Disability Issues in Emergency Physicians

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As the average age of emergency physicians increases, the emergency physician becomes prone to the development of potentially disabling conditions that might affect his or her ability to practice emergency medicine. Emergency physicians may not have a full understanding of the assessment of disability or of the legal, financial, and technical issues involved. The authors report 3 cases of emergency physicians who experienced severe disabilities and were unable to return to the practice of emergency medicine. All 3 physicians had long-term disability insurance policies that enabled them to financially maintain their pre-disability standard of living, despite the devastating effects of the specific disability itself. The authors strongly advise emergency physicians to have a long-term disability policy in effect at all times and review the issues associated with the assessment of disability, as well as the legal, financial, and technical issues. [Ann Emerg Med. 2008;51:732-736.]

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Background

An emergency physician who has lost the capacity to perform an essential component of the job by virtue of an acquired disability presents unique challenges both to the physician and to the group in which he or she practices.[1,2] Concerns about quality of care, the rights of the physician, and the economic well-being of the physician and his or her family are complex and sensitive issues that have been reviewed in the medical literature, though not extensively.[2,3] We report 3 cases of academic emergency physicians who experienced severe disabilities at our institution and were unable to return to the practice of emergency medicine as a result. We review the important issues associated with the assessment of disability, as well as the legal, financial, and technical issues involved, for both the disabled physician and the institution or group from which he or she practices.

Case 1

A previously healthy 40-year-old emergency physician had a stroke after a prolonged hospitalization for sudden and unexpected organ failure. The stroke impaired his ability to speak coherently or to understand written communication. He underwent extensive physical therapy and speech rehabilitation but was unable to return to the field of medicine on account of persistent difficulties with speech. He currently maintains a woodworking shop, and his long-term disability insurance income benefit supplements his income.

Case 2

A previously healthy 45-year-old emergency physician developed necrotizing fasciitis of the left arm and back. His course was complicated by septic shock and disseminated intravascular coagulation, and he required ventilatory assistance while in the ICU. He was hospitalized for 4 weeks and needed extensive skin grafting. At discharge, he was unable to use his left arm effectively and was left with permanent impairment of function of his left upper extremity. He was able to return to work in an administrative capacity, for a lower salary than that which he had earned as an emergency physician. His long-term disability insurance income benefit supplements his income.

Case 3

A previously healthy 51-year-old emergency physician had a prolonged episode of severe depression. His thought process was impaired, and it became increasingly difficult for him to deal with the stresses of a busy emergency department (ED). Despite medication and therapy, he was unable to return to work. He is currently not working, and his long-term disability insurance income provides his income.

Scope of the Problem

There is no universally accepted definition of disability. However, it generally involves an inability to carry out a task successfully within a specified time because of some sort of physical or mental impairment. The World Health Organization defines disability as "any restriction or lack . . . of ability to perform an activity in the manner or within the range considered normal for a human being."[4] The Americans with Disabilities Act (ADA) of 1990 defines a disability as: "a physical or mental impairment that substantially limits one or more of the major life activities of such individual."[5] The Social

Security Administration defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months."[6]

When the inability to carry out a task or tasks limits the performance of a job or important life functions, discussions about the significance and impact of the disability often occur. In our case examples, the inability for the physician in case 1 to process information quickly made return to medical practice impossible. Similarly, the loss of limb strength, mobility, and coordination for the physician in case 2 made work in the ED impossible, though work at a less physically demanding job was possible. The physician in case 3 is no longer able to deal with the demands and stresses of a busy ED on account of mental illness.

