



It Seemed Like a Good Idea at the Time

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

Have you seen poster with the phrase, “IT COULD BE THAT THE PURPOSE OF YOUR LIFE IS ONLY TO SERVE AS A WARNING TO OTHERS?” Have you ever had “one of those days” where you believed the poster was a sign from God directed only to you?

Over the years I have heard hundreds of patients and numerous friends and acquaintances mutter the phrase, “It seemed like a good idea at the time.” I’ve even been known to say it once in a great while. (Ok, maybe even often.) I have been cataloging these “good ideas” for a number of years in the hope that if one ever pops into my head, I can refer back to the list and gain some additional and apparently much-needed perspective.

However, given the nature of some of these, I hope they never “pop” anywhere near my head! Anyway, I would be remiss in my endeavor to enlighten you or put you to sleep if I did not share. In random order, here are 46 of the more memorable, medical legally-related “good ideas at the time” I have heard, witnessed or experienced.

1. Taking creative liberties with the medical records while trying to defend a medical board complaint. *Epilogue:* Once the chart is complete, do not make ANY changes unless they are time and date stamped.
2. Being uncooperative (or lying) to the medical board in the hope that they “go away.” *Epilogue:* Medical boards don’t “go away”; they are like a pit bull on a poodle.
3. Believing that transferring your assets to your spouse (or children) will protect the assets. *Epilogue:* An improper conveyance will be struck down by the courts. In addition, I know of at least one case where, after the transfer of assets, the spouse filed for divorce.



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4. Accepting boilerplate contract language in an employment agreement and not negotiating with your prospective employer. *Epilogue:* Always negotiate; the first contract (offer) is never the best.
5. Not having a truly independent attorney represent your interests during a recapitalization event with a private equity (PE) group. *Epilogue:* PE groups do this for a living. Do not get burned by blindly believing what they verbally represent.
6. Prescribing controlled substances to yourself or members of your immediate family. *Epilogue:* Prohibited in all states and generally a very bad idea.

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You have a small window of time
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medical records.*

7. Sending home a patient with unexplained abnormal vital signs. *Epilogue:* The most common reason I have seen for a medical misadventure.
8. Not having a fair governance agreement negotiated before partnering or joining a group or having a mechanism for dispute resolution. *Epilogue:* The time to negotiate these is BEFORE the dispute.
9. Not negotiating who is responsible for paying for “tail coverage” or allowing your medical malpractice coverage to have gaps. *Epilogue:* Having to cover your own extended reporting endorsement (tail coverage) significantly restricts your freedom to change jobs.
10. Not taking a restrictive covenant seriously. *Epilogue:* Unless unduly restrictive, most are enforceable. Take them seriously.
11. Signing a contract with a one-sided termination provision

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where the employer can terminate you "at will." *Epilogue:* Negotiate some recourse whether it is rights upon termination or mirror language.

12. Going in blind to an interview and not conducting your own due diligence prior to an interview. *Epilogue:* Knowledge is power. Do your homework before the interview.
13. Ignoring HIPAA privacy rules and thinking that an enforcement action would never happen to you. *Epilogue:* HIPAA actions are becoming more prevalent.
14. Unnecessarily delaying or refusing to give patients a copy of their medical records. *Epilogue:* Patients own their records. You have a small window of time to provide them with their medical records.
15. Believing the word "enhanced" actually means "better." *Epilogue:* Enough said...
16. Releasing medical results over the phone without first ensuring some method of security clearance. *Epilogue:* I have had employers call up demanding to know the results of their employee's non-work-related encounter. Don't fall for it.
17. Not alerting patients to mistakes made during their care or not following up on abnormal test results. *Epilogue:* Mistakes happen. Identify, disclose, make it right, move on.
18. Upcoding of Evaluation and Management patient visit codes. *Epilogue:* Ensure that your treatment AND documentation supports the code.
19. Not properly adjudicating credit balances by keeping them on your books and not returning the money to payors. *Epilogue:* You need to address credit balances. If the insurer or patient is not owed the money, the State will claim it.
20. Releasing confidential protected information without an authorization from the patient or surrogate. *Epilogue:* Releasing protected information to the wrong party is bad on every level.
21. Terminating an employee without evaluating or considering whether or not the employee falls under a protected status. *Epilogue:* Be aware of what constitutes a "protected class" of individuals.
22. Letting panic govern your actions when responding to an audit or request for records. *Epilogue:* Take a deep breath and evaluate. Panic NEVER does anyone any good.
23. Operating without following your compliance plan or not having one. *Epilogue:* If you have one— follow it. If you don't—develop one.

