CHAPTER 2

Medical Malpractice Stress Syndrome

S. Sandy Sanbar, M.D., Ph.D., J.D.
Marvin H. Firestone, M.D., J.D.

GOLDEN RULES

1. Medical malpractice lawsuits are extremely stressful.
2. The allegation of medical malpractice may be extremely traumatic to the accused physician.
3. The primary manifestations of medical malpractice stress syndrome are psychological symptoms (e.g., acute or chronic anxiety and depression), and the secondary manifestations are physical symptoms.
4. The accused physician must acknowledge that he or she may be suffering from a medical malpractice stress syndrome.
5. The distressed physician should seek support, understanding, and comfort from immediate family members, close friends, defense counsel, and professional colleagues.
6. The physician needs help to acknowledge and address the fears of medical malpractice stress.
7. The accused physician must continually be reminded that being sued for medical negligence is a predictable hazard of medical practice in our times.
8. Education of the sued physician about medical malpractice stress is the key to dealing with the fear of litigation.

The purpose of this chapter is to provide an overview of the medical malpractice stress syndrome (MMSS), its symptoms, diagnosis, and management in hopes of providing physicians who are suffering from, or who are caring for other litigation-stressed physicians, with the necessary tools to effectively manage this disorder.

CASE PRESENTATION

Dr. Ray Sunshine is a 43-year-old second-generation family physician. While in medical school, Dr. Ray met and fell in love with his classmate, Angela. They got married the same month they graduated from medical school. He and his wife have three children, two daughters and a son. After Dr. Ray and his wife graduated from medical school at the University of Florida, Dr. Ray completed a residency training program in Family Medicine; Angela also trained at the University of Florida as an Emergency Physician. He has been practicing medicine for 12 years, working with his wife, Angela, and his father, Christopher, at the Family Medical Clinic, in Sun City, Florida.

On January 13, 2001, at approximately 1:00 P.M., Dr. Ray returned from lunch to resume his work at the Clinic. His nurse approached Dr. Ray and informed him that the Sheriff (a patient treated by his father) was here to see him. The Sheriff was ushered into Dr. Ray's office. The two of them exchanged greetings. Apologetically, but in a businesslike manner, the Sheriff served Dr. Ray with a summons and complaint, alleging medical malpractice. The Sheriff told Dr. Ray that he was being sued by one of his patients. The Sheriff said goodbye and walked out of the office.

Dr. Ray was stunned, shocked, and dismayed. He could not believe that he was being sued by one of his patients. He had never been sued before. He could not think of having done wrong to his patients. He thought to himself: "All my patients love me. Who would do such a horrible thing?" He had flashbacks of many patients that he had treated in the last few years. He gently placed the petition on his desk without opening it, and he stepped away from his desk, all the time staring at the petition.

His forehead became sweaty, as did the palms of his hands. His hands were shaking and his body felt like it was trembling all over. His chest felt tight and he could not breathe deeply enough. He had goose bumps all over. He became weak and nauseated. His lunch-filled stomach felt heavy, and he was afraid he might vomit any time. He felt momentarily unstable on his feet and dizzy. Dr. Ray could not believe what was happening to him.

Nurse Susan knocked at his door and entered the office to inform Dr. Ray that his first afternoon patient has been waiting to see him. The doctor, now visibly pale and diaphoretic, did not look back to acknowledge the nurse's presence. Instead, he walked two steps and sat in a nearby chair, with his head bent forward. He felt ashamed and did not want to tell his nurse what had happened. He took his handkerchief out of his back pocket and wiped his forehead.

The nurse, realizing that there was something wrong, asked the doctor if he felt all right. The doctor did not answer at first, but then he told the nurse to cancel all his patients for the rest of the day because he was not feeling well. The nurse then informed Angela, Dr. Ray's wife, that Dr. Ray was not feeling well.

Angela excused herself and ran to her husband's office. He was still sitting in the chair, staring at his desk. "Honey," she said, "What is the matter? What is bothering you? Are you hurting anywhere?"

Dr. Ray could not talk. He felt lonely even in his wife's presence. Guilt feelings were running through his mind. Angela asked him what the Sheriff was doing here. Dr. Ray stared at the petition on his desk and nodded ever so slightly. Angela walked toward the desk, picked up the envelope, opened it, and slowly read allegations of negligence and gross negligent acts by her husband. She was shocked herself, but she quickly realized that her husband was suffering from an acute stress disorder.

Angela called her father-in-law, Dr. Christopher, who was in his office, and informed him about Dr. Ray. He rushed to Dr. Ray's office and expressed concern and when he was informed of the lawsuit, he told his son that when he was sued by one of his patients for medical malpractice, he likewise suffered symptoms of distress throughout the five years of litigation, until the lawsuit ended in his favor.

