
LITIGATION SUPPORT

MAINTAINING YOUR BALANCE



PATIENT SAFETY & RISK SOLUTIONS

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OVERVIEW

Welcome to *Maintaining Your Balance*! This booklet is intended for MedPro Group (“MedPro”) insureds who currently are facing legal actions. As an insured, you are entitled to the very best preventive and defense services that we can provide. *Maintaining Your Balance* is just one small component of these services. We hope that this information will help address many of your questions and concerns and make it easier for you to understand and participate in the defense process.¹

Depending on the circumstances, you might be the person most knowledgeable about the pending legal action, and you face two important challenges. First, you must be able to address and manage your emotions during what will likely be a stressful time. Second, you must be able to function as an essential member of your defense team, as it might be difficult to mount an outstanding defense without your active and willing participation.

Maintaining Your Balance provides an overview of these important challenges and offers ideas, resources, and tips to make you better informed and hopefully alleviate some of the stress involved in litigation.

Please remember, however, that this booklet is for informational purposes only. Every attempt has been made to ensure that the content is accurate and relevant. However, it is possible that the circumstances of your case may require a different approach, which your defense team will determine.

If anything you learn while reading this booklet contradicts the information or advice you’ve received from your MedPro claims manager or your assigned defense attorney, please clarify the discrepancies with these experts.

MedPro is committed to helping you resolve your legal dispute in a manner that is satisfactory to you, so that you will once again be able to direct your full attention to the care of your patients.



Five Steps to Take in the Face of Legal Action

1. Immediately notify your professional liability insurance company.
2. Secure all patient records related to the case. Do not produce the records for inspection or photocopying except as indicated by your professional liability company.
3. Keep patient records related to the case wholly intact, and ensure that no one makes any additional entries, corrections, or deletions to the records.
4. Do not create notes or narratives describing the event, unless instructed by and under the direct supervision of your defense counsel.
5. Do not discuss the case with anyone other than your professional liability company’s representatives and your defense counsel.

¹ The word “you” throughout this booklet refers to an insured of MedPro, whether you are individually listed as an insured on a policy or you are an employee of a healthcare entity that MedPro insures.

THE EMOTIONAL IMPACT OF LITIGATION

If you are involved in a healthcare malpractice lawsuit, you might experience emotions that are similar to the grief associated with a significant personal loss. These emotions may include denial, anger, bargaining, depression, and — finally — acceptance.

The negative emotions, stress, and anxiety that can surface during healthcare malpractice litigation might cause emotional and even physical harm. MedPro's long-standing experience with these matters shows that they should be taken seriously — from both a personal and a litigation defense perspective.

Over the years, MedPro claims experts have reported numerous examples of healthcare professionals who have become immobilized by negative feelings related to a healthcare malpractice action. These feelings can have a significant impact on you both personally and professionally, and they may affect your relationships with your spouse, children, friends, and colleagues.

Further, the stress of litigation might threaten your ability to serve as an effective member of your defense team. In an attempt to "block out" the whole process, you might jeopardize your case by failing to participate in the defense process, or even failing to report the claim completely. This can make it difficult for your attorney to mount a strong defense. Additionally, a lack of understanding and uncertainty about the litigation process might increase your apprehension.



Because of this emotional toll, maintaining your perspective is important. Try to identify your emotional responses, and don't ignore symptoms of stress or depression. Avoid taking on major new responsibilities that might cut into the time you need to invest in yourself and in the defense of your case.



"The stress of litigation might threaten your ability to serve as an effective member of your defense team."

Your defense team also can provide emotional support. As experienced professionals, they will educate you, work to alleviate your fears, and help you become a better partner in your defense. Although you are not an expert in the law, your defense team has both the knowledge and experience to help you get through the pending legal action. Your MedPro claims manager is knowledgeable and committed to protecting your rights, reputation, and assets, and your attorney is experienced and dedicated to building a sound defense.

Just as effective communication among healthcare teams improves the likelihood of better quality care, the odds of a successful defense improve drastically when you and your defense team work together. Additionally, once you have a clearer understanding of the defense process — and your important role within it — you may find that some of your stress is alleviated.

