10 Things You Should Know When Being Sued

By Cindy Baker

The specter of being sued is something that frightens all medical professionals. Further, many doctors are in the dark when it comes to knowing what to do and what not to do when they are being sued.

Following is a 10-point list of steps to take when you are confronted with a lawsuit, offered by David Manoogian, a malpractice defense attorney with Epstein, Becker and Green in Washington, D.C.

Report the Lawsuit

Report the problem to the insurance company the second you are handed the papers. A defendant has at the most 30 days to respond to a lawsuit; that’s not much time to respond.

Tell the Pertinent People

Tell your supervisors or the other doctors in your office that you are being sued. They have a right to know, and you are going to need their help.

Meet with an attorney

With only up to 30 days to respond, your attorney will need help in getting a quick understanding of the case and medical issues.

Don’t Discuss the Case with Everyone

Don’t discuss the suit with anyone except the lawyer, insurance company and proper person at your organization. The proper person is limited to a supervisor or fellow practitioner who is protected by peer privilege.

It’s natural for the doctor being sued to stop a colleague in the hallway and make comments like, "Do you know what so-and-so is doing to me," or "Maybe I could have been more careful." Such comments could become known during the discovery phase, i.e., you could be forced to disclose such conversations to the plaintiff’s attorney.
Don’t Call the Patient

You may have treated this patient for years, and have built a professional relationship and trust, so it may be natural to call the patient and say: "Mary, what are you doing to me? Why don’t you come in and we’ll talk about it.”

However, comments that you make to the patient to be polite could be construed in court as a confession. If you express disbelief, your statement could be taken as arrogance.

Segregate the Records

Take the records out of the general records. If you work in a small office, take them out yourself and put them under lock and key; if you work in a large office get the appropriate person to do this. Segregating the records prevents them from being tampered with. You want them to be preserved as they are. I also like to send a copy to the insurance company. I like my copy to have the pages numbered.

Do Not Change the Records

Sometimes a doctor will remember some information that was not put in the patient’s record, and the doctor may just "fill in some details." Usually the doctor does this to make the record more accurate, but this is a disaster if the patient in question is suing you. On a scale of disasters from 1 to 10, this is a 10. It voids insurance coverage and makes a defensible case indefensible.

Immediately Record Everything You Can Remember

In most jurisdictions a plaintiff has up to three years to file a lawsuit; further, a case can take two to five years to adjudicate. With such prolonged time considerations, it is important for you to record everything you can remember as soon as you find out about the suit. Record conversations you had, impressions, etc. It’s important to make sure your memory is protected. However, do not record these items in the chart, record them in a separate diary for your attorney.

Work with Your Attorney

I have been doing this (working as a defense attorney) for a while now, but I don’t know everything. Your attorney will have to understand what chiropractors do. Attorneys are not doctors. Give the attorney reading material; suggest expert witnesses and people to talk to; explain your procedures. Is the suit’s contention a
recognizable complication, or just bad luck?

Follow the Case as It Develops

Pay attention to the depositions, etc. Read the information your attorney sends you. Attend the plaintiff’s deposition. If anything, it’s another pair of eyes and cars. The attorney might miss something, or a medical expert might say "ABC," and during the next break you might suggest that the attorney ask him "XYZ."

Conclusion

Being sued is not an easy thing. These steps won’t guarantee that you will win the suit, but they will keep you from making a costly mistake.

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