



What to Do When You Get Named in a Malpractice Suit

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Your front office receptionist informs you that there is a man at the door who says he is a process server, and that he wants you to sign for a registered letter. Your first thought, of course, is to run out the back door of your office or to simply feign a stroke.

Instead, common sense prevails and you sign for the letter informing you that you are a named defendant in a malpractice suit. What do you do?

If your answer is to move all of your assets into your spouse's name, think again.

Many physicians are named in a malpractice suit at least one time in their professional career. Consequently, the odds are against your being able to dodge the bullet forever. However, in the end, only 20% to 40% of malpractice suits filed against physicians end up with a payout to either the plaintiff or their attorney.

You can even improve upon those odds if you follow a few simple steps.

Prior to actually being served, many patients give the physician a "heads up" that their care did not meet their expectations. These "shots over the transom" are a gift. Take time to talk with the patient, address their concerns, and write off a bill if necessary to make them happy.

Clearly, some patients enter the relationship with expectations which are off the chart, and nothing a provider can do will make the patient happy. As mentioned in a previous article, these are the patients that belong in your competitors' clinics. Dismiss them from your practice as soon as practicable.

If, however, you missed the initial signs and symptoms of the "impossible to please" patient, deal with them in the most professional and polite manner possible and then appropriately dismiss them after the course of their illness.

Sharing the Bad News

When should you report patient complaints to your insurer? Clearly, a physician does not need to report every little issue that a patient complains about. If you are unsure, do *not* talk with a colleague, since that conversation may be admissible as evidence.

The safer course of action is to seek the guidance of an experienced medical malpractice attorney. If still in doubt, the default position is to simply report the incident to your carrier. If the patient has taken the time to write you or come in separate from their appointment to discuss their concerns, you should report.

Reporting the potential claims will not increase your malpractice rates. Insurers understand that medicine is a risky business and that not everyone will always have a good outcome. Often times, the insurer along with counsel can mitigate the damages of a bad outcome case if it was reported early enough.

Once you are actually served, ignoring the summons won't make it go away. After you receive a summons, you need to report it to your insurer immediately. In fact, if you have not read your malpractice policy, you should do so now since many policies have very clear guidelines on reporting.

Also, once you have been named, you should not communicate directly with the patient unless they are being seen for a medical condition. *Under no circumstance should you attempt to call or contact the patient regarding the litigation.* There is absolutely no upside to communicating with the patient about their claim.

Another important caveat: Do not in any way alter the medical record. This means do not cross something out, "lose" a page, remove a lab test or a consult, etc. If you must add something to the record, appropriately date and time the addendum. I knew a physician who dictated an outrageously defensive operative report 10 days after the surgery and three days after the patient died as if he had just walked right out of the operating room. He neglected to realize that all dictated notes have a "date dictated" and "date transcribed" annotation at the end of the dictation. Needless to say, he paid dearly for that transgression.



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Aiding in Your Own Defense

Once you report the claim to your insurer, make sure you do your best to assist the claims representative. Your carrier needs your expertise in defending the cause of action. They will need your billing history, medical records, every communication about the patient, and any authoritative references which support your treatment decisions.

Once you are named, you become a member of the defense team along with your claims representative, legal counsel, and expert witnesses. In order for your defense team to work to its optimum level, all members of the team need to be working in concert with the common goal of mitigating your professional and financial damages.

Many providers once named will take the "misery loves company" approach and look for other providers and/or institutions to blame. The result of this is that now someone else will be named and will often point the finger right back at them. Plaintiffs' attorneys love when professionals point fingers at one another. Even if someone else has some responsibility in the patient's outcome, the typical rebuttal is that the other named defendants should have identified the error and intervened on the patient's behalf. When providers engage in finger pointing, the usual end result is that everyone goes down together.

As providers, we pay a significant price for malpractice insurance. Unfortunately, many times we do not take full advantage of the coverage we purchase. Nor do we take the time to read and understand the malpractice policy, its limits, and our responsibilities. Insurers are experts at dealing with malpractice claims, and their resources and expertise should be appropriately utilized when a claim ensues or a potential claim is uncovered.

Finally, medical malpractice insurance is a cost of doing business, as is the trauma of being named in a suit. I have witnessed a few providers who have been emotionally ruined by going through the process. Their reaction took a very large toll on their family, their practice, and their mental health.

If you are named in a malpractice suit, it is not the end of the world; the odds are on your side, and as long as you have done what you believed was in the best interest of the patient, chances are you will be exonerated. ■

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This does several things:

- It establishes that you are finished treating the employee and they can expect them back on the job shortly.
- You can discuss the protocol for return to work and any work restrictions that the employee may have.
- You can establish what is expected for the remainder of the treatment.
- You drive home the fact that your corporate clients are important to your practice and you appreciate their business.

Practices I have worked with in the past have made a lasting impression by offering a few options for "waiting." To better serve your sick patients and occupational medicine clients, as well as those family members who accompany them to your clinic, offer three areas in the waiting room separated by either partition walls or even use separate rooms if you have enough space: 1) waiting room for truly sick patients; 2) waiting room for healthy patients or family members or friends who came with a sick patient; 3) waiting room for your occupational medicine patients (whose clothes often are dirty from the machine shop or whose shoes may be soaked with oil from the shop floor).

In addition, investing \$300 in a television and game system or a computer dedicated to the children's area can make a lasting impression. If you do not have enough space for three distinct waiting areas, make your best effort to segregate the area as much as possible.

There are many ideas that you can implement to de-commoditize your practice. Find out what other practices and facilities are doing to differentiate themselves from the competition. Ask your current patients what it is that makes your practice stand out. Expand on those ideas and cultivate your strengths. However, choose only a few that you know you will do best and stick to those. Track your results by asking patients what they liked best about the office visit.

If you focus on these ideas and concepts, you will begin to see your business expand. Most importantly, you will see the gap between your practice and those you compete with start to widen. ■

TAKE-HOME POINTS

- Most patients judge the quality of care they receive from a customer service perspective.
- Delegate minor tasks to trusted team members.
- Select a "quarterback" to lead your office through daily operations.
- Consider hosting an open house or a series of seminars for the community.
- Personal follow-up calls after a patient visit make a lasting impression. (That goes for corporate clients, too.)