveal that many medical students are exposed to serious trauma such as sexual abuse or domestic violence *prior* to entering medical school.<sup>8</sup> They then enter medical training, which has been described as a “neglectful abusive family system,”<sup>9</sup> and which adds trauma and toxic shame—

this continues into a career punctuated with acute episodes of severe trauma such as medical errors, unexpected death of patients, and litigation stress.

### Breast cancer, traumatic birth cause acute stress

David read books on trauma<sup>10</sup> and suffering,<sup>11,12</sup> and began to explore ways to apply his new insight. He read journal articles that described acute stress reaction in patients diagnosed with breast cancer,<sup>13</sup> traumatic birth,<sup>14</sup> and spontaneous abortion.<sup>15</sup> Now he understood why patients sometimes left his office bewildered and disoriented, unable to retain any information, and why patients with chronic trauma experience functional somatic symptoms. He also learned how to respond more effectively.

### The outcome: Self-empowerment

Together we studied his written narratives of patient encounters and did role plays of these encounters. He was a good student, and his ability to communicate empathy and support eventually matched his technical proficiency. Increasingly, not only patients, but also employees and colleagues turned to him for listening in times of stress. Their positive feedback enhanced his sense of well-being. His newly acquired empowerment and sense of control was key to his success.

Over the course of 8 months, he traveled full circle from trauma victim to healer.

### Litigation stress: Take it seriously

When taken seriously, much can be done to transform litigation stress into physician empowerment. Studies need to be done on stress disorders in physicians, so as to refute the culture of denial that exists around the trauma inflicted by malpractice litigation. Innovative programs need to be developed to minimize the harmful effect of litigation and to support physicians suffering litigation stress. ■

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