PREVENTION OF MEDICAL ERRORS

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Disclosures

- Neither speaker has any pertinent disclosures for this lecture topic

Purpose of Course

- To reduce risk of medical errors occurring in optometrists' offices
- To improve patient safety
- As of May 8, 2002 a new rule has been added to 64B13-5.001 (8). Licensees are required to complete a 2-hour course relating to prevention of medical errors as part of the licensure and renewal process

Purpose of Course

- The Florida State legislature mandated that all licensees must complete a two-hour course on prevention of medical errors
- The 2-hour course shall count towards the total number of continuing education hours required for the profession.
- Shall include a study of root cause analysis, error reduction and prevention, and patient safety

Epidemiology

- November 1999, the IOM revealed a hidden epidemic in the United States:
- Medical errors result in injury to 1 in every 25 hospital patients and an estimated 44,000 to 98,000 deaths each year. Even the lower estimate makes medical errors more deadly than breast cancer (42,297), motor vehicle accidents (43,458) or AIDS (16,516).
- ("To Err Is Human: Building A Safer Health System." Institute of Medicine. December 1999.)

Epidemiology

- Medical errors cost the economy from $17 to $29 billion each year.
- Agency for Healthcare Research and Quality (AHRQ) has shown that medical errors result most frequently from systems errors-organization of health care and how resources are provided in the delivery system.
  - Only rarely are medical errors the result of carelessness or misconduct of a single individual.

1999 INSTITUTE OF MEDICINE (IOM) REPORT—IS LIMITED AND OUTDATED.

- 1999 IOM report underestimated the magnitude of the problem
- A 2004 report of inpatient deaths associated with the Agency for Healthcare Quality and Research Patient Safety Indicators in the Medicare population estimated that 575 000 deaths were caused by medical error between 2000 and 2002, which is about 195 000 deaths a year

- In 2008, 180 000 reported deaths due to medical error a year among Medicare beneficiaries alone.
- Classen et al described a rate of 1.13%. If this rate is applied to all registered US hospital admissions in 2013 it translates to over 400 000 deaths a year, more than four times the IOM estimate.

*Classen D, Resar R, Griffin F, et al. Global "trigger tool" shows that adverse events in hospitals may be ten times greater than previously measured. Health Aff2011;**30**:581-9*

Why we are really doing this?


String of Errors Put Florida Hospital on the Critical List

April 14, 1993 | MIKE CLARY | SPECIAL TO THE TIMES

Dr. Sanchez testified that he learned of his error from a nurse as he was still cutting through the leg of the patient, Willie King, 52. After reviewing the patient's file, she had started to shake and cry. But by that point, he said, there was no turning back. "I tried to recover from the sinking feeling I had," he testified, as his eyes grew moist and his voice trailed off.

Types of Medical Errors

- The IOM report defines an error as:
  - The failure of a planned action to be completed as intended (i.e., error of execution)
    - Tobrex instead of Tobradex
  - The use of a wrong plan to achieve an aim (i.e., error of planning).
    - Viroptic on bacterial conjunctivitis
    - Tobradex on dendrite

Types of Medical Errors

- An adverse event is an injury caused by medical management rather than the underlying condition of the patient (e.g. allergic response to a drug). An adverse event attributable to error is a preventable adverse event, also called a sentinel event, because it signals the need to ask why the error occurred and make changes in the system (prescribing drug to which patient is allergic because you didn't ask).

Why Errors Happen

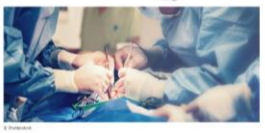
- **Active Errors:** Active errors occur at the level of the frontline operator, and their effects are felt almost immediately.

Why Errors Happen

- **Latent errors:** Latent errors tend to be removed from the direct control of the operator and include things such as poor design, incorrect installation, faulty maintenance, bad management decisions, and poorly structured organizations.

AP

Surgeon fined $3K for removing kidney he thought was tumor



WELLINGTON, Fla. — The Florida Board of Medicine says a West Palm Beach surgeon has agreed to pay a $3,000 fine for removing a woman's healthy kidney that he thought was a tumor.

The Palm Beach Post reports Ramon Vazquez was responsible for cutting Maureen Pacheco open in 2016 so two other surgeons could perform a back operation.

Pacheco had a kidney that never ascended into her abdomen, and Vazquez believed it was a cancerous tumor near her pelvis and removed it without her consent. Vazquez has said that he didn't review her medical records before the surgery.