Dr. Ray's malpractice litigation lasted three years, during which time both his wife and father were extremely sympathetic and supportive. Nevertheless, Dr. Ray suffered distress symptoms throughout the course of the litigation. The trial ended with a defense verdict. Dr. Ray was relieved, but continued to suffer from symptoms similar to those who have post-traumatic stress disorder.[1]

STRESS OF MEDICAL MALPRACTICE LITIGATION

Medical malpractice lawsuits are extremely stressful. They are predictable hazards of medical practice. Some medical professionals view malpractice lawsuits as an inherent part of providing medical care. Indeed, no individual physician is immune from medical malpractice, and the majority of physicians are affected, directly or indirectly, by patients alleging negligent professional care as the cause for their injuries.

It is known that litigation distress may affect any individual who is involved in litigation. There are predictable effects of medical malpractice lawsuits on the defendant physicians characterized by the medical malpractice stress syndrome, a unique variation of the well-accepted litigation stress syndrome.

Even though medical malpractice lawsuits are common, most physicians are ill-prepared to deal with the devastating psychological effects of medical malpractice litigation on the physicians, their families, and their medical practices.

The stress of medical malpractice litigation may directly contribute to physical illness of the physician, as well as dissatisfaction with medical practice leading to burnout and early retirement. Tragically, if the reaction of the physician is extreme, depression may lead to suicide.

MANIFESTATIONS OF MMSS

An allegation of medical malpractice (or charges of unprofessional or unethical conduct by a physician's peers) may be extremely traumatic to the accused physician, regardless of whether or not the allegation has merit. The emotional turmoil that results can be debilitating.

The primary manifestations of medical malpractice stress syndrome are psychological symptoms (e.g., acute or chronic anxiety and depression), and the secondary manifestations are physical symptoms. The physical symptoms may be manifestations of a new disorder or may represent an aggravation of a preexisting disorder.

ANXIETY SYMPTOMS

The accused physician may develop excessive worry, which would occupy over 50% of waking hours. The physician may have difficulty controlling the worry. When such worry symptoms last over six months, it is characterized as persistent or chronic.

The physician may complain of restlessness, tiredness, difficulty concentrating, irritability, tense muscles, and/or insomnia. Such anxiety symptoms interfere with the physician's daily life both at work and at home.

Some physicians develop feelings of anger, bitterness, shock, dismay, guilt, shame, irritability, frustration, distrust, loneliness, and diminished self-esteem; and the physician may manifest hyperactivity.

The accused physician may react by emotionally distancing himself/herself from family members, friends, and professional colleagues. Interest in work, food, recreation, and sex may be diminished. The accused physician may become insecure, may develop concerns about ability and competency to make decisions, may compulsively order unnecessary tests on patients, and may have thoughts of changing careers.

The physician may resort to alcohol, or self-medication, in an attempt to self-medicate many of the uncomfortable symptoms. The accused physician who is already suffering from a preexisting medical illness, such as coronary artery disease, diabetes, hypertension, or gastrointestinal disease, may exacerbate or aggravate those disorders, thereby causing more physical symptoms and signs related to those disorders.

CONSULTATION WITH TREATING PHYSICIAN

The accused physician must acknowledge that he or she may be suffering from a medical malpractice stress syndrome. It is sometimes difficult for the physician to formally seek medical or psychiatric attention from a colleague. Especially when the symptoms of anxiety and depression are severe, or where there are thoughts of suicide, the distressed physician should seek prompt psychiatric assistance.

Management and control of the symptoms of MMSS under the supervision of a treating physician should never be underestimated. The amelioration of the stress symptoms will lead to a feeling of wellbeing, confidence, and behavioral control, thereby reversing the agonizing mental turmoil. Reduction of stress symptoms will also allow the physician to think and act with greater objectivity, to remain focused, and to maintain a more healthy perspective on the litigation process.

DISCUSSIONS WITH FAMILY, CLOSE FRIENDS, AND COLLEAGUES

A friend in need is without question a friend indeed. The distressed physician should seek support, understanding, and comfort from immediate family members, close friends, and professional colleagues. In particular, open and candid discussions with one's spouse, and maybe even the children, may reassure all the family members. This can lead to greater support and understanding of any unusual behavior.

Discussions with physician colleagues, particularly those who have been through malpractice litigation, can be helpful. Reaching out to family, friends, and professional colleagues for emotional support should not be construed as a sign of weakness. Just the opposite, it is the imprimatur of a wise and strong person, one who is not afraid to confront reality, no matter how harsh it may seem.

MEETING WITH DEFENSE COUNSEL

This topic is discussed in detail in Chapter 8. The meeting(s) between the accused physician and the defense counsel can be extremely helpful in educating the physician about the legal system and addressing fears and concerns about the litigation. The physician who develops rapport and trust with the attorney, who gains a thorough understanding of the legal process, and who assists the legal counsel to understand the factual issues related to the alleged negligence claim, will benefit immensely by gaining confidence, thereby reducing the stress of litigation.

MANAGEMENT OF MMSS

In March 2005, at the 45th Annual Conference of the American College of Legal Medicine, in Las Vegas, Dr. Louise B. Andrew, who is an expert in this area, presented the S. Sandy Sanbar Lecture, which dealt with this personal, sensitive, and difficult subject of malpractice litigation stress, and the following discussion is derived in part from that excellent lecture, as well as from the selected references at the end of this chapter.

