NEXTSTEPS IN DERM | Sponsored by Aveeno ACTIVE NATURALS®

Review Next Steps in Derm's most read articles on the legalities and financial components involved with practicing in the field of dermatology.

www.NextStepsInDerm.com

JOURNAL OF DRUGS IN DERMATOLOGY JDD

A product of sanovaworks

From the Editor:

Happy New Year! Welcome to the first Best of Next Steps in Derm of 2016! Focusing on legal and financial matters, we are happy to present our most popular articles from 2015 as well as an exclusive article to help dermatology residents and young physicians gain a leg up on the complex world of legalities.

Navigating your way through legal issues and paperwork in your early career can be time-consuming and overwhelming. Don't panic! Learn from the experts and equip yourself with the most up-to-date knowledge and legislation available. Exclusive to this issue, Dr. H. Ray Jalian is on hand with tips on how to "Minimize the Risk of Medical Malpractice Lawsuits," which will help you learn how to protect yourself. If you work for a private or multispecialty practice, Dr. Ahmad Shatil Amin's article offers an in-depth explanation of physician compensation to ensure you know your rights.

As part of the "Money Matters" series, Dr. Anna Chacon is on call with advice on how to stay ahead with financial matters. Whether you are in residency or a practicing dermatologist, it's a smart move to be in control of your finances and avoid later difficulties. Dr. Chacon's two-part series provides a comprehensive guide on the student loan repayment process, as well as the importance of saving. Sharing a unique perspective, dermatologist and founder of ALC Therapeutics, Dr. Kara Capriotti, explains how to bridge the gap between the residency taught pharmacological understanding of drugs and the less familiar industry side of medicine.

These articles, and others found at NextStepsinDerm.com, will provide you with invaluable career development and practice management advice, directly from leaders in the dermatology industry.

Enjoy this issue!

Daniel M. Siegel MD, MS, Senior Editor

Table of Contents:

Medical Malpractice Lawsuits

How to Minimize the Risk

H. Ray Jalian, MD
Private Practice
Los Angeles, CA

While the overall rate of medical malpractice claims have plateaued, 75% of physicians in low risk specialties, such as dermatology, will face a claim by age 65. Though the probability of an indemnity claim payment is far lower at 20%, the stress and time associated with defending a claim can be quite taxing.

In order to minimize the risk of claims, it is first important to review the criteria to successfully bring upon a medical malpractice claim. Quite simply, medical malpractice is the negligent infliction of personal injury or wrongful death in the course of medical treatment by someone who professed to have a special knowledge and skill in the practice of medicine. Legally, the complaining party must establish four elements to a claim:

1. The physician owed a duty of care to plaintiff.
2. There was a breach of duty. The physician performance fell below the applicable standard of care.
3. The plaintiff suffered actual injury or loss.
4. The loss or injury was proximately caused by the physician's breach of duty.

Standards of care are established by medical literature, consensus opinion and expert testimony.

Informed Consent

For the large part, dermatology is a low risk specialty. Nonetheless, there are simple strategies to curtail risk. In a large review of dermatology claims, improper performance of a procedure was amongst the top reasons for legal action. When looking specifically at patterns for procedural dermatology, lack of informed consent is the most frequently cited cause of action in malpractice claims. All patients have a legal right to an informed consent prior to any treatment, whether it be written or verbal. Key elements of an informed consent are as follows:

- description of diagnosis
- medical steps preceding the diagnosis
- nature and purpose of the treatment
- risks of procedure
- alternatives

All relevant risks of the procedure must be disclosed in the informed consent process, regardless of how minor they are. For example, while the risk of arterial occlusion and blindness is rare with soft tissue augmentation, it should still be disclosed in an informed consent process. Your duty to the patient is expanded as the patient asks more specific questions. Moreover, a proper informed consent should include relevant risks based on particular patient susceptibilities. For example, a skin type V patient should be informed of the relatively higher rate and risk of hyperpigmentation following laser surgery.