You also might find it reassuring to know that MedPro is successful in most of the lawsuits it defends. The success rate percentages vary by professional specialty and locale; however, on average, no payment is made on the majority of lawsuits filed against MedPro insureds.

Finally, try to keep the big picture in mind. Win or lose, a lawsuit can be contentious and stressful. Yet even the majority of healthcare professionals who lose in court are nonetheless able to continue their professions and may even find that the experience helped them improve their practice.

▶ Seeking Help

If you are struggling with your emotions as a result of malpractice litigation, consider looking for resources that can help you cope. Some state medical societies, communities, and professional groups have litigation support programs.

If you aren't certain whether a litigation support program or group is available in your area, don't be afraid to ask outside the boundaries of your own profession. A local hospital, professional society, or counseling practice may provide the help you need. Medical staff leaders at most hospitals should be able to provide resources for stress counseling within your community.

Additionally, the Physician Litigation Stress Resource Center offers a variety of online information and resources about handling the stress of malpractice litigation. For more information, visit <http://physicianlitigationstress.org/>.

STRESS QUESTIONNAIRE

Take a couple of minutes to respond to the statements below. Your responses can be a useful indicator of behavior changes that show you are having a difficult time and might benefit from seeking help and support.

	Yes	No
<i>Personal Health</i>		
Since becoming involved with this lawsuit, I am having a great deal of difficulty sleeping at night. Or, even though I am sleeping at night, I am physically exhausted all the time.	<input type="checkbox"/>	<input type="checkbox"/>
My exercise habits have deteriorated or stopped completely.	<input type="checkbox"/>	<input type="checkbox"/>
My eating habits have deteriorated. I have lost my appetite, or I am using food as an emotional crutch.	<input type="checkbox"/>	<input type="checkbox"/>
I am using tobacco, alcohol, and/or drugs as an emotional crutch.	<input type="checkbox"/>	<input type="checkbox"/>
I have thought about committing suicide.	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
<i>Time Management</i>		
I am unable to stay on task. I am frequently late. I forget appointments.	<input type="checkbox"/>	<input type="checkbox"/>
I have made more commitments than I can meet. I am missing deadlines.	<input type="checkbox"/>	<input type="checkbox"/>
I am taking too long to perform certain activities out of fear that I will make a mistake.	<input type="checkbox"/>	<input type="checkbox"/>
<i>Professional Standing</i>		
I feel that my colleagues have lost trust in me.	<input type="checkbox"/>	<input type="checkbox"/>
I constantly second-guess my decisions. I am terrified that I will make a mistake.	<input type="checkbox"/>	<input type="checkbox"/>
I am delegating my work to others or giving tasks to my colleagues so that I won't have to do them.	<input type="checkbox"/>	<input type="checkbox"/>
I am having trouble concentrating and am forgetting commitments; this includes work I should be doing to help with my lawsuit.	<input type="checkbox"/>	<input type="checkbox"/>
I used to love my work, but now I wish I could do something else.	<input type="checkbox"/>	<input type="checkbox"/>
<i>Relationships</i>		
I have not told my spouse/significant other or colleagues at work about the lawsuit.	<input type="checkbox"/>	<input type="checkbox"/>
I am avoiding professional interactions, e.g., taking consults.	<input type="checkbox"/>	<input type="checkbox"/>
I am avoiding social interactions that used to give me pleasure.	<input type="checkbox"/>	<input type="checkbox"/>
I am uncharacteristically short-tempered or critical.	<input type="checkbox"/>	<input type="checkbox"/>
I feel ashamed and embarrassed around others.	<input type="checkbox"/>	<input type="checkbox"/>
I now see every patient as a potential plaintiff.	<input type="checkbox"/>	<input type="checkbox"/>

UNDERSTANDING THE LEGAL PROCESS

This section of *Maintaining Your Balance* provides a broad overview of the litigation process. The purpose of this information is to explain the components of a lawsuit and help you understand the various deadlines that must be met and your contributions to each phase of preparation.

