Malpractice: Part II

Let’s look first at the element of dereliction. Dereliction as it is commonly used can mean either abandonment or being remiss. There are multiple ways in which a physician can be derelict towards someone. (As a legal term, dereliction means the gaining of land when water receded.)

One way is being remiss by failing to diagnose. If you misdiagnose a patient, you have a potential liability. For example, suppose your diagnose an adolescent with Major Depressive Disorder, first episode, and begin treatment with an SSRI. The youth goes from depressed to manic or hypo-manic. While in this state, he has an argument with his parents, takes off driving the family car, crashes, and is killed. Family history is strong for bipolar disorder, and non-existent for unipolar depression. You were derelict/negligent by not obtaining a thorough history when doing so might have lead to a different treatment approach. However, if the same events occur but there is neither a prior history of bipolar disorder in the patient nor any blood relatives, and you took the time to inquire about such, then malpractice likely does not exist because you were not derelict in performing your assessment. In order for malpractice to lie, each of the four elements listed above must exist, i.e., no dereliction means no malpractice. Just because a patient has a bad outcome does not necessarily mean you have been derelict.

Here is another example. You prescribe an antipsychotic for a youth with bipolar disorder, but do not tell the minor patient or the parents about the significant side effects that may occur, such as drowsiness. Again, he goes driving and crashes. You were negligent by not fully describing the proposed treatment. Your job as a treating physician involves proper diagnosis with treatment recommendations. When describing the proposed treatment, part of your job is to explain the pros and cons of the recommendations. The parents can then make informed decisions. Both they and the minor (if of sufficient age) can understand what to expect regarding possible side effects. In describing effects, side effects, and risks, your job is to convey all the information that a reasonable person would need to know in order to decide whether to accept the proposed treatment. If you do not provide all this information and make a reasonable effort to ascertain that it was understood, you are derelict in your handling of the patient.

Imparting information during the interpretive interview takes time not only because you should discuss all the necessary information in language the parent can comprehend, but also because you need to allow time to answer any questions. Not having enough time in your schedule to do this is not a defense. If you are in private practice, schedule sufficient time to do the interpretive interview thoroughly. If you work in a clinic, do not let someone else dictate how long you are allowed to spend with a patient. Take time to do the job right. Many potential malpractice situations can be obviated by taking sufficient time to do a thorough evaluation and interpretive interview.

Abandonment is another form of dereliction. For example, going away for a vacation (where you are unreachable) without either notifying the patient of what to do in case of an emergency or having another physician take on-call coverage could be considered abandonment. Such failure to be available leaves you potentially liable for any adverse events that occur to the patient because the patient or the parent tried to reach you but could not do so.

Dereliction either through negligence or abandonment can be avoided by dedicating sufficient time and thoughtfulness to your patients and their parents.
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**ERRATA**

Dr. Robert Adler, a child and adolescent psychiatrist from Australia pointed out the following error. On page 186 of the July/August 2009 issue of AACAP News, “Native American Boarding Schools Part III,” the opening quotation was credited to Stephen Harper, Australian Prime Minister. The author, Dr. Breger, clarified the confusion over the quotation. Stephen Harper is the Prime Minister of Canada and was speaking of the indigenous people of Canada. Kevin Rudd, the Prime Minister of Australia, made a similar statement in his major address of apology to Australia’s indigenous population, also in 2008. He had been reviewing both and inadvertently misidentified the speaker.

In the Discussion on Holding Children that appeared in the September/October issue of AACAP News, there is a correction to the closing statement in the second to last paragraph. The sentence should read “When parents are unable to be empathically firm, the resulting childhood tyranny leads parents to feel, if not actively be, abused.”