

## Tips from legal counsel for reducing liability

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All healthcare professionals and facilities are sensitive to the risk of liability for harm to patients. In today's litigious society, being named as a defendant in a malpractice suit is very common, with settlements and awards occurring on a regular basis.

However, being named in a malpractice suit can have a demoralizing effect on professionals and result in increased malpractice insurance premiums. In addition, the cost of defense and settlement for a self-insured institution often results in devastating, long-lasting economic effects.

### Reasons for risk

Within the healthcare provider community, mammography providers face an unusually high level of exposure to malpractice liability for a number of reasons. For one, mammography providers deal with a high volume of studies, including screenings, for a fairly common disease. And breast cancer is often undetectable, or extremely difficult to catch, using the current technology.

To make matters worse for those in the breast imaging arena, the benefits of mammography have been heavily regulated, publicized, and promoted. This creates inflated expectations among the public (and the members of the juries who have the ultimate say with regard to liability).

So patients believe that mammography providers can easily protect them from the threat of cancer. Further, breast cancer often develops very aggressively, yet it is highly treatable in early stages, making it likely that a delay in diagnosis will result in early death, mastectomy, or debilitating therapies for otherwise healthy patients.

Finally, payment for mammography is very low relative to the costs of providing the service. This forces facilities to maintain high volumes and low overhead to hold down economic losses on mammography service. Such situations translate to the unavoidable reality that mammography providers will not detect all early cancers that could have been picked up and successfully treated

before the cancer spreads. The result is in increased exposure to significant liability from patients' claims.

### Manage the menace

What does all of this mean from a risk management perspective? Simply stated, until technology improves dramatically, the risk of lawsuits and malpractice settlement or awards remains. Mammography providers should continue to maintain a high level of insurance coverage, and continue to pay careful attention to details reducing liability exposure. The following represent several strategies for mammography providers to reduce liability:

**1. Focus on improvement.** Because the status quo shows a fairly glum picture (the easiest advice says simply not to provide mammography services unless you have to), dedicate time and resources to figuring out ways to improve the status quo. Mammography providers must legally follow up on clinical findings. Increase your effort to learn as much as possible from this process.

Examine other information about the facility's own performance such as incident reports, complaints of patients or referring physicians, and suggestions from staff at all levels. Assign staff members to keep up on published literature. Communicate with other facilities to come up with ideas for improvement.

**2. Conduct regular staff-performance evaluations.** Evaluate staff performance on a regular basis. Even the best facility makes some mistakes; therefore, even efficient staff will most likely not be perfect. In the current environment, mammography facilities should lean toward meticulous.

**3. Seek out and evaluate staff-training opportunities.** Mammography administrators need to look for staff-training opportunities on a regular basis. Then carefully evaluate training programs, because they symbolize an important link to outside sources of information about quality improvement.

**4. Conduct regular evaluation of protocols for communications with patients and > p. 12**

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