

Post-lawsuit Debriefings: Bringing Home the Lessons of Litigation

It may seem unconventional to view a professional liability lawsuit as an educational experience. However, a well-managed post-lawsuit debriefing session – especially one focusing on an act or occurrence that resulted in severe injury or death, or threatened harm to a large number of patients – can serve as a powerful risk management tool. Such a session can aid healthcare organizations in assessing and improving processes, analyzing staffing patterns, and refocusing leadership and staff attention on the ultimate mission of safely delivering quality patient care.

Debriefing sessions are typically led by litigation counsel following an unfavorable trial result or settlement. They are designed to help senior leaders, clinical and administrative department heads, providers and staff examine the major issues of the lawsuit and determine whether existing policies, procedures and resource levels adequately protect patients/residents from harm, or must be altered in view of events. This *AlertBulletin*® offers guidance on conducting a meaningful post-lawsuit debriefing, including such components as compiling documents, preparing for the discussion and issuing follow-up recommendations.

GETTING STARTED

Any review of issues relating to patient/resident care must take place in an environment that promotes free and open exchange of views while maintaining an appropriate level of confidentiality. In general, debriefing sessions should be conducted under the direction of a quality assurance team responsible for patient/resident care initiatives, such as a sentinel event review committee. This type of forum may afford the strongest legal protection to participants and their findings.

Debriefing participants should include, at a minimum, administrators, designated risk and quality managers, legal counsel, clinical care coordinators, health information system managers, and leaders of nursing and medical staffs. Other areas should be represented as needed to ensure a purposeful and well-informed discussion.

All participants should be expressly informed that the debriefing is a privileged and confidential review, conducted for quality of care purposes. Particular attention should be paid to protecting the confidentiality of sensitive documents relating to the litigation, including settlement and release agreements. In addition, statutory and case law guidelines may require implementation of additional privacy measures, such as redacting individually identifiable protected health information.

Before the group meets, the chair should compile and secure occurrence-related documentation. In most cases, defense counsel already will be in possession of the most pertinent information, such as

- inpatient health information records
- resident care records
- procedure reports
- outpatient care records
- nursing reports
- records from allied healthcare professionals
- diagnostic reports and imaging films

The group also should be prepared to discuss other administrative, operational and/or clinical information affecting legal defense and/or case outcome, including but not limited to

- relevant facility policies, procedures and protocols
- incident reports, witness statements and sentinel event documentation
- notes from internal and/or external expert reviewers
- staffing schedules, assignment and attendance records, and information pertaining to staff coverage during breaks
- equipment maintenance and performance logs
- physical plant maintenance logs
- medical device reports
- clinical data memory drives
- security videos and police officers' notes
- cellular telephone logs

CONDUCTING THE REVIEW

Debriefings should have a constructive tone and educational focus, objectively examining the legal implications of clinical care events and decisions and drawing useful conclusions regarding patient/resident safety.

Sessions require effective organization and strong leadership in order to avoid finger-pointing and defensiveness. They should be of sufficient duration to address salient points, without digressing into secondary or personal issues. Depending upon the nature of the lawsuit and the events being reviewed, an hour should be adequate to review key issues and findings.

By scripting the presentation in advance, the session chair can help ensure that it remains cogent and on track, with adequate time for questions and comments. The outline should cover the following basic lawsuit and risk management elements, among others:

- *case details*, including a brief description of all parties to the lawsuit and the events leading to the claim
- *pleadings*, including plaintiff's complaint and major allegations
- *chief defense findings* and the rationale supporting them
- *relevant organizational policies* and associated procedures
- *pertinent documentation* from the patient/resident care record and other sources
- *significant deposition findings*, including a summary of medical expert testimony
- *liability analysis*, including why the care was deemed unreasonable and the extent to which it adversely affected the patient's/resident's treatment outcome
- *evaluation of the care provided*, emphasizing the performance of processes and systems rather than individuals
- *a critique of staff preparedness* and emergency response strengths and weaknesses
- *quality improvement suggestions*, if warranted by case circumstances

CREATING AN ACTION PLAN

The debriefing team's major goal is to explain how the clinical incident translated into legal liability, and to suggest risk management strategies designed to prevent recurrence of errors and ultimately to minimize exposure. To ensure that memories of the event and its consequences are still fresh and associated strategies are timely and relevant, the debriefing should be convened as soon as practically possible after adjudication.

Risk control recommendations may take many forms, such as staff education, simulated training, and changes in policy or practice. Action plans should be focused on the specific issues raised in the case, clearly and simply described, and practical from an operational and budgetary perspective. As with any risk management intervention, follow-up plans should be carefully documented and assigned to a designated individual, department or committee to ensure accountability. (See "Documenting Post-lawsuit Debriefing Sessions and Action Plans," below.)

Post-lawsuit debriefing sessions can provide invaluable insight into the medicolegal process, revealing the extent to which defensibility and case outcomes are contingent upon issues of patient care documentation and written organizational policy. In addition, debriefings can also help produce a sense of closure for those involved in a case, demonstrating that errors can be lessons and encouraging staff members to move forward from an unfortunate but concluded situation.

Documenting Post-lawsuit Debriefing Sessions and Action Plans

The debriefing process – including the date, names of participants, agenda items and associated action plan – should be thoroughly documented by the risk manager. The action plan template below can aid in organizing post-lawsuit risk control initiatives and achieving compliance with documentation requirements:

| RISK ISSUE | INTERVENTION OPTION(S) | COSTS AND BENEFITS | TIMETABLE FOR IMPLEMENTATION | RESPONSIBLE PERSON | MONITORING REQUIREMENTS |
|------------|------------------------|--------------------|------------------------------|--------------------|-------------------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. (etc.) | | | | | |



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