A disability may be temporary or permanent, partial or complete. Because different organizations use different definitions of disability, the reported number of disabled people in the United States at any given time can vary significantly. Additionally, some of the data are based on self-reported perceptions of disability, rather than objective criteria, further complicating the issue. According to the United States Census Bureau, 28.9% of families report having a household member with some sort of disability,[7] and 9.7% of the civilian, noninstitutionalized population between the ages of 16 and 64 described themselves as having a disability, with 6.5% of respondents describing themselves as having a severe disability.[8]

There are no reliable data about the number of physicians with disabilities. Wainapel,[9] in his review of the literature on this subject, noted the unreliability of the data, adding that "the literature on physically disabled physicians has been sparse and mostly anecdotal." DeLisa and Thomas[10] estimate the prevalence of disability among practicing physicians to range from 2% to 10%. They suggest that medical schools have inappropriately excluded people with disabilities and therefore the total number of physicians with preexisting disabilities is low. Because acquired disabilities increase with age, the prevalence of disability among practicing physicians would be expected to naturally exceed that of the medical students.

Faculty Physician: Department of Emergency Medicine

The faculty physician must have the ability to work in an intermittently fast-paced, high-volume, high-risk environment. The faculty physician must have the ability to see multiple patients at one time (up to 6 or 7 per hour) and to write notes relating to his or her personal involvement in their care, to be interrupted approximately every 2 minutes, to answer radio calls and telephone calls, to make and communicate split-second decisions concerning critically ill or injured patients, and to instruct and supervise medical students and residents. The faculty physician must have the dexterity and arm/grip strength to perform lifesaving maneuvers such as intubation, thoracotomy, defibrillation, open cardiac massage, and cricothyrotomy at a moment's notice and other procedures such as fracture reductions. The faculty physician must have the fine motor skills to grasp instruments, to use a scalpel, and to perform suturing. The faculty physician must have the ability to tolerate long periods of sitting, standing, or walking and be able to bend and stoop frequently. The faculty physician must be able to sit, stand, or walk for more than 8 hours per day. The faculty physician must be able to respond to and interpret applicable diagnostic screening data, to hear and interpret Doppler and stethoscope sounds, to use senses (vision, hearing, smell, touch) to recognize changes in the patient's condition, to hear codes and patient calls/alarms, to perform cardiopulmonary resuscitation, and to intubate patients in emergency situations.

Figure. Job description for an emergency physician, developed at our institution.

Assessment of Disability

Because there is no standard definition of disability, the assessment of disability may vary considerably, depending on who is doing the assessment and what the goals are. Certain occupations, such as commercial pilot or commercial driver, have specifically worded job descriptions with well-defined characteristics that readily define what a disability is.[11,12] Most occupations do not have such detailed descriptions, however. In such cases, a judgment must be made about whether an individual can perform the physical and mental requirements needed for job performance according to a job description. For the emergency physician, such job descriptions are largely lacking. The emergency physician must be able to work in an environment that is physically and mentally demanding. He or she must be able to see multiple patients simultaneously, to make and communicate split-second decisions concerning critically ill or injured patients, and to perform lifesaving maneuvers at a moment's notice. Pertinent excerpts from an example of a job description for an emergency physician, developed at our institution, can be found in the Figure. This job description was written by the chairperson and vice-chairperson of the department, in conjunction with the head administrator of the department and legal counsel. When a possible disability occurs, a job description must exist so that an independent medical assessment for fitness to perform the job can be made with reference to the job requirements.

Determinations of whether a physician with a disability may practice medicine often rest on whether the disability would adversely affect patient safety and quality of care. Also, the potential to mitigate the adverse effects through changes in the work environment are taken into consideration. The attention to patient safety has recently evolved because of a variety of studies and reports.[13,14] Consideration of patient safety issues is beyond the scope of this article.

ADA Issues

The physician with a physical impairment presents unique problems. The ADA protects disabled individuals who are still able to perform the "essential functions" of a position from unfair discrimination.[5] All state and federal employees are covered by the ADA, as are private employees of businesses that have greater than 15 employees. The ADA requires employers to make "reasonable accommodations" to allow the disabled employee to perform his or her job. However, a "reasonable" accommodation may be difficult to define, and it may be expensive and difficult to accomplish. Additionally, decisions concerning reasonableness might require litigation.