Latent Error – Sentinel Event

- Pt develops CN III palsy from aneurysm
  - Treatment choices: aneurysm clip or endovascular coil packing
- Successfully treated with aneurysm clip
  - All coils are inert and MRI safe; not all clips are MRI safe
- Radiology tech doesn't verify type of clip
- Pt undergoes F/U MRI with non-MRI safe clip in major medical center
- Clip displaces during MRI
- Patient has fatal hemorrhage during procedure
- Patient survived disease…but not the treatment

Latent Error

Clinical Leadership & Infection Control

CHOP sued after 23 infants contract, 1 dies from eye infection in 2016 sterilization breach

Written by Alyssa Rege / August 31, 2018 | Print | Email

3. At least 23 infants in CHOP's NICU contracted viral infections stemming from the same sterilization breach in 2016. The figure represented more than half of the 43 infants who underwent eye exams in the NICU during the same period, the hospital wrote in a four-paragraph report in the June 2017 issue of the *American Journal of Infection Control*. All 23 patients suffered respiratory symptoms, and five went on to develop pneumonia. Eleven of the 23 infants experienced infectious symptoms in their eyes. Six hospital employees and three parents also contracted viral infections, according to the case study. The case study did not mention patient deaths.

Latent Error

West Virginia National Guard: 42 residents accidentally given Regeneron antibody treatment instead of COVID-19 vaccine

Medical experts believe there is no risk of harm to those individuals

From Staff Reports Dec 31, 2020 1 1 min to read

CHARLESTON, W.Va. (WV News) — Forty-two people at a COVID-19 vaccination clinic hosted by staff at the Boone County Health Department received the Regeneron Antibody product instead of the Moderna vaccine.

Latent Error

DALLAS

8-Year-Old Boy Vaccinated in Dallas County, Human Error to Blame

Conversations are underway on how to avoid the error moving forward, Dallas County Judge Clay Jenkins says

Diagnostic Inaccuracies

- Incorrect diagnoses may lead to incorrect and ineffective treatment or unnecessary testing.
- Inexperience with a technically difficult diagnostic procedure can affect the accuracy of the results.
  - Study that demonstrated that measuring blood pressure with the most commonly used type of equipment often gives incorrect readings that may lead to mismanagement of hypertension.

Diagnostic Inaccuracies

- Types of Diagnostic Error
  - Misdiagnosis leading to an incorrect choice of therapy (Steroid Combo med on a Dendrite)
  - Failure to use or order an indicated diagnostic test (VF, CV, eye not correctable to 20/20)
  - Misinterpretation of test results
  - Failure to act on abnormal results

Conditions that Create Errors

- **Precursors or Preconditions**
  - A need to have the right equipment, well-maintained and reliable
  - A skilled and knowledgeable workforce
  - Reasonable work schedules
  - Well-designed jobs
  - Clear guidance on desired and undesired performance
- Preconditions are latent failures embedded in the system

Factors and Situations That Increase the Risk of Errors

- Fatigue
- Alcohol and/or other Drugs
- Illness
- Inattention/Distraction
- Emotional States
- Unfamiliar Situations
- Communication Problems
- Illegible Handwriting

OVERCONFIDENCE

This is going to end in disaster, and you have no one to blame but yourself.

Medication Errors

- Problems related to the use of pharmaceutical drugs account for nearly **10 percent** of all hospital admissions, and significantly contribute to increased morbidity and mortality in the United States (Bates. 1995).

- Medication errors are thought to cause 7,000 deaths annually – more than the 6,000 deaths that occur each year in the workplace. The annual cost of medication errors is at least $2 billion

Top 3 Medication Errors

1. **Sound-a-like Drugs**
2. Lack of Drug Knowledge
3. Dose Calculation Errors

Sound-a-Like Meds

- **Vexol (rimexolone) Ophthalmic drops**

Vs.

- **Vosol (acetic acid) Otic drops**

Sound-a-Like Meds

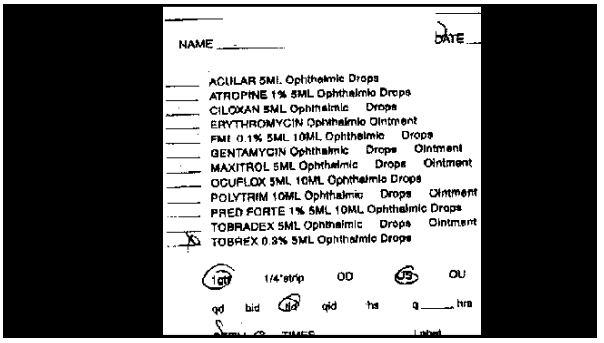
- **Tobrex** (tobramycin) Ophthalmic drops

Vs.