DUE PROCESS AND NEGLIGENCE

The U.S. Constitution requires due process of the law and affirms the rights of citizens to access the courts to resolve grievances. The process is designed to protect both parties; as a result, each side gets to present its case to the court. This guarantees that evidence supporting the healthcare provider will be presented and considered.

Healthcare malpractice is a form of professional negligence, which consists of four elements:

1. **Duty:** Did you establish a professional relationship with the patient?
2. **Breach of duty:** Did you violate the standard of care?
3. **Causation:** Did your actions, or failure to act, cause an injury?
4. **Damages:** Were there damages as a result of the injury?

The plaintiff must prove that all four of these elements exist. If any one of the four elements is not proven, the plaintiff's case generally will fail. Requirements for determining the existence of negligence vary from state to state. Therefore, if you have questions or concerns about the elements of negligence as

they may apply to your state, be sure to discuss them with your defense counsel.

Duty

While preparing the defense of your case, your attorney will inquire about the scope of your professional relationship with the patient. This information will be presented during trial to determine whether you had a professional relationship with the patient and, therefore, a duty to care for the patient.



If a professional relationship did not exist, the court may rule in your favor and dismiss the case with prejudice, meaning that the case is complete and cannot be brought against you again.

Breach of Duty

If duty is established through evidence of a provider-patient relationship, the next question is whether you provided care within generally accepted standards. These standards of care are flexible enough to allow for clinical differences of opinion and are generally proven through expert testimony.

If the care provided fell outside accepted standards, then the patient or his or her representative (now the plaintiff) will allege that a breach of duty occurred. In contrast, if the jury is convinced that the care provided was within accepted standards, even if the clinical outcome was poor, then the verdict will most likely be in favor of the defendant.

Causation

The question of causation will be considered only after duty and breach of duty have been established. Causation determines whether the breach of the standard of care caused the injury. Thus, even if an error was made, and that error was below the standard of care, the plaintiff must still prove that the error caused the injury. Consider the examples below:

- **Example 1:** A lawsuit alleges that a doctor failed to diagnose cancer and a patient died as a result. Damages generally will not be awarded unless the court determines that a timely diagnosis would have given the patient a chance of recovery.
- **Example 2:** A lawsuit alleges that a nurse failed to promptly respond to a patient's deteriorating condition, and shortly thereafter the patient died. Damages generally will not be awarded unless the court determines that a timely response would have given the patient a chance of recovery.

In each case described above, if it can be shown that the patient's condition was terminal at the point at which the practitioner's failure occurred, and that the failure did not cause the patient's death, then the defendant will likely prevail.

Damages

Plaintiffs must also prove damages in a healthcare malpractice case. When a plaintiff files a malpractice lawsuit, a claim will be made for damages. If no proof of damages exists, the plaintiff may not succeed in his or her claim. For example, a lawsuit alleges that a hospital staff member gave an incorrect

dosage of medication to a patient. The error went unnoticed until well after the patient had taken the medication, but caused no harm to the patient. As a result, there are no damages, and the plaintiff will likely be unable to sustain a claim.

Damages can fall within several different categories, including economic, noneconomic, and punitive.

Economic Damages

In cases involving economic damages, the plaintiff might request compensation for out-of-pocket expenses, such as lost wages, a loss of promotion, or medical bills. If the patient has died, his or her representatives will make the request for damages, which will be based on loss of income that may have a negative effect on the patient's heirs.

Requests for compensation for economic damages are based on the circumstances of the case and might involve a higher dollar amount if the patient had a young family, a high income, or significant leadership

responsibilities (e.g., was the president of a small company whose employees relied on the individual for their jobs).

Financial experts might be asked to testify about the extent of economic loss in a lawsuit involving economic damages.

Noneconomic Damages

The second type of damages sought in healthcare malpractice cases are noneconomic damages — most often described as pain and suffering. Examples of noneconomic damages



include loss of independence, loss of companionship, ongoing pain, or physical limitations as the result of a healthcare-related injury.

Punitive Damages

In some states, under specific conditions, courts might award punitive damages in healthcare malpractice cases. This happens when the defendant’s actions are found to be so far outside the scope of acceptable ethical or clinical practice that the court or the jury demands additional financial penalties.