Dr. Andrew noted the following four essentials of management of MMSS:

1. Replace mystery with knowledge.
2. Replace shame with confidence.
3. Provide insight into the players and drama while being enacted.
4. Provide tools and strategies for combating the emotional and physical stress of litigation.

Dr. Andrew pointed out that charging the physician with malpractice is perceived as a "wound to the heart." In every known bad medical treatment outcome, the physician blames self long before the patient begins to blame. Hence, the physician already has a wound to self-esteem by the time the legal claim is made. Every step in the legal process, while ostensibly designed to reveal the truth and serve justice is perceived by the physician

as an attempt to prove intentional wrongdoing by the physician. This is related to the psychological vulnerabilities of the accused physician and the lack of understanding of the legal process.

The physician needs help to acknowledge and address the fears of medical malpractice stress, all of which are appropriate to the situation. These include:

1. Loss of control.
2. Loss of livelihood.
3. Loss of reputation.
4. Loss of assets.
5. Loss of significant supporters.
6. Lack of knowledge about the process and potential outcomes.

Education is the key to dealing with fear. The physician should be encouraged to:

1. Attend supportive educational meetings.
2. Read available materials on litigation stress support.
3. Seek advice from experienced colleagues, malpractice and estates lawyers, counselors, or consultants.
4. Ask questions, and acknowledge that this is not the physician's sphere of expertise.

The physician can do a number of things, including:

1. Begin to transform one's personal definitions.
2. Pay more attention to one's own needs.
3. Assemble a personal survival kit.
4. Pay more attention to the needs of one's principal supporters.
5. Reframe the case as a "Passion Play," and hone one's acting skills for the court drama. According to Dr. Andrew, the physician should recognize that he or she is an actor involved in a malpractice lawsuit "drama" which is not of the physician's own making nor under his/her control. The arcane script is written by people who have long been dead, by morbid "poets," and by modern-day pirates. Indeed, only part of the physician's professional persona is involuntarily involved in the "Passion Play."

It is important, according to Dr. Andrew, to arm the physician with psychological armor. The physician should be taught that, to the extent that he or she forgets the actual goal of the plaintiff (money), and accepts the stated goal (justice), he or she can and will be disempowered. Therefore, to the extent possible, the physician should ignore what the other side says or does and focus on the fact that the plaintiff is only entitled to money.

The physician must remember that knowledge is power and must be acquired. The physician should be encouraged to access resources, including counselors and consultants in litigation stress and witness preparation, talk to close colleagues, and attend support groups. Physicians who have been involved in malpractice litigation should share their experiences and their successes with their colleagues.

The accused physician must continually be reminded that being sued for medical negligence is a predictable hazard of medical practice in our times.

Medical malpractice litigation is one of the most stressful events of the life of any physician. But it is survivable and surmountable. It can be an experience from which the physician can actually become a better doctor. Nietzsche said, "What does not destroy me, makes me stronger."

The physician can derive therapeutic benefit from the following:

1. Being actively involved with the defense attorney team.
2. Participating in official discovery requests.
3. Assisting in identifying qualified experts.
4. Performing medical literature research to determine nuances of medical care.
5. Attending as many depositions and as much of the trial as feasible.
6. Preparing diligently for appearances by thoroughly knowing the medical records and the medical literature.
7. Becoming educated and comfortable in dealing with the tactics of the plaintiff's attorney and the time and scheduling difficulties required by legal proceedings.
8. Becoming educated about medical malpractice stress and its effects on the physician.
9. Recognizing that there are inherent conflicts of interest between the insurer and the physician.
10. Being prepared to seek counsel by a private attorney if conflicts are perceived with being represented by an insurance company appointed attorney or if claims are not covered or if an excess judgment beyond coverage is possible.

FURTHER READING

Andrew, Louise, Managing Medical Malpractice Stress, 2003, last accessed February 26, 2006; http://www.magmutual.com/risk/malpractice-stress1.html

Charles SC; Wilbert JR; Franke KJ, *Sued and nonsued physicians' self-reported reactions* to malpractice litigation. Am. J. Psychiatry 142(4):437–440(1985).

Charles SC, *How to handle the stress of litigation*. Clin. Plast. Surg. 26(1): 69–77(1999).

Charles SC, *Coping with a medical malpractice suit*. West. J. Med. 174(1): 55–58(2001).

Reading EG, *Malpractice stress syndrome: a new diagnosis?* Md. Med. J. 36(3): 256–257(1987).

Reading EG, The *malpractice stress syndrome*. N. J. Med. 83(5):289–290(1986).

REFERENCE

1. Diagnostic criteria from the *Diagnostic and Statistical Manual of Mental Disorders*,4th Edition, with text revision (APA 2000) (DSM-IV-TR) for Acute Stress Disorder (DSM-IV-TR 308.3) and Post-Traumatic Stress Disorder (DSM-IV-TR 309.81) other than Criterion A (the stressor), describe the signs and symptoms suffered by physicians who suffer MMSS.