When drafting an informed consent document, care must be taken to avoid medical jargon. The document is ineffective if your patient is unable to understand the material that is present.

Blanket authorizations or informed consents should also be avoided. These are generally

viewed with disfavor by the court system as they fail to document the discussion of the specific risks and alternatives to a particular treatment.

Performing a procedure without an informed consent process is considered battery by the judicial system. Though seemingly extreme, the legal precedent for patient autonomy greatly favors the plaintiffs in these cases. Injury or negligence is less relevant in these circumstances; all that needs to be shown is non-consensual touching. Caution must be taken in particular cases where consent is given for one procedure but not another. For example, extension of liposuction of the thighs to the buttocks without informed consent would be considered battery.

Delegation

With increase in demand for access to dermatology services, many practitioners are now utilizing midlevel providers. Depending on the state the practice is located in and the certification of the provider, midlevel providers can perform a variety of aesthetic and medical procedures. One should be familiar with the regulations in their state in regards to supervisory requirements and the scope of practice of midlevel providers.

While the scope of practice may vary state to state, physician liability for midlevel providers is more uniformly established. In general, a physician is held liable for a physician extender's negligence provided that the extender is an employee receiving a salary and benefits, and performing within the scope of his/her duty. This is supported by a variety of legal doctrines. First, the physician is directly liable for any negligence that can be attributed to an individual capacity. For example, the physician can be responsible for negligently hiring or negligently training the extender. There is also the concept of vicarious liability, which is simply the liability for the negligence of your employees. This is based on the belief that the employer has the ability and duty to control their employees. Moreover, as the extender is performing procedures that benefit the physician (usually financially beneficial) the physician naturally bears some of the liability.

Tips to Avoid a Lawsuit

One of the simplest ways to avoid a lawsuit is by having open communication with your patients. Good communication and rapport are the most important means to avoid a lawsuit. Patients with a good relationship with their physician are far less likely to sue. Taking the time to discuss the nature of a procedure with your patients helps to set proper expectations and avoids disappointment when encountering expected side effects.

Avoiding complications can also help one curtail lawsuits. Even in skilled hands, if you perform a large number of procedures you will inevitably encounter challenging side effects. In general, do not perform a procedure that may produce a side effect that you cannot recognize or treat. Moreover, abandoning or avoiding a patient with a poor outcome understandably can anger and alienate your patient.

Understanding Compensation for Physicians in Private or Multispecialty Practices

By AHMAD SHATIL AMIN, MD, FAAD
"Best Of" Next Steps Online
from July 13, 2015

You may have received advertisements and flyers in the mail highlighting attractive starting or base salaries. This is the way many practices lure young graduates. A high base salary is great, but often these base salaries are only guaranteed for one to two years. After that point, you are likely to be compensated on some form of a production model that takes into account your work output or how much revenue your services bring to the employer. Keep in mind that a typical general dermatologist who works four to five days a week and sees an average of 30 patients per day will generate for their employer approximately between $900,000 to $1,200,000 yearly on average. This is not the money you take home, but the money that your employer is making directly from your

professional services. And this is the reason why many dermatology practices and multi-specialty practices are eagerly looking to hire dermatologists.

It is important that in addition to the base salary, you look carefully into the specifics of the productivity-based compensation model that will likely take effect once your guaranteed base salary expires. If you are a busy dermatologist, your total productivity-based compensation will likely far exceed your base salary. You may agree to work at a practice that offers a very attractive base salary only to find out later that the production-based compensation is not as competitive. Productivity-based compensation is based on either net collections (the total amount of money you bring in for the practice — payments made by patients and insurers) or total number of work RVU (a metric of work output).

In the collections model, you are paid a certain percentage of the total money that you generate for the practice. The common range can be anywhere between 30-50 percent — obviously the higher the percentage the better for you. For example, if you negotiate to keep 40 percent of net collections, and if you generated $900,000 in collections, your salary would be $360,000. A downside of this model is that the payor mix of your patient population (the types of insurance your patients have) will affect your net collections and thus your net pay.