If an employee with an acquired disability cannot perform the "essential functions" of his or her position, despite reasonable accommodations, he or she must pursue other avenues. There may be some degree of difficulty in defining what the essential functions of the job are and what limitations the physician has in performing those functions. In such instances, these issues must be decided on a case-by-case basis, and ultimately it may fall to the clinical director of the emergency medicine practice group or the state medical board to make a decision based on all the available information. At what point would concerns about patient safety trump the right of the disabled physician to practice? In many cases, expert evaluations concerning performance will be required. The 3 cases cited above illustrate some of these issues.

The physician in case 1, in the months after his release from the hospital, wished to continue in his job as an emergency physician. Because he was unable to process written or verbal information effectively, the clinical director of the practice group decided that he was not capable of doing so. Several discussions followed, and in the end both parties came to an amicable agreement that he would not pursue clinical emergency medicine any longer. The physician currently maintains a woodshop and is active in several emergency medical service organizations. His long-term disability insurance enables him to maintain his standard of living.

The physician in case 2 also wished to continue in his role as an emergency physician. Because he was the clinical director of the group, he had a unique perspective on the essential functions of the job and how his disability might affect these functions. His left upper extremity was generally functional but greatly restricted in motion at the shoulder and elbow joints. Additionally, it was completely insensate from the scapula to the wrist, and his hand had frequent paresthesias and periods of numbness. He was unable to perform several potentially lifesaving tasks such as intubation, thoracotomy, and cricothyrotomy. Additionally, he no longer had the fine motor skills to grasp instruments, to use a scalpel, and to perform suturing. Several discussions followed, and the physician was agreeable to a move to an administrative position within the hospital in which he had practiced. Although his salary is now lower, his long-term disability insurance supplements his income so that he is financially secure and able to maintain his standard of living.

The physician in case 3 continued to have severe depression. He believed that he was unable to make appropriate decisions and therefore patient safety was at risk. A mental health expert was consulted and several discussions followed. The physician ended up leaving medicine altogether. His long-term disability insurance provides his income so that he is, at present, financially secure and able to maintain his standard of living.

The Physician With Substance Abuse Issues

The physician with a mental impairment caused by substance abuse presents unique challenges. Many physicians who experience substance abuse are able to return to work after treatment programs. A recent study of impaired anesthesiology residents in the United States demonstrated that at the end of the 10-year survey period, only 56% were chemically abstinent and professionally stable "in some specialty of medicine."[15] There are no similar studies of emergency medicine residents or practitioners, though an excellent discussion of this issue may be found in Milling's[16] article. Whereas an inability to perform one's job because of substance abuse issues is a valid reason for receiving long-term disability payments, most long-term disability policies now carry a 2-year lifetime lockout for such things. Even if the physician is not able to return to work, payments will cease after 2 years.

Financial Support

Insurance operates on the principle that many people pool their resources to benefit those who might need those resources should their circumstances change for the worse. In the case of disability income insurance, the resource is income. For most people, the ability to earn income is their single greatest asset, and therefore disability income insurance should be regarded as a form of asset protection. Because an acquired disability can result in complete and sudden loss of income, the emergency physician needs to be aware of what resources are available so that he or she can take adequate and appropriate steps to plan for such an event, should it ever occur.

There are 2 main government programs that deal with compensation of workers with acquired disabilities: worker's compensation programs and Social Security programs. Federal and state worker's compensation programs are designed to provide income to workers who have sustained injuries or disabilities while performing their job.

Social Security Disability Insurance is a federal program that provides benefits to individuals who are physically or mentally disabled and consequently unable to work. The Social Security Act states that to be considered disabled an individual must be unable to engage in "any kind of substantial gainful work which exists in the national economy, regardless of whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."[6] The average monthly payment in 2007 for a person unable to engage in substantial gainful activity is expected to be $896.[17] It is probably not wise for the emergency

physician to depend on Social Security Disability Insurance benefits as the only potential source of disability income.