- **Tobradex** (tobramycin and dexamethasone) Ophthalmic drops

Case

- A pediatric ophthalmologist prescribed **TOBREX** (tobramycin) 0.3% ophthalmic drops for a one-month-old infant with a dacryocystitis (one drop TID to the left eye). The physician indicated this drug by checking off a space on a preprinted prescription order form which listed 12 different ophthalmic drops including **TOBRADEX** (tobramycin and dexamethasone) which appeared on the line above Tobrex.


NAME _____ DATE _____

ACULAR 5ML Ophthalmic Drops
ATROPINE 1% 5ML Ophthalmic Drops
CILOXAN 5ML Ophthalmic Drops
ERYTHROMYCIN Ophthalmic Ointment
FML 0.1% 5ML 10ML Ophthalmic Drops
GENTAMYCIN Ophthalmic Drops Ointment
MAXITROL 5ML Ophthalmic Drops Ointment
OCUFLOX 5ML 10ML Ophthalmic Drops
POLYTRIM 10ML Ophthalmic Drops Ointment
PRED FORTE 1% 5ML 10ML Ophthalmic Drops
TOBRADEX 5ML Ophthalmic Drops Ointment
TOBREX 0.3% 5ML Ophthalmic Drops

1gtt 1/4"strip OD 1/2 OU

qd bid tid qid hs q ____ hrs

Same Drug – Different Direction

- Prescribed Tobradex
- Patient fails to improve
- Produces bottle of Tobrex
- Whose mistake? Doctor? Pharmacy? Company?
- Ask to see medications at follow-up

Computerized Drug Ordering

- A physician selected **OCCLUSAL-HP** (17% salicylic acid for wart removal) instead of **OCUFLOX** (ophthalmic ofloxacin) from a alphabetical product list in a computerized prescriber order entry system and sent the prescription to a hospital outpatient pharmacy with directions to **"use daily as directed."**

Sound-a-Like Meds

- **Zymar** (gatifloxacin) Ophthalmic drops

Vs.

- **Zymase** (amylase, lipase, protease) capsules for digestion

Sound-a-Like Meds

- **Ocuflox** (ofloxacin 0.3%) Ophthalmic drops (Allergan)

Vs.

- **Ocufen** (flurbiprofen 0.03%) Ophthalmic drops (Allergan)

SOUND-A-LIKE MEDS

AcetaZOLAMIDE (Diamox) Vs.

AcetoHEXAMIDE (Dymelor)

Type 2 diabetes treatment

SOUND-A-LIKE MEDS

VitA-POS (ocular lubricant)

Vs.

Vitaros (erectile dysfunction cream)

- Due to a doctor's illegible handwriting, a woman was prescribed the ocular lubricant VitA-POS, was given the erectile dysfunction cream Vitaros instead. The patient suffered eye pain, blurry vision, redness, and yes—swelling. The dispensing pharmacist didn't stop to question why an erectile dysfunction drug was prescribed to a woman, which should have at least given him a reason to double check.

SOUND-A-LIKE MEDS

SOUND-A-LIKE MEDS

- Refresh Liquigel

Vs.

- RePhresh Vaginal Gel

LOOK-A-LIKE PACKAGING

- *The problem of packaging similarities with ophthalmic medications is related in part to FDA approval of a color-coding system by pharmacologic class, making all products within a class the same color.*

Look-a-Like Packaging

- Sulfacetamide, Tobramycin, Neomycin

Look-a-Like Packaging

- Sulfacetamide, Tobramycin, Neomycin, Ocufloxacin

Look-a-Like Packaging

- Generics are no different

Look-a-Like Meds

- Precision Glucose Control Soln vs. Timolol

Look-a-Like Packaging

- Ophthalmic

Vs.

- Otic

Look-a-Like Packaging

- Ophthalmic

Vs.

- Otic

Look-a-Like Packaging

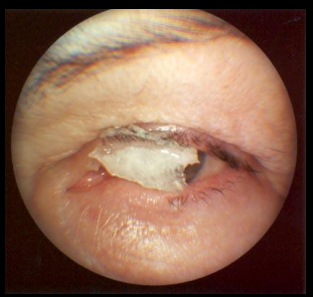
- **FML Forte**

Vs.

