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EXPERTISE

CHOICE

THE MEDPRO GROUP DIFFERENCE

Litigation Support: Maintaining Your Balance



This document does not constitute legal or medical advice and should not be construed as rules or establishing a standard of care. 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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Overview



Coping with an impending or ongoing legal action can present many personal and professional challenges for healthcare providers. MedPro Group (“MedPro”) recognizes the toll that malpractice litigation can take, and our insureds are entitled to the best risk-reduction services and claims expertise we can offer.


Litigation Support: Maintaining Your Balance is intended to supplement these services with clear, concise information to guide you through the legal process and help address emotional stress. We hope that this booklet will help address many of your questions and concerns and make it easier for you to understand and participate in the defense process.*

Depending on the circumstances, you might be the person most knowledgeable about the pending legal action, and you face two important challenges:

1. You must be able to address and manage your emotions during what will likely be a stressful time.
2. 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.

FIVE STEPS

to Take in the Face of Legal Action





ONE

Immediately notify MedPro, and state that you have a new claim or suit to report.

TWO

Secure all patient records related to the case. Do not access these records or produce them for inspection or photocopying without the approval of your MedPro claims manager or defense counsel.







THREE

Keep patient records related to the case wholly intact, and ensure that no one makes any additional entries, corrections, or deletions to the records.

FOUR

Do not create notes or narratives describing the event, unless instructed by and under the direct supervision of your defense counsel.





FIVE

Do not discuss the facts of the case with anyone other than your MedPro claims manager and your defense counsel.

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

Litigation Support: 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 providing high-quality care to your patients.

The Emotional Impact of Litigation



Involvement in malpractice litigation can affect healthcare providers in various ways. Some providers are able to “compartmentalize” the experience, giving the litigation the necessary attention when needed, but still continuing with daily life. Others find the litigation process very overwhelming, and it disrupts their personal and/or professional lives.

How Litigation Might Affect You

In the 1980s, psychiatrist Sara C. Charles, MD, conducted groundbreaking research into the mental, emotional, and physical effects that involvement in malpractice litigation had on her physician colleagues. Her research identified both emotional effects (e.g., anger, isolation, depression, distraction, loss of confidence, and suicidal ideation) and physical symptoms (e.g., exacerbation of a previous illness and an increase in alcohol and medication consumption).

The traumatic experience associated with malpractice litigation sometimes is referred to as medical malpractice stress syndrome (MMSS). Research conducted subsequent to Dr. Charles’ work indicates that providers attempting to practice while suffering from MMSS might have difficulty focusing, concentrating, and communicating, which can result in an increased risk of patient harm and additional litigation.[†]

Although litigation stress is not a universal phenomenon, it is common in varying degrees of severity. One of the reasons malpractice litigation is so difficult for some providers has to do with the nature of the conflict. When healthcare malpractice is alleged, it calls into question the provider’s competency. This is frequently interpreted as an attack on an important element of the provider’s core identity. The perceived attack often is made worse when, in the process of litigation, a standard-of-care expert witness who practices in the provider’s own field and specialty criticizes the provider’s actions.

Internalizing and personalizing the expert’s criticism can lead to the effects of litigation stress that Dr. Charles identified many years ago. This stress, in turn, can cause difficulty in professional and personal relationships, and it can limit the provider’s ability to assist their attorney in the defense of the case.

[†] Reyes, R., & Reyes, C. (2017, February). At your defense: Medical malpractice stress syndrome takes its toll. *Emergency Medicine News*, 39(2), 19. Retrieved from <https://journals.lww.com/em-news/toc/2017/02000>

Understanding that malpractice litigation is more of a marathon than a sprint is important. Complicated legal issues, combined with inevitable scheduling challenges, can cause a malpractice case to span many months or even several years. For this reason, providers will benefit if they can develop strategies to cope with the “start–stop” of litigation.

Frequently, providers also worry that the results of an adverse verdict will ruin them financially. However, over MedPro’s 120+-year history, we have handled hundreds of thousands of malpractice cases, including thousands of cases that went to trial. In almost every case, the provider did not suffer any personal financial loss.

