A Malpractice Lawsuit Simulation: Critical Care Providers Learn as Participants in a Mock Trial
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Critical care professionals and health care organizations recognize that failure to continually improve patient safety exposes critical care providers and their organizations to significant financial and human loss. For example, the average 250-bed hospital spends the equivalent of the cost of a new [magnetic resonance imaging] unit, between $300,000 and $1 million annually, defending medical malpractice lawsuits, not including settlements and judgments.1

Hospitals pay claims in 50% of court cases brought, and independently contracted physicians pay in 30% of cases.1 Although nurses and other critical care professionals may be sued separately from their hospital employer, claims paid by hospitals include payments because of the negligence of their employees such as nurses, respiratory therapists, and other health care providers. Research on jury verdicts indicates that the median plaintiff award against hospitals and their employed health care providers is about $500,000.1

Health care organizations have become more aggressive with a variety of new protocols to reduce hospital errors. These new processes include pharmaceutical bar coding, conducting a root cause analysis for unexpected outcomes, and using electronic medical records. Humans are imperfect by nature and mistakes happen. However, the Institute of Medicine estimates that as many as 44,000 to 98,000 deaths per year occur in American hospitals as a result of preventable errors.2 By participating in a simulation of a medical malpractice trial, participants experience the different factual and legal components required for a lawsuit to reach a jury and learn the lessons of a medical malpractice
lawsuit without having to endure the stress, cost, and uncertainty of an actual lawsuit.

Our goal was to demonstrate the importance of applied legal and ethical experiential learning activities in the continuing education of health professionals. In response to the litigious environment facing critical care professionals today, we used an innovative approach to teach health care providers the complexities of health care law by simulating a medical malpractice lawsuit. This case involved recurrent challenges in patient care and treatment that currently face critical care providers and hospitals. The experiential learning activity teaches providers how the legal system scrutinizes daily decisions made by health care professionals. These may include decisions about both documentation and policy implementation. The simulation is based on the claims of Ms Jones, who sustained broken ribs in a car accident and was admitted directly to the intensive care unit for mechanical ventilation. Ms Jones sued the critical care providers and the hospital by a patient and culminated with a mock trial and jury verdict. The participants advocated either for the patient (plaintiff) or for the hospital/health care providers (defendant) or they served on the jury.

Members of the critical care team, other health care providers, and administrators who participated in the trial simulation applied the medical-legal principles governing health care institutions as they played their assigned roles. The simulation began with the initial filing of a lawsuit against the critical care providers and the hospital by a patient and culminated with a mock trial and jury verdict. The participants advocated either for the patient (plaintiff) or for the hospital/health care providers (defendant) or they served on the jury.

Nursing Education: Legal Principles Applied to Clinical Decisions

Health law is an important part of the education of nurses, physicians, and other health care providers. The American Association of Colleges of Nursing suggested education in key areas that included risk reduction and health care systems and policy. Use of simulation can be an effective teaching tool for nurse educators. This simulated trial provides an experiential tool in the context of a malpractice lawsuit to teach health care providers how legal principles are applied to clinical decision making.

After completing the simulation, health care providers have been exposed to many of the components of how the legal system scrutinizes clinical decisions. Health care providers who understand the legal process are in a better position to evaluate the strengths and weaknesses of the principles governing their respective organizations. The trial simulation allows providers to experience quickly the facts that drive a lawsuit. It also shows health care providers the importance of following standard care procedures and the importance of complete documentation in the patient’s medical record.

This simulation of a critical care lawsuit consists of 2 separate sessions. Session 1 introduces the legal concepts that apply to critical care team members, assigns each participant a role for the simulation, and describes the case facts of the lawsuit. Session 2 includes the mock trial, jury verdict, posttrial debriefing, and discussion (Table 1).

Session 1: Case Facts for the Mock Trial

Decubitus ulcers are experienced by some hospital patients and may develop without any negligence of the critical care team. Intensive care patients are at greater risk for decubitus ulcers than are other patients. The incidence of decubitus ulcers in acute care settings ranges from 10% to 18% and increases the cost to the hospital for the care of the ulcers formed. We modeled this simulation on a variety of malpractice lawsuits related to formation of decubitus ulcers. The simulation involved an intensive care patient who had a decubitus ulcer develop during the course of her stay in the hospital.