For example, the defendant lied about the care or treatment provided to the patient, altered the medical record to hide an error or omission, was proven to have been under the influence of drugs or alcohol during treatment of the patient, threatened other members of the healthcare team to suppress information, or purposely destroyed evidence.

Professional liability insurance may not cover punitive damages. As a result, an award of such damages can prove financially devastating for the defendant.

Types of Damages		
Economic	Noneconomic	Punitive
Lost wages	Pain and suffering	Egregious behavior of the healthcare provider
Additional medical or dental bills	Loss of companionship	Depending on state, may be awarded by judge or jury
Failure to obtain a promotion/loss of a job	Loss of consortium	May not be covered by professional liability insurance

INFORMATION GATHERING

Once a lawsuit has been filed against you or your healthcare entity — and you or the appropriate person at your entity has notified MedPro — an attorney will be assigned to your case.

Your defense counsel will spend significant time investigating the facts of the claim and the relative healthcare treatment provided. He or she also will obtain complete copies of the patient’s records, both clinical and billing.

As part of the information-gathering process, your attorney will ask questions, such as:

- What actually happened?
- Who was present?
- What was the chain of events?
- What kind of documentation exists?
- Where are the various documents related to the case?
- Who are the experts in this particular area of practice?

- What does the professional literature say about this type of case?
- Is the standard of care for this type of case in transition?

Providing your attorney with detailed answers to these questions and many others is imperative to helping the defense team assemble a clear picture of the case and your role in the patient's care. At some point, your attorney also may want your objectively written narrative of the case. **DO NOT** write this narrative unless your defense counsels instructs you to do so.

DISCUSSIONS ABOUT SETTLEMENT OF A CASE

Your attorney will be sensitive to your wishes about settling the case. However, your wishes must be balanced against the evidence, which may or may not support your contentions. In some circumstances, if the evidence appears to be stacked against you, settlement might be your best option.

If your entity is named in a lawsuit as a result of your actions or inactions, your entity's risk manager and administrative team will work with the defense attorney regarding disposition of the case. However, your cooperation in the investigation of the case will still be a critical component in discussions about case resolution.

Most professional liability insurance policies contain a provision that sets forth an insured's right to consent to the settlement of a claim. However, some states simply don't allow the defendant the right to consent to settle a claim. Discuss this matter with your attorney, as your input might make a difference in the approach to defending the lawsuit, and you need to be aware of this requirement if you work in one of these states.

Additionally, certain policies give the right to consent to the first named insured, such as a corporation or entity, rather than an individual.

If an entity is included in your lawsuit, and is covered under the same policy, discuss the coverage and resolution details with your attorney.

Other provisions in your professional liability insurance policy also might affect your right to consent to settle a claim, such as (a) a requirement for binding arbitration if an insured and an insurance carrier disagree about whether to settle a claim, (b) a requirement that a board of peers will determine

whether to settle a claim if an insured and an insurance carrier disagree about settling, and/or (c) a "hammer

clause" that allows an insurance carrier to hold an insured who refuses to consent to settle personally responsible for any verdict or settlement that exceeds the amount the insurance carrier would have originally paid to settle the claim.

Read your policy closely to understand its provisions in the event of a claim.

AN INTRODUCTION TO THE DEPOSITION PROCESS

One reason that your defense attorney will quickly gather information is to prepare for upcoming depositions. Generally speaking, a deposition is one of the most important means for the parties involved in the case to gather information through obtaining sworn testimony of the parties and witnesses.



There are several types of depositions. The type that you will most likely be asked to participate in is called a party deposition, meaning that the parties to a healthcare malpractice lawsuit will be interviewed under oath. If you are a defendant in a malpractice lawsuit, your deposition almost certainly will be taken.



“A deposition is one of the most important means for the parties involved in the case to gather information . . .”

The testimony sought during your deposition is typically limited to information regarding your experience, education, and treatment of, or interactions with, the patient. However, the plaintiff’s attorney might attempt to expand the scope of questioning. Your attorney often will object to these questions, so pause after each question to give your attorney time to raise appropriate objections.

