Don't shoot the messenger

Michael M. Raskin, MD, MPH, JD

When creating your reports, try to put yourself in the patient's shoes and think: How would I or one of my family members respond to the same news?

I recently learned that a radiologist was found liable in a malpractice lawsuit after a lung cancer patient perceived his report as "bad news" and died as the result of suicide.[1] The radiologist was aware that the patient was undergoing psychiatric treatment for depression and was receiving radiation following lung resection.

"Don't shoot the messenger" is a cliché often used to avoid blaming or punishing the bearer of bad news. We have all heard this cliché; many of us have probably used it many times over, and even though the lawsuit was not a case from the United States, it raises the question: Could it happen here? Could a radiologist in the United States be held liable for medical malpractice for reporting "bad news"?

Historically, radiology reports have been sent only to treating physicians, not to their patients. Radiologists and other clinicians were not comfortable with patients receiving their reports, especially in the event of abnormal findings. This attitude has softened over the years, especially after the Mammography Quality Standards Act of 1999, which mandated that patients receive a plain-language summary of their report within 30 days of their mammogram.

And despite physician concerns that receiving certain abnormal test results could place patients at risk for psychological harm, federal law has made it mandatory since 2014 for physicians and hospitals to provide patients with copies of their medical records upon request.

To date, there has not been a malpractice case in the U.S. because a radiologist sent a report that was considered to be bad news by a patient. But that doesn't mean that it can't occur. Now that patients have the right to their medical records, including radiology reports, they may receive "bad news" before the ordering physician has explained the results to them. Radiologists should expect that their reports will be increasingly read by patients. The potential for patients acting on perceived "bad news" will increase with time.

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Dr. Raskin is a Clinical Associate Professor of Radiology at the University of Miami School of Medicine, and a neuroradiologist at University Medical Center, Tamarac, FL. He is also a member of the Applied Radiology Editorial Advisory Board.

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Another potential but highly unlikely pitfall could be the tort of intentional infliction of emotional distress. However, to prevail on such a charge, it would have to be proved that a radiologist acted intentionally or recklessly, and the conduct of the radiologist was extreme and outrageous. The tort of negligent infliction of emotional distress is a controversial cause of action, which is available in nearly all U.S. states but is severely constrained and limited in most. The underlying concept is that the radiologist has a legal duty to use reasonable care to avoid causing emotional distress to the patient.

As I mentioned previously, there have not been any malpractice lawsuits filed against a radiologist in the U.S. because the report contains findings that may be considered bad news. The legal pathway to prevailing on such a tract is murky at best. Nevertheless, it would be foolish to believe that it couldn't happen here. As a result, it pays to follow the example of the Boy Scouts and to be prepared.

Delivering bad news, either in person or in writing, is difficult. Radiologists should be aware that a written report may contain findings that some patients may consider to be bad news; e.g., a report that is "suspicious for malignancy," or a report that describes a "recurrence" or "progression of a known tumor." What constitutes "bad news" is based on the patient's viewpoint, not what is actually contained within the report; i.e., "Perception is reality," as the saying goes.

When creating your reports, try to put yourself in the patient's shoes and think: How would I or one of my family members respond to the same news?

Carefully choose your words. Be careful in your choice of the adjectives and adverbs. However, it's equally important to remember not to gloss over or hide facts. This can result in an incorrect diagnosis. Say what must be said with compassion and in a considerate way. Strive to be more deliberate in the wording of your reports. Realize that many patients who are undergoing cancer treatment may already be depressed. Be honest and direct.

Dictate your report without unreasonable delay. For us, dictating these reports is a routine part of our job, but for patients, even if there is no bad news, waiting for the result is a nerve-racking experience from beginning to end. Patients tend to think the worst.

Proofread your report for accuracy, especially if you think you will become the bearer of bad news, and make sure it reads honestly as well as compassionately.

Finally, consider directly communicating with the ordering or treating physician to provide a "heads' up" so he or she can have the opportunity to discuss the findings with the patient before the patient has received the report.

Besides reducing your risk of being sued, it is the considerate and compassionate thing to do for your patient. And should the news be truly bad, your patients will appreciate being handled with a human touch.

Reference

1. Berlin L, Sosna J, Halevy D. Radiologist found liable for malpractice in Israel for causing a patient's suicide by sending a "bad news" report: Can this happen in the United States? *AJR* 2017;208:241-244.