It is important to review pressure ulcer stages at the beginning of the
simulation because lawsuits about decubitus ulcers often involve different critical care providers classifying the same wound at the same time period as being in different stages (Table 2). The decubitus ulcer simulation includes a patient with wounds at different stages so that participants can experience how the legal system responds to differences in staging documentation by various members of the critical care team.

### Table 1: Mock trial components

<table>
<thead>
<tr>
<th>Session 1, part A: (time: approximately 1 hour)</th>
<th>Introduce case facts for mock trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assign simulation roles to health care employees: divide participants into plaintiff’s team, defense team, or jury team</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Session 1, part B: (time: approximately 1 hour)</th>
<th>Prepare each team for trial, using pleadings and deposition testimony</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Session 2, part A: (time: approximately 3-4 hours)</th>
<th>Conduct the mock trial</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Session 2, part B: (time: approximately 1-2 hours)</th>
<th>Jury deliberations and jury verdict</th>
</tr>
</thead>
</table>

| Posttrial debriefing with all participants and discussion of lessons learned |

### Table 2: Stages of decubitus ulcers

<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Redness on the surface of the skin that does not blanch with pressure</td>
</tr>
<tr>
<td>II</td>
<td>Further damage to the skin that appears as an abrasion or blister</td>
</tr>
<tr>
<td>III</td>
<td>A hole in the skin that exposes the underlying tissue or fat</td>
</tr>
<tr>
<td>IV</td>
<td>A hole in the skin that develops into necrotic tissue and fat, exposing bones, muscles, and other structural tissue</td>
</tr>
</tbody>
</table>

*Definitions from the National Pressure Ulcer Advisory Panel.*

**Session 1: Case Facts for Patient and Critical Care Team**

The trial simulation involved a lawsuit by an 80-year-old, well-nourished, obese woman, Ms Jones, who entered the hospital after a traumatic car accident and required intensive care until her discharge from the hospital 10 days later.

During Ms Jones’s initial nursing assessment, no decubitus ulcers were noted anywhere on her body. During the first 48 hours of Ms Jones’s stay in the intensive care unit, she required ventilator assistance but was alert and responsive. She was in considerable pain, and she refused to be turned by the nurses for an entire evening shift. The nurse documented that the patient refused to be turned throughout the evening but did not request a physician’s order for a specialty bed. During Ms Jones’s nursing assessment on her third day in the intensive care unit, Gloria (a registered nurse) documented that the patient now had a stage II decubitus ulcer on her right buttock.

Ms Jones was discharged 4 days later. Ms Jones steadfastly refused placement in a nursing home or rehabilitation facility, stating that she needed to get home to her flowers. However, no documentation of Ms Jones’s refusal to go to a nursing facility was made in her medical record and the discharge instructions dictated by her attending physician did not mention any decubitus ulcer and did not include any provision for how to take care of the stage II decubitus ulcer on her right buttock. The nursing notes included 1 sentence by the discharge nurse coordinator stating that long-term care was discussed with the patient.

Ms Jones returned to the emergency department of the same hospital 10 days later, reporting that the decubitus ulcer that began during her last admission had never healed. In addition, Ms Jones now had a stage IV decubitus ulcer on her coccyx and a stage II decubitus ulcer on her left buttock. Ms Jones was readmitted to the hospital and underwent 3 separate debridement procedures to treat the stage IV decubitus ulcer. Ms Jones was discharged 12 days later to a skilled nursing facility.

**Session 1: Assignment of Simulation Roles**

Session 1 begins with the participants being assigned as advocates for the plaintiff or the defendant or to serve as jury members. Depending on the number of participants, roughly one-third of the participants advocate for the plaintiff, one-third of the participants advocate for the defendant, and the remaining participants serve as jury members. The ideal number of participants can vary between 30 and 50; however, the simulation has been...
completed with as few as 15 and as many as 100 participants. Responsibilities of the plaintiff’s team, the defendant’s team, and the jury team are enumerated in Table 3.