Your deposition will give the plaintiff’s attorney an opportunity to assess your credibility as a witness and uncover the defenses to the case. The plaintiff’s attorney may attempt to limit the effectiveness of your opinions and identify any inaccuracies or contradictions in your statements, statements of others, or the medical records.

Be aware that anything you say during a deposition can be used at trial to impeach your credibility, so it is of utmost importance to thoroughly prepare and follow your defense team’s guidance.

You should consider your answers carefully and provide brief, concise responses. Refrain from speculation, and, if you don’t understand a question, ask for clarification.

In most states, depositions are videotaped and played to the jury at the time of trial. This makes your attire and demeanor at the deposition very important. Both should be consistent with your behavior and demeanor at trial. Portraying a different personality or type of behavior at trial could damage the jury’s perception of your credibility.

Additionally, understanding the parameters your defense team will establish is critically important for your own protection. Not following these instructions from your defense team may damage your chances of prevailing at trial. Potential parameters might include the following:

- Don’t write down any notes, recollections, or responses to the case without specific directions from your defense team members. Failure to follow their guidance may force your team to share confidential information with the plaintiff.
- Don’t — under any circumstances — alter, correct, delete, or make additional or explanatory comments in the patient’s medical record or in any other document or file related to the case without specific instructions from your defense team.
- Don’t have conversations of any kind with the patient (i.e., the plaintiff) or with the patient’s family or other representatives unless you first speak with your attorney.
- Don’t discuss the details of the case with anyone other than your defense team. You can be compelled — and so can others — to relate the substance of these conversations, which may be harmful to your defense.



- If, for some reason, the patient or patient's family members plan to continue a professional relationship with you, discuss the matter with your defense counsel, your MedPro patient safety and risk consultant, and/or your MedPro claims manager.

PREPARATION FOR DEPOSITION AND TRIAL

Adequate preparation is the most important element in giving a successful deposition. Several elements should be included in your planning and preparation schedule. Remember that many of the following suggestions can also be applied to your preparation for a trial:

- Review pertinent materials. You should be familiar with all aspects of the treatment or care you rendered to the patient. This familiarity includes a thorough review of the billing records as well as the complete clinical record. Prior to your deposition, you should also review other written materials relevant to your involvement in the case (including answers to interrogatories).
- Plan a predeposition conference with your attorney. Preferably, this meeting should occur several days to a week before the deposition to allow time for questions and review of materials. If you and your attorney discover that additional preparation is necessary, you'll have sufficient time to schedule an extra meeting. After the initial preparation, you will likely think of additional questions and concerns. Raise these issues with your attorney before the deposition.
- Ask your attorney to explain the general theme of the plaintiff's case as well as any themes being used to defend you or your entity. Remember these themes as you answer questions during the deposition.
- Ask your attorney to schedule a practice deposition during which he or she can ask you questions relative to the critical areas of your case. The more you practice and prepare, the more relaxed and comfortable you will likely be in your responses.
- Dress in business attire for your deposition, especially if the deposition will be videotaped. You should wear the same kind of attire for trial.
- Consider your overall demeanor and how a judge and jury might interpret it. Try to look alert, respectful, and cooperative. Being argumentative, sarcastic, condescending, or confrontational with the plaintiff's counsel is not beneficial to your defense.
- Don't delay preparing for the deposition. The opposing counsel may easily recognize lack of preparation and capitalize on the opportunity to confuse you or make you appear untruthful or incompetent.
- Be discreet in your interactions with your defense team. Others might be aware of your attitude and body language. If you need to speak to your defense team, request a private moment. If at all possible, avoid writing notes, but if you must, make sure that they are destroyed.

POSTDEPOSITION EVALUATION

At the conclusion of the deposition, ask your attorney for a truthful impression of how you performed and how you can improve for trial.

If your attorney does not immediately make time for a postdeposition discussion, be sure to follow up and request this important feedback. If the deposition is videotaped, watch the tape carefully.

CORRECTIONS TO YOUR TESTIMONY

When the deposition is over and the transcript is available, you will be given an opportunity to review all of your testimony and make changes.