The greatest protection that a physician can have in terms of disability income benefits is private disability insurance. It is arguably just as important as health insurance and probably more important than life insurance because one is statistically more likely to incur a disability than death during one's career.[18]

Private Disability Insurance

No laws require employers to provide disability insurance, although many large employers, such as hospitals and universities, provide group disability insurance as a benefit of employment.[18,19] Typically, group long-term disability policies are activated after a variable waiting period and continue for several years or up to age 65, depending on the terms of the policy. The policies replace a percentage of one's base salary at the time of the disability and may include an optional rider to adjust for inflation. Individual policies differ considerably in terms of their definitions of disability, length of waiting period before the start of the benefit, amount paid as a benefit, and length of coverage.[19]

The most important thing to look for in a private disability income policy is what its definition of disability is. Policies vary considerably with regard to this. The most comprehensive policies define a disability as an inability to perform the essential duties of one's own medical specialty, the so-called "own occupation" policy. It has become increasingly difficult to find policies that use this definition.[20] Instead, disability is more commonly being defined as an inability to engage in any job for which one is "reasonably fit." Some policies, such as the one that the American Medical Association is presently using, have some combination of these 2 definitions, with an "own occupation" definition serving the first 5 years of a disability and a "reasonably fit" definition applying afterward, until age 65.[21] It is essential that the emergency physician carefully read and understand the definition of disability for any policy that he or she is considering purchasing.

Other important aspects of the policy include the renewability clause, the waiting period before the initiation of coverage, the length of coverage, and the monthly benefit amount.

There is considerable variability from carrier to carrier. The most protective policies have noncancelable or guaranteed renewable provisions written into the policy. Waiting periods before the initiation of coverage and length of coverage are decisions that are typically left up to the applicant of the insurance policy: the more one pays, the shorter the wait time before the initiation of coverage and the longer the length of coverage. It is imperative to have an emergency cash fund of some sort that is adequate to support oneself during whatever waiting period one chooses. The monthly benefit amount that policies provide is variable and is usually a function of what percentage of income one wishes to replace with disability income. The maximum typically allowed is on the order of 60%, or two thirds of one's predisability income, with a lockout at $10,000 per month.[22] Most policies also give the option of attaching a cost-of-living adjustment rider to the policy to adjust for yearly inflation. These riders are costly, but well worth considering, given the power of inflation to erode the value of one's disability payments over time.

Legal Advice

The disability insurance industry has significantly scaled back many features and benefits of disability income policies.[20,23] Although the industry has not released any official data on the subject, it is widely believed that disability claim rates by physicians have increased dramatically during the past 10 years, especially for disability claims arising from mental health issues.[22,23] Many policies now carry a 2-year lifetime payment period for claims awarded for mental health or substance abuse issues. Additionally, many carriers have dropped own-occupation policies and have added complicated and difficult-to-understand renewability clauses.[22,23]

The disability income policy is a legal document, and as such its wording may be foreign and confusing to the emergency physician. Policy holders might well need the assistance of legal representation to obtain their benefits, even in seemingly straightforward cases. All 3 emergency physicians in our cases needed legal assistance to obtain their benefits.

Summary

We have described 3 cases in which emergency physicians have unexpectedly experienced severe disabilities. Not much is known about the numbers of emergency physicians who are currently disabled and unable to practice their chosen specialty. The impact on the physicians, the group, and the institution can be substantial. Legal aspects and risks for each differ. Unfortunately, a disability can pit the disabled physician against his or her employer as each attempts to protect and advance his or her own interests.

All 3 physicians profiled above were unable to return to clinical emergency medicine. In all 3 cases, the absence of a long-term disability income policy would have been financially catastrophic. Emergency physicians who do not already have a long-term disability income policy are strongly urged to obtain one. Group policies are available through national medical organizations such as the American Medical Association and the American College of Emergency Physicians, as well as through many state medical organizations. Additionally, individual coverage is available directly from private insurance carriers.

Conclusion

As the average age of emergency physicians increases, it is likely that a variety of potentially disabling conditions may require emergency physicians to consider whether or not to continue clinical practice. Understanding the basic issues of disability will be important as emergency physicians attempt to resolve the dilemma of continued practice in the face of a

potentially disabling condition. Emergency physicians who do not have access to a group long-term disability policy as a benefit of their employment should purchase their own individual policy from a reputable and financially healthy carrier.

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