- **Pred Forte**

Look-a-Like Packaging

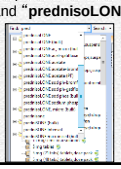
- **ALREX vs. NAIL GLUE**



Clear Care: Still causing eye injuries

Med Module Changes

- Effort to use a combination of upper- and lower-case letters to differentiate drugs, called "**Tall Man lettering**"
- Using that system, the potentially confusable drugs "prednisone" and "prednisolone" would be written as "**predniSONE**" and "**prednisoLONE**" to tell them apart



Practice Recommendations

- **Special care to Sound-a-like and Look-a-Like Medications**
- **Avoid pre-printed prescription pads if possible**
- **Review your Erx thoroughly**
- **Have patient bring all medications that you've prescribed with them**
- **Patient Education**

Error Prevention

- Identification and Evaluation of Error
- Hospital Mortality and Morbidity Meetings
  - Recourse free error reporting protocol
- Automated Equipment
  - Recall system
  - Medication ordering systems/software
- Professional Continuing Education

Doctor-Patient Communication

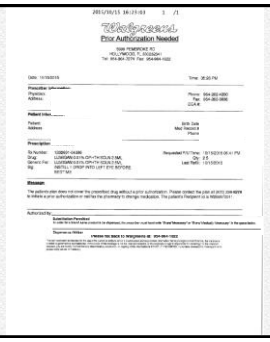
- Know all your patient's medications, vitamins and herbs
- Question about allergies and past adverse reactions to medications
- Write prescriptions legibly so patients and pharmacists can read them

New Prescriber Law

- **Florida Statute 456.42** A written prescription for a medicinal drug issued by a healthcare practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in both textual and numerical formats, and the directions for use of the drugs; must be dated with the month written out in textual letters; and must be signed by the prescribing practitioner on the day when issued.

Patient Education

- DO NOT rely on the Pharmacist!
- What is the medicine for?
- How is it supposed to be taken?
- What side effects are likely?
- What to do if side effects occur?
- Drug interactions?
- What food, drink or activity should be avoided or included?
- Have patient check meds from pharmacy
- Which generics are not acceptable
- Encourage Patient's questions!


Walgreens
Prior Authorization Needed

Professional Communication

- **Inter and Intra professional communication**
- **Communicate with patient's other healthcare providers to coordinate care.**

Medical Record Keeping

- **Make Obvious Chart Notations for:**
  - Medical Allergies/ adverse reactions
  - Medications
  - Narrow/Occludable Angles
  - Iris Fixed IOL's
- **Write Legibly**
  - Avoid Abbreviations
- **Document! Document! Document!**

Root-Cause Analysis

- Understanding Why Errors happen
- JCAHO requires that a thorough, credible RCA be performed for each reported sentinel event.
  - What Happened?
  - Why did it happen?
  - What do you do to prevent it from happening again?

Patient Safety

- Stress dose adjustment in children and elderly patients
- Limit Access to high hazard drugs
- Use protocols for high hazard drugs
- Computerized drug order entry
- Use pharmacy-based IV and drug mixing programs
- Standardize drug packaging, labeling, storage
- Use "unit dose" drug systems (packaged and labeled in standard patient doses)

Patient/Office Safety

- Standards for Healthcare Professionals
- Licensing, Certification and Accreditation
- Role of Professional Societies
- Infection Prevention
  - Tonometer tip, gonioprism, etc.
- OSHA
- CPR/EMS
- Handling common medical emergencies
  - Vasovagal Syncope

Populations of Special Vulnerability

- Infants and Children
- Older Patients (Florida)
  - Medication errors can have life-threatening or even fatal effects
  - Hearing impaired
- Persons with Limited English Language Skills and/or Limited Literacy
  - Bilingual care providers or translators
  - Health Literacy - What did the Doctor say?
- Mentally handicapped

Report of Adverse Incidents in the Practice of Optometry

- Effective **January 1, 2014**, an adverse incident occurring in the practice of optometry must be reported to the department in accordance with this section.