Although you have the right to change your testimony in any way you wish, it is rarely

productive to make substantial changes to your answers. Discuss any proposed changes in your testimony with your attorney.

Any changes you make in your deposition testimony will likely be read to the jury at trial. Substantial or self-serving changes could have an adverse effect on your credibility with the jury.



NATIONAL PRACTITIONER DATA BANK

BACKGROUND

The National Practitioner Data Bank (NPDB) is an electronic repository that Congress established to (a) facilitate peer review within the healthcare professions, and (b) prevent the undetected movement of incompetent healthcare professionals from state to state. The NPDB accomplishes these goals through retention of information about healthcare malpractice claims, privileging actions, and other disciplinary rulings.

ELIGIBLE ENTITIES

The NPDB allows eligible entities that have querying requirements to review healthcare professionals' stored data. These organizations are expected to seek various types of information (including reports from the NPDB) and take such information into account when granting clinical privileges, extending employment offers, considering affiliations, or deliberating on licensure actions.

Eligible entities must meet specific reporting and querying requirements. Further, to access information, each entity must certify its eligibility to the NPDB. Entities that are allowed to access NPDB information (within guidelines established by Congress) include:

- Agencies or companies that contract with the government to administer federally funded healthcare programs
- Quality improvement organizations
- Law enforcement agencies, including federal entities such as the U.S. Comptroller General and the U.S. Attorney General
- State agencies charged with administering state-funded healthcare programs
- State agencies that manage licensing and certification of healthcare professionals
- State authorities that investigate Medicare fraud
- Healthcare practitioners, for information about themselves
- Hospitals and healthcare systems
- Professional associations that engage in formal peer review processes

Approved entities might also have access to research consisting of statistical data. Additionally, plaintiffs' attorneys are allowed to access NPDB information under limited circumstances. This access typically is associated with Healthcare Quality Improvement Act (HCQIA) investigations of peer review activities.

NPDB information is considered an important supplement to a comprehensive review of a practitioner's professional credentials. However, it does not replace traditional credentialing activities.

REPORTING OBLIGATIONS AND REPORTABLE EVENTS INFORMATION

Many of the same entities mentioned previously are required to report information to the data bank. Such information includes:

- Healthcare malpractice payments
- Adverse actions related to clinical privileges (for a period of more than 30 days)

- Adverse actions related to professional memberships
- Denial of an application for privileges or for renewal of privileges
- Withdrawal of an application for privileges or for renewal of privileges — for example, while under investigation for possible professional incompetence or improper professional conduct — or in return for not conducting such an investigation or taking a professional review action
- Summary suspension — for example, an action taken in response to a perceived emergency situation
- Voluntary surrender, limitation, or restriction of a license, excluding those due to nonpayment of licensure renewal fees, retirement, or transitions to inactive status
- Administrative fines or citations that are related to the delivery of healthcare, which might occur along with other licensure or certification actions and can be obtained in publicly available records

CONFIDENTIALITY OF NPDB INFORMATION

Many healthcare professionals view the NPDB with mixed feelings. Although the public needs protection from incompetent or unethical practitioners, healthcare professionals may have concerns about the effect that an NPDB report could have on their professional standing — as well as the security and accuracy of such information.

To the extent possible, the NPDB limits use of the information it stores to those who need it to protect the quality of healthcare. The NPDB may not disclose information about individual practitioners to professional liability insurance companies, attorneys, or the general public.

Although this rule has a few exceptions, all parties who are authorized to query the NPDB are required to maintain confidentiality of the information they obtain.

However, the confidentiality provisions do not prohibit an eligible entity that has received information from disclosing the information to others who are part of the peer review process, as long as the information is used for the purpose for which it was provided.

INDIVIDUAL INQUIRIES

Practitioners are allowed to review personal information contained in the NPDB at any time (a fee may apply). This process is called “self-query.” Information about the self-query process can be found at www.npdb.hrsa.gov/pract/selfQueryBasics.jsp.

