



WhiteCoat's Call Room

A blog from inside the emergency department

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The Trial of a WhiteCoat – Part 4

I added a page to keep track of all the posts – see the link to the right.

I was back in Vinny's waiting room the following week. We were going to walk to the deposition together. He busted out of the waiting room door with a big smile on his face. "Ready?" He asked. "Yeah, can't wait. Kind of like going to get my teeth drilled."

Once again, the wind blasted us as we walked down the street. I had no idea where I was going, but with Vinny as my tour guide, all I had to make sure to do was avoid losing him. During our walk, he made small talk about another malpractice case he was dealing with. After the physician's deposition, the insurance company was in a "settlement posture." Apparently the physician was difficult to understand and had a thick foreign accent. He would make a "poor witness" at trial. "Unfortunately, juries around here just are not very forgiving of foreign doctors."

Funny, I always thought malpractice was about the appropriateness of care. Two blocks north, one block to the west, third building to the right. We were officially in the enemy's lair.

In the waiting room, there were four other people. They all stood up and shook Vinny's hand when we entered. Then they all began chatting about "lawyer" stuff. I sat in a chair and watched.

"Can you believe Judge Smith's ruling last week?"

"Oh I'm sure that Jerry will appeal it."

"You don't want to get on Smith's bad side though. I heard that he got mad at an attorney and made him cancel his honeymoon trip to Greece to show up in court for a hearing."

"Ah, you just have to milk his ego."

This must be what it's like when a bunch of doctors get together at a party – only we talk about wacky patients, funky x-rays, and all the lives we save.

An older man in a designer suit with a Rolex watch rattling around on his wrist opened the waiting room door and greeted everyone. That must be "the enemy." It was. The plaintiff's attorney. The thing that struck me most about the plaintiff's attorney was his smile. When he showed his teeth, it reminded me of the caricature of the Grinch. Never got that picture out of my mind.

I have to admit that I got a little miffed when all of the other attorneys went up to him and shook his hand, then began joking around with him. How could someone that was supposed to be helping me be so friendly and nonchalant with the person that's trying to bankrupt me?

The Grinch led us back to a large conference room in his office. Everyone took their seats at the table. I couldn't help thinking how much money was being spent for all the different attorneys by all the different parties in this case just so this guy could ask me questions.

The plaintiff's attorney asked me all about my history of employment and my family history. What does my wife do? How many kids do I have? What are their ages? I was already annoyed and the deposition had just begun. What does my personal life have to do with the case? I looked over at Vinny and he didn't seem to mind, so I bit my tongue and answered the questions.

Then the Grinch started asking questions about how to diagnose the disease that the patient had. What signs are typical of this disease? How does one diagnose it? What should someone do to treat it? I did fine with those questions. So far, so good.

He pulled out a copy of the patient's chart and handed it to me. Then he picked the medical records apart word by word. He wanted me to comment on pretty much everything that was written in the chart.

"Why did the nurse do this?"

"I don't know. Ask the nurse."

Then we got into a discussion about the definition of the term "clinically significant."

"Was there anything of clinical significance to you?"

"In what sense?"

"Your evaluation of the patient."

"That would lead me to think what?"

"I don't know. I'm asking you."

I could tell that the plaintiff attorney was getting frustrated.

"This is not to try to trip you up or anything. Juries just have to understand your thought

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WhiteCoat

Latest patient complaint: "The doctor had dirty shoes." Arrrg.

2012/02/24 03:29

How are Press Ganey survey comparisons and preliminary presidential polling alike? They're both inaccurate.

<http://t.co/BWIkWV8o>

2012/01/18 21:50

New weapon: Squirt gun full of penicillin. 90% of ED patients are allergic to it. One shot would hospitalize miscreants ... and cure acne!

2011/12/21 05:02

ED secretary on phone: "Hi, this is the back pain toothache work note department, how may I help you?"

2011/12/15 04:26

US tech says that patients always

processes."

I felt like rolling my eyes and saying "yeah right" at that point, but I just smiled and nodded my head.

He asked me about the patient's medications. Did I think he was taking them? How was I supposed to know?