**Session 1: Preparing for Trial**

After assigning each participant to a team, the participants were given written pleadings (see Glossary) and depositions (see Glossary) to begin learning more facts pertaining to the simulation. Although attorneys working on an actual lawsuit would not necessarily have such a predictable or controlled flow of information, the use of selective pleadings and depositions established enough information for both the plaintiff’s team and the defendant’s team to feel that they had the material necessary to present a convincing case to the jury.

**Pleadings**

Pleadings are documents filed with the court by either side of a lawsuit and can have a variety of purposes. Pleadings contain the formal allegations by the parties to a suit, delineating their respective claims and defenses to provide each side notice of what to expect at trial. A few important pleadings that are present in every lawsuit include the following:

- **The complaint**, which is filed by the plaintiff at the beginning of the claim and

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**Table 3** Responsibilities of the plaintiff’s team, the defense team, and the jury team

<table>
<thead>
<tr>
<th>Team</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiff's</td>
<td>Plaintiff’s advocates present the fact scenario in the light most favorable to the injured patient. Plaintiff’s advocates have the burden of proof to convince the jury of the merit behind the patient’s lawsuit. Plaintiff’s advocates prepare the plaintiff’s witnesses for testifying (family members of the plaintiff and the plaintiff’s nursing expert who supported the plaintiff’s position that the hospital’s nursing staff violated the prevailing nursing standard of care). Plaintiff’s advocates also divide the trial responsibilities of a plaintiff lawyer (Table 4—available online only).</td>
</tr>
<tr>
<td>Defense</td>
<td>Defense advocates present the fact scenario in the light most favorable to the defendants. Defense advocates have the practical responsibility of providing the jury with a plausible explanation that refutes the plaintiff’s negligence claims, even though the burden of proof is technically the plaintiff’s responsibility. Defense advocates prepare the defense witnesses for testifying (critical care providers, other health care providers who cared for the patient, and the defense nursing expert who testified that the care provided by the critical care team met the prevailing nursing standard of care). Defense advocates must equally divide the various trial duties of a defense lawyer (Table 5—available online only).</td>
</tr>
<tr>
<td>Jury</td>
<td>Jury members participate in the process of jury selection whereby both the plaintiff and defense teams ask each member of the jury questions to identify juror bias for or against one party of the lawsuit. Jury members complete a jury questionnaire designed to elicit areas of juror bias for or against either the plaintiff or the defendant (Table 6—available online only). Jury members must elect a foreperson and deliberate until they reach a verdict or impasse. Jury members explain which arguments they found either convincing or unpersuasive after sharing their verdict with the participants during the postsimulation debriefing (Table 6—available online only).</td>
</tr>
</tbody>
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**Glossary of Legal Terms**

- **Answer**: The response of the defendant to the plaintiff’s complaint
- **Closing argument**: The final statements by the attorneys to a jury summarizing the evidence
- **Comparative fault**: Damages allowed shall be diminished in proportion to the amount of negligence attributable to the person (plaintiff)
- **Complaint**: The initial pleading by which a cause of action is commenced which sets forth the claim
- **Cross-examination**: The examination of a witness by the party opposed to the one who produced the witness
- **Deposition**: The testimony of a witness taken upon oral question not in open court, intended to be used in preparation for a trial
- **Direct examination**: The first interrogation or examination of a witness
- **Opening statement**: An outline or summary of the nature of the case and of anticipated testimony presented by an attorney to the jury at the start of a trial
- **Pleadings**: The formal allegations by the parties to a lawsuit of their respective claims and defenses with the intended purpose to provide notice of what is to be expected at trial
describes the legal and factual basis for bringing the lawsuit (Appendix 1—available online only).

• The answer, which is filed by the defendant in response to the allegations delineated in the plaintiff’s complaint (Appendix 2—available online only).