Many providers opine that the worst part of the litigation process is the process itself. Please be assured that the entire MedPro team, and particularly your claims manager and defense attorney, are going to be with you every step of the way. You *will* get through this.

What Can You Do?

Understanding and accepting that involvement in malpractice litigation can be a difficult and, in some cases, a debilitating emotional experience is essential. Like any emotional trauma, it is best to not face it alone.

You may have been advised to not discuss the case with anyone except your claims manager or defense attorney. Following this advice is critical in terms of the facts of the case and any legal discussions. However, discussing your personal feelings with a counselor, trusted colleague, personal friend, or your spouse can help you avoid shouldering the stress alone.

Support Resources

Informational resources are available to assist you during this time. An excellent resource is [The Sara Charles MD Physician Litigation Stress Resource Center](#). Other resources may vary from state to state, so providers should consult their state or national societies for additional information.

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 difficulty sleeping at night and/or feel physically exhausted most of 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"/>
<i>Time Management</i>		
I am frequently late and/or I forget appointments.	<input type="checkbox"/>	<input type="checkbox"/>
I am unable to focus and stay on task.	<input type="checkbox"/>	<input type="checkbox"/>
I have made more commitments than I can meet and/or 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"/>

	Yes	No
Professional Standing (continued)		
I am having trouble concentrating, and I am forgetting commitments, including 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"/>
Relationships		
I have not told my spouse/significant other or colleagues at work about the malpractice suit.	<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 *Litigation Support: Maintaining Your Balance* provides a high-level 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: duty, breach of duty, causation, and damages.



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.

Specific requirements for determining the existence of negligence vary from state to state. If you have questions or concerns about the elements of negligence as they might apply within your state, make 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 permanently dismissed 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 generally are proven through expert testimony.

If the care provided fell outside accepted standards, the patient (now the plaintiff) or their representative will allege that a breach of duty occurred. In contrast, if the jury is convinced that the care provided was within acceptable 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. The court generally will not award damages unless it determines that a timely diagnosis would have given the patient a chance of recovery.

- **Example 2:** A lawsuit alleges that a nurse failed to administer an antibiotic at prescribed intervals. The court generally will not award damages unless it determines that the failure slowed or impeded the patient's recovery.

Damages

A plaintiff 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 — or if the damages are too speculative — the plaintiff may not succeed with the 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 healthcare bills. If the patient has died, their 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 has (or 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

Noneconomic damages — often described as pain and suffering — are the second type of damages sought in healthcare malpractice cases. Examples of noneconomic damages include:

- Loss of independence
- Loss of companionship
- Ongoing pain
- Physical limitations as the result of a healthcare-related injury

