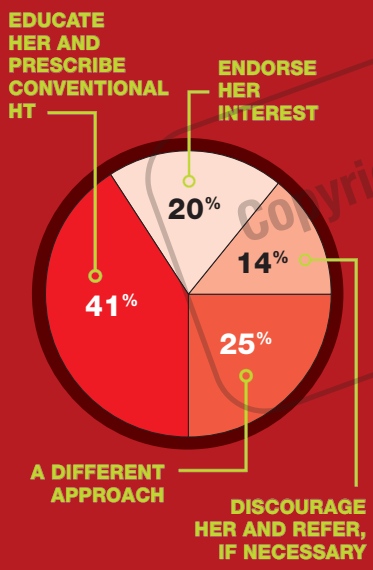
Instant Poll Results

October 2008

BIOIDENTICAL HT: WHERE DO YOU STAND?

A 54-year-old woman, recently menopausal, complains of hot flushes that make her miserable. After an evaluation, including an endocrine work-up, you recommend hormone therapy (HT). She promptly asks about bioidentical hormones, which she has read about on the Internet and heard about from friends. In your practice, the next step would be to:



COMMENTS

- "I would educate her on the facts about bioidenticals but, if she insists, I would let her have them."
- "I employ a combination of the three options."
- "As a specialty, we need to be clear on terminology: There are pharmaceutical bioidentical hormones."
- "I explain to patients that estradiol—the medication in Estrace, Vivelle, etc.—is bioidentical."

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"REBUFF THOSE MALPRACTICE LAWYERS' TRAPS AND TRICKS,"
BY HENRY M. LERNER, MD
(NOVEMBER 2008)

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Malpractice lawyers aren't as underhanded as you think

I am shocked by some of the statements in Dr. Lerner's article on malpractice lawyers' "traps and tricks." First, he misstates the law. The plaintiff attorney does not have to prove beyond a reasonable doubt that the doctor violated the standard of care. (That's the rule in criminal cases.) Rather, he must prove liability by a preponderance of the evidence. That is akin to the scales being tipped slightly in the patient's favor.

Second, there is no "general rule" about a doctor having to discuss risks greater than 1%. Now that Dr. Lerner has made such a statement in the pages of OBG MANAGEMENT, I'm afraid he and your readers are stuck with it—no plaintiff attorney would make such a statement because it is simply not the law.

Third, what's wrong with "trolling" a doctor's CV? Defense lawyers do that with plaintiff expert witnesses.

Lewis Laska, JD, PhD
Editor, *Medical Malpractice Verdicts, Settlements & Experts*
Nashville, Tenn

›› Dr. Lerner responds:

Disclosure is required when a risk has ~1% or greater chance of occurrence

Dr. Laska is on point with one of his statements: The rule governing most medical malpractice suits in the United States is "preponderance of the evidence," not proof "beyond a reasonable doubt" as I stated. The latter, or something like it, may come into play when punitive damages are sought.

Dr. Laska is wrong on his last two points, however. I cite a general rule about what requires disclosure in informed consent discussions: a significant risk that has ~1% or greater chance of occurrence. Dr. Laska says that this is not the law, a statement that may or may not be true. This general rule, however, is the standard of care in medicine, and those are the criteria on which a physician is judged in a malpractice suit. In support of this, I reference what is generally taught in medical training and include a specific citation from a surgical textbook.

About this 1% standard Dr. Laska also says that "no plaintiff attorney would make such a statement." If only that were true. In my review of over 300 medical malpractice cases, plaintiff lawyers frequently allege that a physician was obliged to tell a patient about a risk when its chance of occurrence was one in 500, one in 5,000, or even rarer. Examples are the risk of ureteral damage during hysterectomy, the risk of permanent brachial plexus injury from a shoulder dystocia delivery, and the risk of thromboembolic complications from taking the birth control pill.

As for his last point about trolling through a doctor's CV, I agree that it is appropriate for both plaintiff and defense lawyers to examine the CV of