Review of Pleadings

During the first session, each participant received a copy of Ms Jones’s complaint, and session time was spent describing how its factual and legal components mirrored the essential components of any lawsuit. The factual components pertain to the specific facts of this specific decubitus ulcer lawsuit, and the legal components refer to how lawyers respond to each of the factual statements that comprise the plaintiff’s legal complaint. Each participant also received the defendant’s answer (see Glossary) to the complaint, and the instructor followed the same process of explaining the legal and practical tactics to follow when responding to a lawsuit brought against a health care organization. For example, the instructor introduced the concept of comparative fault (see Glossary) by focusing the participants on the defendant’s answer. Comparative fault is a defense raised in an answer that allows the defense team to present evidence that the patient may bear some or all of the responsibility for the injuries claimed in the lawsuit.

Because the participants were not law students and the purpose of the simulation was to help participants educate themselves and their fellow employees regarding the basics of a medical malpractice lawsuit, we did not have the students draft any pleadings.

Depositions

Depositions (see Glossary) are items that both plaintiff and defense lawyers use to prepare their case for trial. They are a pretrial discovery mechanism in which one party’s attorney asks oral questions of the other party or of a witness for the other party.11 Depositions are sworn testimony obtained before trial from members of the critical care team who treated the patient (eg, nurse Gloria), factual witnesses such as family members, or expert witnesses. Depositions allow each side to refine its trial strategy on the basis of the sworn testimony of the various witnesses in the lawsuit (Appendix 3—available online only).

Review of Depositions

Next, the participants receive each deposition, which enables each side to weave new facts from the depositions into their case theory and also serves as a guideline for what each witness would say at trial because depositions are sworn testimony. Therefore, when asked the same questions, truthful witnesses should have the same testimony at trial as the testimony they had provided in their deposition. The development of the mock trial facts through depositions provided the opportunity to educate participants about the purpose of depositions.

Session 2: The Medical Negligence Trial Simulation

After session 1 was completed, 1 to 4 weeks were given for the participants to prepare for their role in the simulated trial. The first part of session 2 began with the mock trial. The simulation instructor served as the judge for the mock trial and ruled on issues of law, overruled or sustained objections made by the attorneys, and instructed the jurors...
about their roles and responsibilities. After the legal teams for both the plaintiff and the defendant concluded their questioning of the prospective jurors, each side requested that the biased jurors be removed from the jury panel. The judge granted or denied their requests depending on whether the requesting team had sufficiently established that the juror in question could not be impartial. However, the jurors who were removed did not know they had been removed from the jury until the lawyers rested their case and the jury began deliberations. By not disclosing which jurors were removed until after the trial, we ensured that all jurors remained attentive during the trial.

The Plaintiff’s Team

The plaintiff’s team began the mock trial with an opening statement (see Glossary) that introduced their version of the case facts and law for the jury. The plaintiff’s team selected 1 person from their team who was responsible for delivering the opening statement. Next, the defense team followed the same procedure as the plaintiff’s team. After both sides presented their opening statements, the plaintiff’s team began presenting their case. They had the burden of proving that the alleged damages occurred because the critical care providers failed to meet the prevailing standard of care that would have been provided by other critical care providers under the same or similar circumstances.

The plaintiff’s team divided the responsibilities of presenting their case equally among the team members. They begin with 1 team member drafting the direct examination (see Glossary) for the first plaintiff witness, Ms Jones. The role of Ms Jones was also the responsibility of another member of the plaintiff’s team because as the plaintiff, she would be considered a plaintiff’s witness.

After the plaintiff’s team completed the direct examination of a witness, then a member of the defense team has the opportunity to ask the witness any other questions necessary to present the jury with a complete picture of the witness’s testimony during a process known as cross-examination (see Glossary). The process of the plaintiff’s team calling witnesses necessary for their case-in-chief, followed by a member of the defense team conducting a cross-examination of the same witness, continued until the plaintiff’s team rested its case.

The Defense Team

Once the plaintiff’s team rested its case, the defense then had an opportunity to conduct a direct examination of the defense witnesses. The defense team follows the same procedure as the plaintiff’s team, and 1 member of the defense team serves as the defense lawyer. The defense lawyer is responsible for conducting the direct examination of the defense’s nursing expert, whose testifying role was played by another member of the defense team. After the defense lawyer completes the direct examination, a lawyer from the plaintiff’s team has the opportunity to cross-examine the defense witness to make sure that the jury has a complete picture of the witness’s testimony. During the cross-examination of witnesses, both plaintiff and defense lawyers effectively use the previous deposition testimony of the witnesses to impeach those witnesses who changed their sworn testimony from deposition to trial.

