

Litigation PR

How to Protect a Hospital Brand in Medical Malpractice Trials

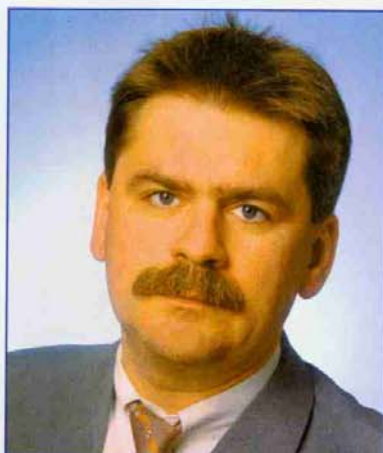
It was simply a negligent decision in favour of a higher dilution of a disinfectant used for room cleansing. For a German paediatric clinic, it turned out to be disastrous: initiated by a publication in the Lancet, and driven by intense media interest and desperate parents as well, federal prosecutors decided to investigate for life-threatening infections in newborns that related to inefficient disinfection practice in the hospital.

Initial media reports triggered other parents to file claims for the same medical occurrence, and prosecutors ended up with 28 cases of severe infections, two of which were fatal and one resulting in major disabilities of the patient. After several years of court proceedings, considerable indemnity was appointed to the victim families, and case numbers of the hospital dropped by more than 50%. What had happened?

Strategic Communication For Credibility

The case was covered by hundreds of articles in the national press. Besides factual negligence, particularly the hospital's communication failed in actively forming public opinion, leading to substantial damage of reputation: in acute crisis, management missed to take the active part of generating the relevant news and, even more important, in the long-lasting litigation the news flow was driven by prosecutors, the media, and victim's lawyers rather than by the hospital. Strategic communication, however, which accounts for brand building, maintenance of credibility, and patients' trust in performance and quality, has climbed to a top position on agendas in a highly competitive hospital market in

Germany as well as many other countries. Therefore, means of active reputation management in crisis are an essential ingredient the standard portfolio of management tools in any hospital.



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Risk Is Intrinsic to Medical Services

This holds true in particular for situations where medical injuries can occur, as the risk of medical malpractice or error is per se intrinsic to any medical services and easily becomes relevant to attorneys and prosecutors

of civil or penal law. Communication in prosecution is what is called Litigation PR. As a specialized discipline of crisis communication, litigation PR is based on the observation that public opinion and reputation are densely connected to the course a trial takes. European hospitals, however, traditionally tend to underestimate the reputation risks that might result from medical error claims that go to trial. According to the German Patient Association, medical malpractice occurs in Germany in 100,000 cases per year including 25,000 deaths due to error, medical injury, or substandard care. Insurance companies are faced with 30,000 claims for medical errors per year. Certainly not all of these cases face a trial verdict but a considerable and increasing number does: In a recent study (N Engl J Med 354; 19 pp 2024) investigating the outcome of malpractice litigation in the U.S. with respect to compensation and the way it was achieved, the authors found that 15% of the claims based on medical errors were decided by trial verdict. This is similar to German figures. Intriguingly, claims where no error could be substantiated were more than twice as likely to go to trial as claims where a medical error was evident.

Factors Contributing to the Threat

Several factors add to medical malpractice litigation as being a major threat for a hospital's reputation. First, health is a high interest issue for media especially in combination with malpractice and journalists may have excellent contacts within the prosecuting administration which frequently creates easy access to sensible information. At the same time complex medical infor-

mation paired with often enough complex legal backgrounds opens doors for misleading reports. Second, in most European countries trials are public and therefore media gain access to such cases. Third, patients today are well informed, become more willing to fight for their rights in case of medical injury and gain substantial support from attorneys, health insurance companies and NPOs. Finally, trials on medical malpractice usually take several years until resolution by verdict is achieved. In the above study, the average was five years to the closure of a claim. This time scale requires a long term communication strategy to prevent negative reputation from becoming chronic.

A Major Challenge

Altogether, this poses a major challenge with very special and frequently highly delicate requirements to communication of hospitals in the case of trials on medical malpractice that can be met by professional litigation PR. To efficiently control public opinion and reputation, litigation PR aims to anticipate strategies within a legal case and actively uses information and arguments from it for a long term strategic communication planning and reputation management. For success, close cooperation between lawyers and communicators is essential.

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