

**Common Medicolegal Situations in Hematopathology
And How to Lessen Your Risk**

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- I. Introduction – being named as a defendant in a malpractice lawsuit is becoming a more frequent problem for pathologists than in the past. This reflects the growing importance of our specialty in the clinical management of patients with serious disorders, such as cancer, and, correspondingly, representations by patients and lawyers of our accountability for any damages resulting from diagnostic errors. On the basis of my own observations from legal cases in which I have been involved in the role of expert witness over the past 25 years the following admonitions are offered in regard to the subspecialty of hematopathology.

- II. Factors that contribute to the development of lawsuits in hematopathology:
 - A. The increasing role for pathology in the management of disease (now not only diagnosis but prognostic and therapeutic markers)
 - B. Attempting to make definitive diagnoses with ever smaller samples
 - C. Weakening communication and relationship with clinicians
 - D. Pressures (financial) to sign out ever more cases

- III. Types of cases in hematopathology leading to lawsuits:
 - A. Failure to diagnose Hodgkin lymphoma
 - B. Mistaking an inflammatory process for lymphoma/leukemia
 - C. Failure to correctly classify a lymphoma

- IV. Common pitfalls in the practice of hematopathology cases leading to lawsuits:
 - A. Inadequate or inaccurate clinical information for case interpretation
 - B. Biopsy sampling inadequate or nonrepresentative
 - C. Diagnostic report abrupt or incomplete
 - D. Simplistic interpretation of ancillary studies
 - E. Resistance in sending case out for review
 - F. Seeds of doubt planted in patient at referral center

V. Examples:

- A. Elderly woman with constitutional symptoms for more than a year, a needle biopsy of liver is diagnosed as “inconclusive”, and at autopsy 3 months later advanced stage Hodgkin lymphoma is discovered. Expert witness for plaintiff states that diagnosis should have been “suggestive of Hodgkin’s”.
- B. 60-year-old man with progressing sinus problems undergoes biopsy, clinician expresses concerns regarding fungal infection. Fungal organisms and necrosis lead to diagnosis of fungal infection. Months later case is reviewed at another institution where diagnosis of nasal type NK/T-cell lymphoma is made. Patient survives one year and succumbs to systemic lymphoma.
- C. D&C from a 38-year-old woman is interpreted as high-grade lymphoma. One year later, six months after completing intensive chemotherapy, the patient is evaluated at a referral center where she is told that review of the pathology reveals that she never had lymphoma, only an inflammatory process. The patient sues the clinician and pathologist for expenses, suffering, loss of consort, etc.

VI. How best to win the suit:

- A. As soon as you learn of the suit gather all data, pathology materials relating to case, etc. and privately, thoroughly review everything and take copious notes that are stored in a secure place.
- B. Discuss the case only with your lawyers.
- C. Earlier than later assist your lawyers in finding respected expert witness(es) to represent your side of the case.
- D. Keep your lawyers on the case; hold them to their deadlines as the case moves along (lawyers actually are human too!).

VII. TAKE HOME MESSAGES:

- A. Get clinical information, especially for small biopsies with “atypical findings”.
- B. Do not cut corners in generating the diagnostic report.
- C. Freely use descriptors such as “complex”, “difficult”, “challenging”, or “unusual” in reports.
- D. Do not imply that you resent or are uninterested in others’ reviews of your cases.
- E. Never conceal, destroy or modify evidence.

VIII. Reference:

Davis, Gregory G. Pathology and Law. 2004, Springer, NY. ISBN 0387200355