Closing Arguments

After the defense team rests its case, the plaintiff’s team gives the jury its closing argument (see Glossary) first. Closing arguments are the final statements of the attorneys to a jury, summarizing the evidence that has been established and the evidence that they think the other side failed to establish. Although new evidence cannot be introduced, the lawyers for each team can refer to evidence already admitted during the trial and use exhibits and other visual aids to help clarify confusing issues or reiterate important ones.

The defense team then gives the jury its closing statement. After both sides have addressed the jury, the judge instructs the jury regarding the law they have to follow to reach their decision and explains the jury verdict form. Once the judge concludes the jury instructions, members of the plaintiff’s team and the defense team are excused and the jury members who were removed at the beginning of the case are excused. The remaining jury members begin the hard work of jury deliberations. For simulations involving a large number of jurors, the judge may elect to divide the jurors into separate juror teams at this stage of the simulation to see if different juries hearing the same evidence reach different verdicts.

Jury Verdict

After deliberating for more than an hour, the jury reached a verdict in favor of the plaintiff for
approximately $50,000. However, the jury reduced the verdict amount by finding that the plaintiff herself had 80% responsibility for her decubitus ulcers, which reduced the net jury award for the plaintiff to only 20% of $50,000. The jury’s decision to reduce the verdict due to the plaintiff’s comparative fault is a good example of how the trial simulation experience allowed participants to see how a legal principle learned in session 1 played out in the trial.

Comparative fault is an important concept for providers to understand and document appropriately in the medical record. The jury’s assignment of comparative fault to the patient will ultimately reduce the hospital’s financial losses if the jury finds both the health care providers and the patient at fault. How well the critical care providers documented the patient’s refusal to be turned in the medical record is an important factor determining whether the defense can make a successful comparative fault case.

Conversely, the advocates for both sides learned the delicate balance required when asking a jury to consider placing the blame for a patient’s injuries on the patient even when the hospital may have some responsibility for the injuries. If the issue of comparative fault is not handled appropriately, the jury may become angered and assign more financial responsibility to the hospital.

**Evaluation: Posttrial Debriefing**

Session 2, part B began by asking the members of the plaintiff and defense team to write down on paper who they believed had won the trial. The participants did not seem surprised when the voting results reflected that a majority of the participants believed the plaintiff’s team had won. Next, the judge asked the jury members to stand and the foreperson of the jury to read the verdict. The participants also knew before the mock trial that the winning team would be presented an award as the prevailing party.

The participants and jury consensus also mirrored this author’s evaluation of the mock trial: the plaintiff’s team was generally better prepared. The plaintiff’s team effectively highlighted the provisions of the hospital wound care policy and procedures that the critical care providers did not follow during Ms Jones’s care. The plaintiff’s team also effectively prepared its witnesses and used visual aids to illustrate the plaintiff’s version of events more clearly for the jury. The posttrial debriefing session allowed for a productive discussion of how critical care providers can assist with the successful defense of lawsuits by helping to ensure that hospital polices drafted are consistent with applicable health care setting.

Many participants shared during the posttrial debriefing session that having to defend the hospital’s multipage policy on wound care was difficult. The jury feedback also confirmed that jury members had difficulty understanding many sections of the hospital’s multipage policy on wound care. Participants expressed concern that if the members of the mock trial’s jury, most of whom were health care employees, had difficulty understanding the detailed policy on decubitus ulcers, a jury of laypersons would most likely have an even harder time.

Participants genuinely enjoyed the simulation and indicated that the decubitus ulcer mock trial exercise forced them to think with a different skill set than they used for many of their more traditional continuing educational programs. At the conclusion of the simulation, participants felt that they had a better understanding of the malpractice litigation process. Many participants left the simulation with a renewed appreciation for the importance of medical record documentation and a specific desire to reevaluate existing policies on decubitus ulcers.

**Formal Evaluation**

Participants completed a formal evaluation and rated various aspects of the program from 1 to 5, with 1 indicating “disagree” and 5 indicating “agree.” Although an overwhelming majority of comments and evaluations were extremely positive, opportunities exist to improve the simulation further. The formal responses are summarized in Table 7; each question had a total of 20 respondents.