In the work RVU model, you are paid a set amount of dollars per work RVU that you generate. A little explanation of work RVUs (wRVU): Each procedure or activity that a physician performs is associated with a wRVU value. This value is fixed by national committees and takes into account the amount of time, skill and effort required for each activity. For example, the wRVU value of an established patient level 3 visit is 0.97. A new patient level 3 visit is 1.42 wRVUs. A biopsy is 0.81 wRVUs. In the wRVU compensation model, the physician compensation is calculated by multiplying the total wRVUs performed by a variable called the conversion factor (CF). The CF is set by your employer and may be negotiated. The CF may be anywhere between $47-60 dollars per wRVU (sometimes even higher) — of course, the higher the better. For example, if your conversion factor (CF) is $52 per wRVU, and if you produce a total of 7500 wRVUs in a year, your total salary will be $390,000. As compared to the collections model, the benefit of the wRVU compensation model is that you consistently get paid the same amount for each service regardless of the patient's insurance type.

There are several databases that are available, such as the MGMA physician survey, that can help you understand the median compensation of dermatologists by geographic region, the median total number of wRVUs generated and the median value of the conversion factor. These values can help you determine whether the offers you receive are competitive and can help provide data to help in your negotiations.

Drug Development for the Practicing Dermatologist: Have the Best of Both Worlds

By KARA CAPRIOTTI, MD, FAAD
"Best Of" Next Steps Online
from November 19, 2015

In medical school and residency, the industry side of medicine is not exactly a topic that gets paid much attention. Countless hours are spent memorizing pharmacology, but the process of how a drug actually makes the transition from bench to bedside is not part of the curriculum. A few years into my own private practice, the opportunity to learn the process of drug development would come to fruition.

The journey started as many innovations do - out of necessity. A breast cancer patient presented with debilitating paronychia consisting of eruptive granulation tissue and onycholysis of her fingernails triggered by her axane regimen. All conventional treatments had failed, and she was now unable to perform activities of daily living secondary to the pain, and faced discontinuing treatment. As a strong advocate of compounding pharmacies,

the decision was made to compound a well-known broad spectrum antiseptic with a penetration enhancer. The results exceeded all expectations. The patient called two days later to say the pain was completely gone, and within several weeks the paronychia was eradicated altogether. All local oncology groups were subsequently called and asked to refer any additional cases, and the results were repetitively duplicated. A few weeks later upon discussion of the findings with a colleague having a background in pharmaceuticals, the pursuance of this new discovery further than just a case series was launched.

When embarking upon a potentially new idea, the first thing that should be done before anything else is a patent search to determine if the idea is in fact novel. You can research this by visiting and becoming familiar with The United States Patent and Trademark Office website (www.uspto.org). On this website, guidelines for writing and filing a provisional patent are explained, which establishes an invention priority date on the patent. The process of filing a provisional patent is inexpensive and gives a one-year period to refine the idea until it must be converted into what is called a utility patent. An experienced patent attorney is essential in this conversion step, and it is what will be the most costly upfront. Choosing correctly pays in dividends as the patent attorney takes the provisional patent and broadens/refines the claims to be written in such a way as to protect the invention in a 360-degree fashion. This is necessary so poachers cannot find cracks in the patent and copycat its ideas without infringing upon them down the road.

In conjunction with working on the patent, the daunting task of FDA approval arises. The first step in developing any new drug or device is to file what is called an Investigational New Drug (IND) Application. An IND is a request for authorization from the FDA to administer an investigational drug or biological product to humans. The main purpose of the IND is for the FDA to review the application for safety to assure that research subjects will not be subjected to unreasonable risk. The website www.fda.gov reviews the process extensively, and offers a Pre-IND consultation program that will allow companies to discuss intentions with the appropriate branch of the FDA (in this case the Division of Dermatology and Dental Products) and get their feedback regarding the plan for trial set up, formulation, dosing schedule, etc. The IND itself is a very lengthy application and will take quite a bit of time to prepare. After submission, the FDA then has a finite time period to either allow the IND to move forward or deny it based on safety concerns. Concomitantly during the IND process, the logistics of the trial need to be hammered out. Investigators and trial sites need to be established, contract research organizations should be contacted for quotes on trial cost, manufacturers should be sourced, and if necessary, a stability testing program identified in order to establish a budget when seeking investment.