Report of adverse incidents in the practice of optometry

The required notification must be in writing and submitted to the department by certified mail. The required notification must be postmarked within 15 days after the adverse incident if the adverse incident occurs when the patient is at the office of the licensed practitioner. If the adverse incident occurs when the patient is not at the office of the licensed practitioner, the required notification must be postmarked within 15 days after the licensed practitioner discovers, or reasonably should have discovered, the occurrence of the adverse incident.

Report of adverse incidents in the practice of optometry

For purposes of notification to the department, the term "adverse incident," as used in this section, means any of the following events when it is reasonable to believe that the event is attributable to the prescription of an **ORAL** ocular pharmaceutical agent by the licensed practitioner:

Report of adverse incidents in the practice of optometry

- Any condition that requires the transfer of a patient to a hospital licensed under chapter 395.
- Any condition that requires the patient to obtain care from a physician licensed under chapter 458 or chapter 459, other than a referral or a consultation required under this chapter.
- Permanent physical injury to the patient.
- Partial or complete permanent loss of sight by the patient.
- Death of the patient.

Report of adverse incidents in the practice of optometry

- The department shall review each incident and determine whether it potentially involved conduct by the licensed practitioner who may be subject to disciplinary action, in which event s. 456.073 applies. Disciplinary action, if any, shall be taken by the board.

New Study

- Published 2023 – *Journal of Irreproducible Results and Senseless Studies*
- Researched Sunday in-person lectures:
- Half of audience is asleep
- Of the half awake, 2/3rds are having some sort of fantasy…
- So…At this point:
- 90% of you are enjoying this lecture!

Reducing Medical Errors within the Optometric Practice

Malpractice and How it Happens – a Look at Some Cases

Role of the Expert Witness

- Handle an adversarial situation
- Be fair and objective
- Be balanced
- Educate
- Optometry vs ophthalmology

Three Main Offenders

- Failure to detect retinal detachment
- Failure to detect glaucoma
- Failure to detect tumor

In Other Words…

- Failure to listen to the patient
- Failure to observe the signs
- Failure to make the diagnosis fit the findings
  - Not vice-versa!
- Failure to do the appropriate tests and follow-up
- Failure to make the proper referral

Failure to Observe the Signs

- A 16 year old male presents for contact lens fitting.
- His refraction is: +1.00 - 1.00 x 180 - 20/40
  +0.75 - 0.50 x 005 - 20/20
- Fundus – "WNL"; no c/d ratio
- He is diagnosed with refractive amblyopia OD and fit with contact lenses.
- At 2 week f/u, his VA is 20/100 OD – "good fit" recorded.

Failure to Observe the Signs

- One month f/u – 20/200 OD – "good fit"
- Discharged
- Annual exam:
  - Refraction unchanged – 20/400 OD, 20/20 OS
  - Fundus WNL
  - New lenses ordered
- Contact lens dispense – "Right lens not clear"
  - Retinal detachment OD
- Recommendation: Seek settlement

Failure to Make the Diagnosis Fit the Findings

- 58 YOWF – awakened with pain, photophobia, lacrimation
- Previous exams normal
- Corneal edema and punctate epitheliopathy OD
- History:
  - Had cleaned house day and a half earlier
- Diagnosis: chemical keratitis
  - "But I felt fine afterwards"
- Treated with Tobradex QID

Failure to Make the Diagnosis Fit the Findings

- Worsens with advent of nausea and emesis
- Seeks second opinion
- IOP 58 mm Hg OD
- Acute angle closure
- Failure to do the appropriate tests and follow-up
- Recommendation: Settle

Failure to Diagnose Retinal Detachment

- 50 YOWM
- Sees flashes and floaters
- Presents to optometrist
- Dilation and BIO performed
  - "Ø breaks, Ø detachment" recorded
  - No scleral indentation performed
- Patient warned signs and symptoms RD
- Dismissed

Failure to Diagnose Retinal Detachment

- Patient has worsening of symptoms and vision loss one week later
- Telephones optometrist who immediately directs patient to retinologist
  - Does not record this in the chart
- Patient now has RD
- Poor surgical outcome
- Sues OD for malpractice
- Is it malpractice? Was standard of care breached?
- NO!

Amending Records: Transparency

Joseph Sowka, OD reviewed this chart note and amended it on 2/26/16 @ 2:24 pm in full knowledge that the original chart note was given to the patient on 2/25/16 so that she could obtain necessary referrals and care. Joseph Sowka, OD acknowledges that there will be some differences in the wording of this chart note compared to that given to the patient on 2/25/16 due to the urgent nature that the patient needed this document.