**Written Feedback**

The more informal written comments on participants’ reactions were almost universally favorable. A frequent comment was “every employee should have to go through this great learning experience as the simulation was an excellent way to instruct and an extremely useful way to learn.” Other participants commented “as I sat on the jury, I watched my peers passionately try to prove or disprove allegedly negligent care from a
made-up hospital using made-up allegations and facts. As my peers role-played their assigned tasks as an attorney, health care provider, patient, or family member, an incredible learning experience was unfolding for everyone involved. It seemed the scenarios were not all that far off from what happens every day.

Opportunities to improve the simulation also exist. For example, the plaintiff’s teams sometimes complain that they did not receive a fair trial because most of the jurors have a health care background and therefore may be more sympathetic to the defense version of the case. A potential solution may involve increasing the interdisciplinary aspects of the trial simulation further by involving lawyers, law students, or health care employees who are not involved with patient care as jurors. Another opportunity to improve the simulation would be through the creation of a written medical record that matches the facts driving the patient’s lawsuit. The plaintiff’s, defense, and juror teams all commented that the additional illustration of a tangible patient medical record would help the presentation of the case before the jury.

Interdisciplinary Pedagogical Opportunities

The mock trial experience reinforced the principle that one of the best ways to learn, digest, and remember material among a variety of health care professionals with different backgrounds, training, and experience is by applying it in a hands-on environment. The mock trial allowed participants to personally experience a concrete and practical application of what are often abstract and complicated legal principles. After completing the decubitus ulcer simulation, critical care team members have been exposed to different facets of the legal process. Employees also have experienced the importance of following hospital policies and adequately documenting the medical record.

This experiential learning mock trial activity may also increase interdisciplinary collaboration because the mock trial is conducted by using a combination of nurses, physicians, administrators, and other health care employees interspersed among the plaintiff, defense, and juror teams. Furthermore, additional interdisciplinary opportunities exist for health care providers and organizations whose employees have already been through the trial simulation exercise. The repeat participants could serve as mentors who coach the plaintiff’s team and the defense team on the basis of the lessons learned from their initial experience with trial simulation.

In summary, the medical malpractice simulated lawsuit was an effective learning tool for critical care providers, physicians, and other health care providers. By completing the mock trial simulation, health care professionals experienced the key phases of a lawsuit. Participants learned how the legal process interfaces with the clinical treatment provided by clinicians and nurses to patients. This exercise is typically described by participants at the conclusion as one of the best continuing

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**Table 7 Formal evaluation**

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<thead>
<tr>
<th>Feature</th>
<th>Scorea</th>
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<tr>
<td>Instructional method</td>
<td></td>
</tr>
<tr>
<td>Overall</td>
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</tr>
<tr>
<td>Organization</td>
<td>1 2 17</td>
</tr>
<tr>
<td>Concept illustration</td>
<td>1 2 17</td>
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<td>Teaching strategies</td>
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<td>Effectiveness of presentation</td>
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<tr>
<td>Clear</td>
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<td>Methods held attention</td>
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<tr>
<td>Presenter’s mastery of topic</td>
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<tr>
<td>Content of simulation</td>
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<td>Overall</td>
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<tr>
<td>Extended participants’ knowledge</td>
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<td>Consistent with activity’s purpose</td>
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<td>Related to respondent’s job</td>
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<tr>
<td>Learners’ achievement of objectives</td>
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<tr>
<td>Overall</td>
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</tr>
<tr>
<td>Understood standard of care in lawsuits</td>
<td>1 19</td>
</tr>
<tr>
<td>Role of documentation/policies in lawsuits</td>
<td>1 19</td>
</tr>
<tr>
<td>Scrutiny of treatment and depositions</td>
<td>1 19</td>
</tr>
</tbody>
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*a Scoring system: 1 = disagree to 5 = agree. Numbers in body of table are how many of the 20 respondents selected that score.

education learning activities they have experienced. Participants repeatedly expressed that the mock trial provided a tangible illustration of how the legal process operates.

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References