24. Blaming other providers during a malpractice deposition or trial. *Epilogue:* Medical malpractice plaintiff attorneys love this!
25. Not hiring seasoned consultants in order to save money. *Epilogue:* Hire people who have already made all the mistakes you will make if you don't hire them.
26. Signing broad indemnification commitments with health plans or health systems. *Epilogue:* Don't get stuck holding the bag; misery loves company!
27. Discharging an intoxicated patient with altered mental status knowing he/she is going to drive. *Epilogue:* You, too, will be held responsible.
28. Believing that a handshake somehow trumps a written contract. *Epilogue:* Contracts are only as good as the people signing them. That said, get it in writing.
29. Going in front of the medical board unrepresented. *Epilogue:* Your medical license cost you a lot of money and time. Protect it like it is the most valuable possession because other than your health and your family, it is.
30. Contacting the plaintiff after the initiation of a medical malpractice complaint. *Epilogue:* After the suit is filed, it is "game on." Do not talk to the former patient/ current plaintiff.

Hire people who have already made all the mistakes you will make if you don't hire them.

31. Failing to negotiate a severance agreement and an indemnification provision with an employer. *Epilogue:* The time to negotiate these is BEFORE they are needed. Once the bird hits the windshield it is too late.
32. Discharging a patient with the worst headache of his/her life without a complete workup. *Epilogue:* Check the nursing notes to make sure no one else was given that history by the patient.
33. Cardioverting someone while standing in water. *Epilogue:* I used to have straight hair.
34. Not terminating or transferring an employee and hoping his/her performance will improve or conduct will change. *Epilogue:* A rotten apple never gets better tasting.
35. Disciplining an employee before conducting a thorough investigation. *Epilogue:* There are always two sides and everyone deserves their "day in court" prior to being judged.
36. Discharging a patient you thought was only attention-seeking with suicidal ideation, covered with gasoline, who happens to smoke a pack a day. *Epilogue:* It ended as badly as you are imagining.
37. Becoming argumentative or defensive during a deposi-

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tion. *Epilogue:* You are being judged by the opposing counsel as to how fit you are to stand trial. Prepare, stay calm, and be honest and professional.

38. Going into a deposition or trial unprepared, under-dressed or arrogant. *Epilogue:* Again, you are being judged.
 39. Making a job offer before a pre-employment screening, (drug screen and background check) is completed. *Epilogue:* Wait for the data. A lot of seemingly normal applicants have checkered pasts—knowledge is power.
 40. Believing that the interests of your medical malpractice carrier and yours are always aligned. *Epilogue:* Keep your eyes open. Sometimes interests diverge.
 41. Forgetting to notify your state licensing board of a change of address, a DUI, a payment made on your behalf by a malpractice carrier (in some states), or a felony conviction. *Epilogue:* Self-disclosure and following your state's medical practice guidelines are crucial. Ignorance is not an excuse.
 42. Not retaining or destroying medical records. *Epilogue:* Keep paper or electronic copies. They may be the only defense you have.
 43. Failing to report adverse peer review actions on applications for credentialing. *Epilogue:* Don't forget to disclose your previous misadventures.
 44. Using the medical record to air complaints against nurses or other physicians. *Epilogue:* Medical malpractice attorneys love this!
 45. Not getting personal legal counsel if the malpractice claim or verdict could exceed policy limits. *Epilogue:* This is one instance in which your interests could diverge from your malpractice carrier.
 46. Not timely consulting specialists when a higher level of care is necessary. *Epilogue:* Don't try to be a hero. When there is more to do and more to know, get some help.
- Please tear this column out and hang it on your mirror to remind yourself of what not to do. ■

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