

THE COST OF WHITE LIES

If you find yourself the defendant in a trial, falsifications in your CV or other sources could destroy your credibility, or even your career.

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Covered in FPM Quiz

He lied. No doubt about it. He fabricated things on his curriculum vitae. He had never been a professor of medicine, clinical or otherwise, but there it was smack dab in the middle of his CV. Why did he put it in there? Who knew? Regardless, now we were stuck with it, and the opposing counsel had the CV in his grubby little paws. What should we do? Should we bring it out in the open? Or should we keep it to ourselves and hope the plaintiff's counsel didn't check the facts?

It didn't take long to reach a decision. The opposing counsel phoned us to ask about the obvious discrepancy in the CV. The result? The case was settled out of court for a hefty sum, all because of this apparent lie.

If you are a defendant in a lawsuit, your credibility as a physician is extremely important. It may be the make-or-break factor in determining whether the jury buys the rest of your story. In my role as a physician/attorney, I have counseled many physicians who have fudged a bit about some aspect of their practice. Many have come to regret these white lies.

Checking the facts

The first thing I check when evaluating a physician's credibility before a trial is his or her CV, because it requires unerring accuracy. Small secretarial errors are not a big concern, but it is crucial that you remove all of the things that cannot be documented through

other sources. If a hospital doesn't consider you a staff member, take it off your CV. If you didn't complete a residency, don't claim you did. If something on your list of publications can't be verified, toss it out. If your cum laude status doesn't match the records of the university, change it. If you're older than your

CV states, correct it. Each of these examples appeared in actual CVs, and those physicians had to face the consequences of their little untruths.

Be aware that your CV is just one area that may require a careful examination. Errors can pop up in unexpected places. They are not always the fault of the physician, but often he or she winds up paying for these mistakes.

In one case, a well-known plastic surgeon claimed that years before, his office manager had placed the words "board certified" in the

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KEY POINTS

- Any dishonest information on your curriculum vitae, advertisements or other office materials can undermine your credibility as a physician and decrease your chances of prevailing in a malpractice lawsuit.
- If you do have misleading information on your CV, discuss this with your attorney and decide how to approach the situation so that the opposing counsel doesn't use it to their advantage.
- Certain information can be withheld during the trial if the judge agrees.

clinic's Yellow Pages advertisement. The physician noticed the error but did not reprimand the office manager or change the ad. Seven years' worth of ads later, a reporter asked the surgeon, now a state legislator, about his advertisement. The truth was uncovered, and the surgeon is no longer a politician. The office manager's error became his ticket out of politics.

Take a close look at all the letters and honors that appear after your name on your office sign, advertisements and other printed materials. Make sure they all can be documented and proven when the time comes. The information is usually available online to the general public and reporters, as well as to the opposing counsel.

Admitting your mistakes

It seems common that physicians do not want to admit their humanity to their attorneys. I once received a client's information from his religious leader because the physician was too embarrassed to tell me about it but had confessed to his pastor. Fortunately, the pastor had more sense than the physician and received permission to talk to me about the issue. If there is a problem, tell your attorney and your religious leader, in that order. Remember, your attorney cannot address blemishes unless he or she sees them first.

There is nothing worse than the attorney hearing something for the first time while ques-

tioning the client on the stand. I know of one incident that occurred soon after a physician was sworn in to testify. His attorney, trying to show the physician in the best possible light, asked where the doctor had gone to medical school. The attorney fully expected the answer to be Yale, as per the CV. The doctor testified

that he had gone to a school in the Caribbean. The attorney was so stunned by the answer that he asked a follow-up question, "But didn't you also

go to Yale?" The answer silenced the courtroom. "No, I just put that in my biographical information because that makes the patients feel more comfortable with me as a physician."

When asked later why he hadn't informed the attorney until then, the physician's response was, "I didn't think it mattered." Well, it mattered to the tune of \$110,000 in settlement. The opposing counsel jumped on this information and hammered home that his CV was a lie. The physician's credibility was destroyed, and the jury did not believe anything else he said. The physician's patients could have easily decided on a class action suit for fraud.

Choosing a strategy

Before a trial you need a reality check. If you have general indiscretions that could damage your credibility, you and your attorney must assess how likely it is that the opposing

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If you have been dishonest in some aspect of your professional career, your reputation as a physician could be ruined in a malpractice trial.



Your CV must contain accurate information that includes degrees, awards and accomplishments that you have really earned.



Examine your advertisements and office materials for errors because mistakes might have been made without your knowledge.



If you should discover a discrepancy, whether intentional or unintentional, point this out to your attorney immediately.

HOW TO APPROPRIATELY DISCLOSE HARMFUL FACTS DURING A TRIAL

The following dialogue between an attorney and a client presents one way to handle falsified information during a jury trial.

Attorney: Dr. Smith, are you a clinical professor of psychiatry?

Client: No, I am not.

A: Have you ever been?

C: No, I have not.

A: Have you ever claimed to be?

C: Yes, I have.

A: Why would you claim to be something you aren't?

C: I attended a class reunion and I wanted to impress my old classmates.

A: Have you ever used this in an attempt to fool patients?

C: No, I would never do that.

A: Why are you telling us this now?

C: I want, more than anything, to tell the truth. I have sworn to tell the truth, and I believe that I have a moral, ethical and legal obligation to be forthright in every way possible with the jury.

A: Will you continue to tell the truth to this jury, no matter how difficult?

C: Yes, I will.

A: All right, Doctor, now let's talk more about the case.



Discuss with your attorney if and when you should disclose your indiscretions to the jury.



If you are afraid the opposing counsel plans to use this information against you, consider a pretrial motion to keep it out of the case.

side will become aware of them. If you have fully complied with the discovery process, you are under no legal or ethical requirement to divulge potentially damaging information to your opponents. Nevertheless, you must always be careful about information you withhold from the plaintiff. Your opponent may already know about this information and may be preparing to ask you about it at trial.

If you know that damaging information is going to be used against you, consider carefully whether you should be the one to expose your “warts” to the jury, and discuss this option with your attorney. It may be best to disclose it early in the trial process to prevent the opposite side from doing it at a time more advantageous to the plaintiff.

If you are especially concerned about some information from your past and absolutely do not want it exposed to the jury, there are ways to prevent it from coming out. Even when the information is relevant, the judge has the discretion to keep it out of the case. To withhold this information, the judge must decide that the emotional impact on the jury outweighs its benefits in the trial. We all understand that past indiscretions occur. Everyone has skeletons in the closet, and sometimes, the court will rule

that it would not be fair to expose these delicate issues for the world to see. If you decide to go this route and prevent access to information, you and your attorney should consider doing it through pretrial motions because objections during the trial can damage your credibility.

Pretrial motions do have their limitations. First, you may be turned down by the judge. Second, even if your motion is approved, your opponent then is privy to this information. Do you really want to open up this can of worms? Tough decisions are ahead, but it is significantly easier to change incorrect or damaging information prior to the trial.

Protecting your credibility

Psychologists will tell you that people subconsciously cling to their first impressions. This is no different for a jury. If you come across as a liar, then it is difficult to change that opinion. If you have harmful information that must come out, it should be you or your attorney who brings it out. As an attorney, I would rather be able to say to a jury, “My client was open and honest with you even when it hurt.” **FPM**

Send comments to fpmedit@aafp.org.