REQUESTS FOR CORRECTION

The NPDB’s reporting process requires the entity responsible for submitting information to provide notice to the subject of the report. Both parties should review the report for accuracy; however, reporting entities are responsible for the accuracy of information they report to the NPDB. Further, the NPDB cannot edit information contained in a report.

From time to time, a healthcare professional conducting a self-query may determine that some of the information included in his or her data bank file is incorrect. Although subjects may not submit changes to reports, they should request that the reporting entity file a correction to the information.

If the subject and the reporting entity cannot resolve the issue in dispute, an additional process allows the matter to be reviewed with the Secretary of Health and Human Services for a final ruling.

GETTING ON WITH YOUR LIFE

Admittedly, a legal action is unpleasant. But sometimes, unpleasant events reveal opportunities for personal and professional growth. Once the legalities are over — regardless of whether the outcome was in your favor — you may find it beneficial to reflect on the experience.

Some of the information you learned throughout the legal process may fall into the category of sound risk management, and hopefully it will prove useful to you over time. When the dust has settled, consider the questions listed in this section.



“Once the legalities are over — regardless of whether the outcome was in your favor — you may find it beneficial to reflect on the experience.”

CLINICAL ASSESSMENT

- If you had it to do over again, would you probably make the same clinical decisions? If the answer is no, what would you do differently?
- Regardless of the outcome of your legal action, are you comfortable about being involved in the same kind of clinical scenario again in the future?
- If you are uncomfortable, is your reason based on lack of confidence in your clinical skills or fear of litigation? If so, what should you do about it?
- Should you or your healthcare entity make any policy or process changes as a result of this experience?

COMMUNICATION ASSESSMENT

- Do you believe that your interactions with the patient/patient’s family were as effective as you would have wanted them to be?
- Given the opportunity, how would you advise a colleague to approach the same situation?
- Do you believe that your documentation of the care provided to the patient helped or hindered your defense?
- Should you or your healthcare entity make any changes in documentation requirements as a result of this experience?
- Can you find positive elements in your interactions with patients, staff, and colleagues that will make you an even more effective communicator in the future?
- Because of your experience, will you be better able to support a colleague or team member in a similar situation?
- Did you ask your defense team members if they believed you were an effective witness on your own behalf? Their candid responses might give you a better picture of how you are perceived by others.

PERSONAL ASSESSMENT

- If this was a divisive experience, what steps might you take to address the problem?
- Are you capable of interacting with patients in the future, without seeing them as potential plaintiffs?

- If you are experiencing negative feelings about patient interactions, what are some beneficial ways in which you could go about addressing these feelings?
- If you lost your case, did elements of your personal communication style undermine your defense? How can you effectively keep this from becoming a problem for you again in the future?

FINAL THOUGHT

You might find it difficult to identify positive aspects of litigation. The process can cause many negative and stressful emotions. However, it also may help you find opportunities to improve yourself as a person and as a healthcare professional, which will make you stronger and more capable of moving forward.



COMMONLY USED LEGAL TERMS IN HEALTHCARE MALPRACTICE LITIGATION

The following glossary provides layman's definitions for some of the legal terms most commonly used in healthcare malpractice litigation. Although the terms may not have been used herein, they are important for you to understand and be familiar with during the process of your claim. This glossary is neither comprehensive nor detailed; rather, its purpose is to provide you with an introductory reference.

Allegations: Statements or claims made in a complaint asserting the legal and factual nature or cause of the harm to the patient as caused by the healthcare provider. Example: A plaintiff may allege that a doctor failed to refer the patient to a specialist or failed to obtain the patient's informed consent.

Alternative dispute resolution: A procedure for settling disputes by means other than litigation, such as arbitration or mediation.

Arbitration: A type of alternative dispute resolution in which a neutral third party renders a decision, which may be binding or nonbinding depending on the state, following a hearing at which disputing parties are heard.

Breach of duty: Failure to properly fulfill an obligation (duty) owed to another under the law.

Causation: The act by which an effect is produced. Example: A plaintiff might allege that a practitioner caused an injury by lacerating a patient's common bile duct.

Codefendant/s: Individuals or entities named by the plaintiff or another defendant as parties to the same legal action and alleged to be at fault for an injury in some way (as opposed to multiple, separate lawsuits that might be related to the same disputed occurrence).