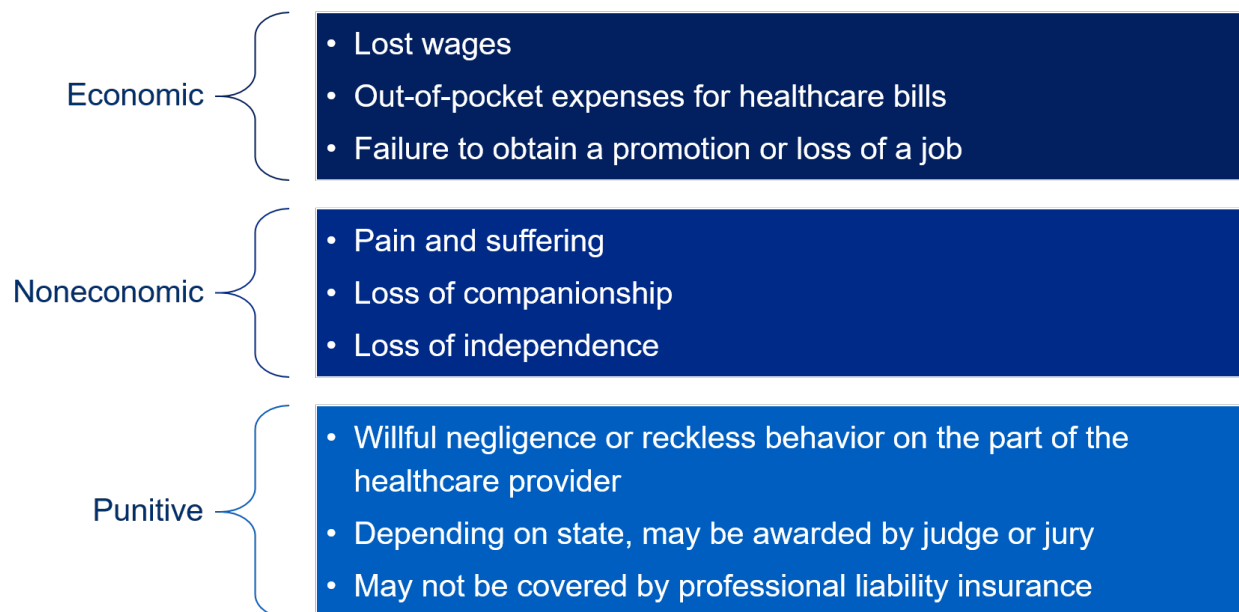
Punitive Damages

In some states, under specific conditions, courts might award punitive damages in healthcare malpractice cases. These damages are intended to punish willfully negligent or reckless behavior.

Punitive damages might be awarded 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 health record to hide an error or omission
- Was under the influence of drugs or alcohol while treating the patient
- Threatened other members of the healthcare team to suppress information
- Purposely destroyed evidence

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



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. They 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?

Important Note

At some point, your attorney may want your objectively written narrative of the case. **DO NOT** write this narrative unless your defense counsel instructs you to do so.

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.

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 support a plaintiff verdict, settlement might be your best option.

If your entity also is named in a lawsuit against you, 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 will still be a critical component in discussions about case resolution.

An Introduction to the Deposition Process

Your defense attorney will quickly gather information 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. You will most likely be asked to participate in a party deposition, which means 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.

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 of the case. The plaintiff's attorney may attempt to identify any inaccuracies or contradictions in your statements, statements of others, or the health 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. Answer only what is asked, and answer as succinctly as possible. If you don't understand a question, ask for clarification. Never offer speculation or your opinion.

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 the 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 health record or in any other document or file related to the case without specific instructions from your defense team. Similarly, do not access or make any changes to the patient's health record once you are aware of the possibility of litigation.
- 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 facts 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 might 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 senior risk solutions consultant, and/or your MedPro claims manager.

Important Note

Plaintiff attorneys might request electronic health record (EHR) audit trails and metadata to look for activity that could be used to allege spoliation of evidence (i.e., improper destruction or alteration of records). Additionally, audit trails can lead plaintiff attorneys to specific locations and/or issues in the EHR based on access history.

Preparation for Deposition and Trial

Adequate preparation is the most important factor in giving a successful deposition. Several elements should be included in your planning and preparation schedule. Remember that you also can apply many of the following suggestions 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 they 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 similar 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.

Important Note

MedPro offers third-party deposition preparation. Please inquire about this service if you have specific areas you wish to address.

- 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. Avoid writing notes if possible; 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.

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 NPDB. 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 on the NPDB’s [Self-Query Basics](#) webpage.

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, healthcare professionals conducting self-queries may determine that some of the information included in their data bank files 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 malpractice lawsuit is unpleasant, but unpleasant events sometimes 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.

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 actions can you take to address these issues?
- 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 possible?
- 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 identify 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 others perceive you.

Personal Assessment

- If this was a divisive experience, what steps could 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 address 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 again?

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 not intended to be exhaustive; 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 of patient harm as caused by the healthcare provider. For 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. For 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 their 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, such as 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 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 usually 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 their family, authorized representative, heirs, or estate.

Pleadings

Legal documents filed with the court that outline formal allegations, defenses, and claims presented by both parties to a lawsuit.

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 (i.e., an attorney questioning their own witness).

Questions — open-ended

A question that does not offer any suggested answer to the question.

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. For example, a plaintiff requests that a defendant doctor provide copies of a patient's health 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 lawsuit.

Tort

A breach of a civil duty or wrongful act, whether intentional or accidental, from which injury occurs to another.

Venue

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

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