Failure to Diagnose Retinal Detachment

- Could OD have missed existing break?
- Yes
- Could break have been undetectable to best retinologist?
- Yes
- Could there have been no break initially and one formed after exam?
- Yes
- Bad outcome yes – malpractice no

Failure to Diagnose Retinal Detachment

- Plaintiff attorney: "I have another optometrist that will swear that this is malpractice."
- Me: "Well, you better give him a call because I'm not doing it!"
- Plaintiff attorney: Even for $$?"
- Me: "No!"

Failure to Diagnose Retinal Detachment

- "Friendly" retinologist deposed
- Plaintiff attorney: "Could Dr. XYZ have missed the retinal break?"
- "Friendly" retinologist: "Well, yes. It is likely he did. He is not a physician, you know".

Another Retina Specialist Perspective

- Q. *"Do you think that you as a medical doctor, as an ophthalmologist are better trained and equipped to rule out or rule in a retinal detachment than an optometrist?'"*
- A. *"I think optometrists are trained or supposedly are trained in their field to be able to do a dilated fundus exam to diagnose retinal tears or detachments as well as any other eye care professionals."*
- Q. *"You believe an optometrist has the same expertise and ability to diagnose a retinal detachment or retinal tear as you do?"*
- A. *"Setting my ego aside, I would say that optometrists are trained to evaluate the peripheral retina as well as an ophthalmologist and that's my answer."*

Sometimes it is Black and White… or Worse

- 55 YOBM with 'weed whacker abrasion'
  - 2 ODs
  - Shallow chamber; IOP < 5 mm; hypopyon
  - End Result?

"Standard of Care?"

- *"In all medical probability, the retinal break/ corneal perforation/ whatever-it-may be was r examin ed to see and dia e standar ndard of care di seen and diagnosed it. And because you didn't, you were negligent".*

Standard of Care and Negligence

- Negligence refers to a person's failure to follow a duty of conduct imposed by law.
- Every health care provider is under a duty to:
- use his/her best judgment in the treatment and care of his/her patient;
- to use reasonable care and diligence in the application of his/her knowledge and skill to his/her patient's care;
- to provide health care in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time the health care is rendered

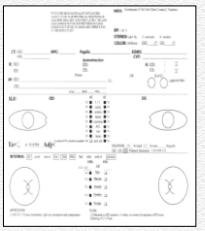
Highest Degree of Skill Not Required

- The law does not require of a health care provider absolute accuracy, either in his/her practice or in his judgment. It does not hold him/her to a standard of infallibility, nor does it require of him/her the utmost degree of skill and learning known only to a few in his profession. The law only requires a health care provider to have used those standards of practice exercised by members of the same health care profession with similar training and experience situated in the same or similar communities at the time the health care is rendered

Not Guarantor of Diagnosis, Analysis, Judgment or Result

- A health care provider does not, ordinarily, guarantee the correctness of his/her diagnosis, analysis, judgment as to the nature of a patient's condition or the success of his/her health care service rendered.
- Absent such guarantee, a health care provider is not responsible for a mistake in his/her diagnosis, analysis, judgment unless he has violated the duty (one or more of the duties) previously described.

A good example of how it should be done



Just because a patient developed RD after an exam doesn't mean that the doctor should *always* be sued.

Sometimes you JUST shake your head

- Retained for defense
- Diabetic pt sees OD who diagnosis PDR OU
- Educates and warns risk permanent blindness- must see retinal specialist w/i 7 days
- Pt sees another OD 6 weeks later
- Detailed exam completely normal
- Pt now completely visually impaired from PDR

Sometimes you JUST shake your head- Part II

- Defending OD alleged to have misdiagnosed PXG
- Affidavit- *"Th idence of glaucoma*

A Festival of Ignorance

- 37 YOF- pterygium surgery. PF post-op
- Sees OD 3 weeks p/o. Some blur
  - No IOP
- Sees another OD next day
  - Dilates; swollen nerve, refers, no IOP
- Sees retinal specialist same day
  - IOP 49.5 mm Hg
  - Injects steroid
- All 3 sued for missing steroid induced glaucoma
- Does any glaucoma cause a swollen nerve?

A Festival of Ignorance

- Plaintiff's expert witness:
- *"Pallor is common in glaucoma"*
- *"This case had extremely fast progression of the field loss"*
- *"Glaucoma commonly occurs with minimal cupping"*
- *"Extremely high intraocular pressure commonly causes a swollen nerve"*
- *"You never consider ischemic neuropathy in a patient under 70 years"*

Surviving the Legal Process

The Most Important Thing to Remember

It isn't personal…it's just business

Am I Being Sued?