I had to go through every aspect of my physical examination of the patient.

I had to comment on every aspect of all of the patient's laboratory tests.

After an hour and a half, I needed to use the bathroom and asked for a break.

I got into the bathroom and started going when the door opened up. Vinny came in and stood two urinals down from me. Guys can never stand next to each other in an empty bathroom. It just doesn't look right.

"So far, you're doing great," he whispered.

"What about..."

"Ssshhhhhh!" he interrupted and frowned. "People may be listening."

I didn't realize that plaintiff attorneys bugged their bathrooms as one of their sneaky tricks. I opened my eyes really wide, mouthed the word "OK," and made a big "OK" sign with my hand. He squinted his eyes and frowned at me.

When the deposition started again, the plaintiff attorney got more gnarly. Why I didn't do this sooner and why I didn't order that test earlier? Why did I waste time ordering this test when the patient didn't have the disease? Why didn't I consult the surgeon as soon as the patient arrived? Initially, it appeared as if he was trying to trick me. But the more he asked the questions, the more I could tell that he really had little idea how medicine works or how to manage a significantly ill patient in the emergency department. Later, Vinny would tell me that the attorney was just "locking me in" to my version of the events so that his hired experts could then retrospectively criticize all of my reasoning.

After another 30 minutes, the plaintiff attorney closed his notebook and said "I have nothing further."

"Sweet. I'm outta here," I thought to myself as I pushed my chair back from the table.

Then one of the other attorneys spoke up. I slid my chair back in.

She started asking me all kinds of questions about whether the hospital "controlled my actions." Like I was some marionette or something. Yeah, just call me Pinocchio. I told her that there were several hospital policies that the emergency physicians were expected to follow. She appeared flustered. Apparently, she just expected me to say "no."

"Any other ways that the hospital controlled your actions?"

"Well, the hospital sometimes doesn't have certain medications on formulary, so they routinely switch medications that I order ... if that's the kind of thing you're looking for."

She became even more flustered and dropped the issue. Later Vinny would chuckle about that. She was the hospital attorney and was trying to protect the hospital. She ended up doing damage, instead. He quipped that "lawyers shouldn't ask questions when they don't know what the answers are."

Eventually, she settled on showing that I was an independent contractor when I performed services at the hospital.

She also asked me whether I had any criticisms of the nursing staff or the residents. I really didn't. The nurse and residents taking care of the patient were both top-notch and provided excellent care.

After the deposition, I got a better idea of what the plaintiff was going to allege that I did wrong. I waited too long. I didn't focus on the right things. I didn't call consultants as soon as the patient hit the door.

I started to question myself, wondering if maybe the plaintiff was right. My doubts sometimes affected my clinical practice. I noticed that especially with critically ill patients, I tended to worry as much about the potential liability I could incur as I did about the patient's medical problems. For a while, I found myself practicing defensive medicine – almost as if I would be able to compensate for this lawsuit by being "extra careful" with future patients. Looking back on those times, I can't think of one instance in which those hundreds of thousands of dollars in extra tests made any difference in the patient's diagnosis or treatment. All they did was penalize the patients on whom I ordered them.

This entry was posted on Thursday, June 11th, 2009 at 9:47 am and is filed under [Trial](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. You can [leave a response](#), or [trackback](#) from your own site. [Edit this entry](#).

36 Responses to "The Trial of a WhiteCoat – Part 4"



1. **matt** says:

[June 11, 2009 at 10:35 am](#) ([Edit](#))

"How could someone that was supposed to be helping me be so friendly and nonchalant with the person that's trying to bankrupt me?"

Don't be such a princess – no one is trying to bankrupt you. And the possibility of bankruptcy is so remote it's ridiculous.

"I didn't realize that plaintiff attorneys bugged their bathrooms as one of their sneaky tricks."

Or, less nefarious – someone might be taking a dump and hear you at the urinal. Don't be so ridiculous, this isn't a Grisham novel.

[Reply](#)



o **WhiteCoat** says:

request US picture so they can prove that they're pregnant. She refuses to print them out any more.

2011/12/07 03:51