Complaint: Initial legal document usually filed with a court to formally commence a lawsuit and to state the allegations.

Damages: The value placed upon the injuries sustained by the patient or his/her family, including both economic and noneconomic damages. Economic damages include compensation for lost wages, medical bills, etc. Noneconomic damages might include compensation for pain and suffering, mental anguish, or loss of consortium.

Defendant: Person (the healthcare professional) or entity (the healthcare corporation) being sued.

Demand: Dollar amount proposed by the plaintiff to resolve a claim.

Deposition: The oral testimony of a witness taken under oath.

Discovery: The process of gathering information to determine the facts of the lawsuit. The discovery process usually includes written discovery — including interrogatories, requests for production of documents, and requests for admission — as well as the taking of depositions.

Dismissal: A voluntary or involuntary order or judgment that disposes of an action, suit, motion, etc., sometimes without trial of the issues involved.

Due process of law: Legal proceedings that abide by rules and principles designed to ensure that all parties are treated fairly, e.g., being given adequate notice and the opportunity to be heard.

Duty: A legal, contractual, or ethical obligation to others that has been formalized as a legal standard by either rulings from the courts, laws enacted by legislatures, or the usual and customary practices of a profession or commercial enterprise.

Independent medical examination (IME): A medical examination performed by a healthcare provider who is not otherwise involved in the patient's care. The purpose of an IME is to provide an expert opinion on the medical issues presented in the lawsuit.

Interrogatories: Written questions submitted by one party to another party of a lawsuit. Answers usually are given under oath.

Judgment: The official decision of the court on the claims of a lawsuit.

Jurisdiction: The legal power and authority of a court to hear and decide a case.

Lawsuit: A legal action in a court.

Mediation: A type of alternative dispute resolution that is private, informal, and typically nonbinding. The parties agree upon a neutral third party (the mediator) and then meet with the mediator to attempt to negotiate a settlement. Any decisions or recommendations made by the mediator are not binding on either party.

Negligence: The failure to use such care as a reasonably prudent and careful person would use under the same or similar circumstances.

Plaintiff: The person who initiates a lawsuit. In a healthcare malpractice lawsuit, the plaintiff may be the patient or his/her family, authorized representative, heirs, or estate.

Pleadings: Legal documents filed with the court in a lawsuit that outline formal allegations, defenses, and claims presented by both parties to a lawsuit for identifying the materials and actions to be taken during trial.

Questions — open-ended: A question that does not offer any suggested answer to the question.

Questions — leading: A question that suggests the answer desired by the questioner, often asking for a yes or no answer. Generally, this type of question is not permissible on direct examination of a witness.

Request for admission: Written statements of facts concerning the case, which are submitted to an adverse party during the discovery process and are required to be admitted or denied by that party; if admitted, the facts in the requests for admissions are proven in court by entering the admissions into evidence.

Request for production: A process by which one party in a lawsuit requests that another party in the lawsuit produce copies of specific documents. Example: A plaintiff requests that a defendant doctor provide copies of a patient's medical record.

Rules of civil procedure: Rules that regulate the practice and procedure before a court.

Settlement: Any resolution to a dispute in which the parties agree that one or both of the parties accommodate the other in some way, which would generally consist of a financial payment in a civil court. Settlement agreements are almost always reduced to writing, signed by the parties, and are enforceable by the court. Settlements may involve confidentiality restrictions.

Statement of fact: A legal document that presents factual information without including an argument.

Statute of limitations: A law setting the maximum time period in which a lawsuit can be brought forth for any given act that caused a loss or injury.

Subpoena: A command to appear at a certain time and place to give testimony regarding a specific matter.

Subpoena *duces tecum*: A court process, initiated by a party of a lawsuit, compelling the production of certain documents and other items relevant to the lawsuit. This type of subpoena usually is served on a person or entity that is not a party to the suit.

Tort: A breach of a civil duty owed to another.

Venue: The specific geographic location in which a court with jurisdiction may hear and determine a case.

This document should not be construed as medical or legal advice. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

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