Paying Back Student Loans
Money Matters Series, Part 1

By ANNA H. CHACON, MD
"Best Of" Next Steps Online
from January 6, 2015

A comprehensive understanding of the repayment process for paying back student loans is essential in building a solid financial foundation early on. It's important to remember that student loans are real loans, just like mortgages on your house or a loan for your car. You must repay student loans even if financial circumstances become difficult or you're facing unexpected hardships. Unfortunately, they cannot be canceled either!

Payments are made to a loan servicer, which has its own payment process, so if you are unsure about how or when to pay you should check with the company. It is up to you to keep in touch with your servicer and make payments, even if you don't receive a bill or notice. There are several repayment plans designed to meet your needs and you can choose amongst these to vary the amount you pay and the length of time you have to repay your loans. Certain loans qualify for consolidation – combining multiple loans into one loan – resulting in a single monthly payment instead of multiple

payments. There are pros and cons to this, and only certain types of loans qualify for consolidation.

Deferment and forbearance allow you to temporarily postpone or lower payments while back in school, in the military, or if you are experiencing financial hardships or certain other unique situations. In circumstances such as total/permanent disability, certain kinds of teaching service or closure of the place where you were carrying out your education, your obligation to repay your student loan may be removed.

Most importantly, never ignore default or delinquent notices. Without making regular monthly payments, you will be labeled as delinquent on your loan and risk going into default. This has serious consequences and your school, the financial institutions that own your loan, your loan guarantor and government officials can take action to recover the money you owe. If you are having trouble making payments or won't be able to pay in a timely fashion, it's important to contact your servicer immediately. If you are experiencing a loan dispute, you may be able to resolve it by simply discussing the issue with your loan servicer. If you need additional help, become knowledgeable and be prepared before seeking further measures.

Saving Money
Money Matters Series, Part 2

By ANNA H. CHACON, MD
"Best Of" Next Steps Online
from February 23, 2015

Saving during residency and fellowship can be difficult – many training programs are in large cities where the cost of living, transportation, food and rent can be quite high. With each step, we continue our journey of becoming experienced doctors, however at some point we feel lost because we don't receive much financial planning advice. With medical school debt on our shoulders and specialty training ahead of us, the ability to now generate an income and live life like our peers begins.

Rule #1: take care of your most important financial asset – you. Take good care of your health and avoid getting hurt or ill – if you do, your training and ability to earn a living will be delayed. Yes, unforeseen illnesses and unexpected accidents happen, but while you can, maintain good healthy habits.

Make sure you have health insurance, even if you are between jobs and may have no coverage during that time. Activate it immediately. Disability insurance is also key. It provides a source of income if you become disabled for a long period of time, typically in the range of 50 percent of your annual salary. Although the odds of using it are hopefully low, if something happens to you, you will be glad you have it.

Pay your debt as quickly as you can including debt from credit cards and medical school - try to pay it down. You may think to yourself, how can I achieve this? If you simply continued to live the life of a resident, you may think that the higher income post-training would surely be more than enough to handle this issue. After all, don't you deserve it? Yes, you do, just be mindful not to spend too much.

Last but not least, start saving money. The easiest way is to set up an automatic withdrawal system where a percentage or amount is automatically deducted from your paycheck into a retirement plan or savings account outside of your usual checking account. When it's out of sight, it's not within our spending reach.

There has been much coverage in the media on how doctors aren't particularly experienced at managing money and finances. Let's not fall into this stereotype of our colleagues – we can do better! A memorable biotechnology professor once told me to make it a goal to save 10 percent of each paycheck. This is a reasonable amount while in residency. In summary, don't wait - start saving as early as possible!