- Subpoena for your records
  - Most likely not being sued
    - Accidents, disability, etc.
  - Send immediately
    - 10 day window
    - Make sure records complete…and unaltered
- Notice of Intent to Litigate
  - Now you are being sued

Notice of Intent to Litigate

- Notice immediately tries to beat you into submission.
- Doesn't mention your care or your exam, but your *negligence*
  - "Prior to your *negligence…*", "As a result of your *negligence…*", "Was there anything subsequent to your *negligence…*"
- DO NOT respond to this yourself
  - Contact insurance company- get attorney

It All Lies in the Depositions

- Trial is nothing more than a performance
  - Written
  - Rehearsed
  - Hair and makeup
  - Jury is the audience
  - No smoking guns
  - Everything comes from the depositions
    - The "Script"

It All Lies in the Depositions

- Attorneys representing all parties involved
- Court reporter/ videographer
- No judge or jury
- Fact finding mission
- Don't volunteer information
  - Won't convince them they were wrong to file suit – cases aren't won in deposition, but they are lost
- Insist on home field advantage

Just answer the question

- You have to answer unless instructed not
  - Your attorney will object throughout- still answer
- Don't try to educate plaintiff's attorney
  - Could give beneficial information not otherwise asked
- Avoid temptation to give "great" testimony
  - You'll have your chance in court
- Be prepared and be professional

Beware wolves in sheep's clothing

- Deposition is adversarial
- Some attorneys will intimidate, others will kill with kindness
  - He/she is the enemy
  - Wants information to use against you
  - Always keep up your guard
- Get comfortable with attorney – agree to something medically ridiculous
- If tired – take a break

Look in the mirror

- Appearance and demeanor as important as testimony*
  - Be neat
  - Avoid anger, hostility, condescension*
- Questions phrased to make you appear dishonest*
  - Keep concentration and composure
  - Attorney may become intimidated by your resilience

*It's not personal…it's just business

Know what you are answering

- Attorney is not medical professional
  - May ask confusing questions
  - Ask for question to be repeated or rephrased
- Don't be intimidated into answers the attorney wants
  - Very few absolutes in life
- You must answer 'yes' or 'no'
  - You can explain yourself <u>after</u> answering
    - Not before- becomes adversarial

Red flags

- "Would you agree that…"; "Is it a fair statement…"
  - Typically precede proposition that is too broad to be answered by yes or no.
- These questions are fashioned to elicit material to use against you.
- Think before you speak

One at a time

- Let attorney finish question before answering
  - Understand question before responding
  - Court reporter can only transcribe so fast
    - Complete question won't be in transcript
  - Your attorney has time to voice objections
- Be sure that entire question is accurate before saying yes
  - If any portion inaccurate or illogical – say no

Sometimes you cannot remember

- Facts occurred several years ago
  - Refer to records during questioning
- What about questions with no recollection or records?
  - If you remember – say so
  - If you don't remember – say so
  - Don't guess or speculate

Watch what you are answering

- Hypothetical questions are posed only to be used against you
- Sometimes a hypothetical question cannot be answered
- Make sure that you agree with entire hypothetical before answering
- No rule that you must have opinion on hypothetical

- It is not a crime to meet with your attorney
  - May try to intimidate
- Nothing is off the record
  - Keep your mouth shut
- Tell the truth
  - There are very few cases that can't be defended on the facts
  - There are very few cases that can be defended if the defendant is caught lying. **"The cover-up is worse than the crime!"**

Hold to your opinion

- Attorney will try to imply that you are lying
  - Hold firm to your opinion
- If attorney doesn't like your answer, he/she will repeat with prefaces " Are you telling us under oath…" or "Is it really your sworn testimony that…"
  - Don't be intimidated
  - Your answer is your answer; if asked repeatedly, repeatedly give the same answer
    - Rope-a-dope

Prepare

- Read! Read! Read!
- Skilled attorney can get competent physicians to agree to medical impossibilities
- Once something is said in deposition, it is written in stone.

In Conclusion…

- Risk of malpractice is a fact of professional life
- You *will* get through it
- It will not end your life, practice, career
- It' s not personal…it' s just business.

Thank You

Joe &
Barry