

UB Department of Psychiatry
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MEDICAL MALPRACTICE 101

Conflict of Interest?

I do not have any conflicts of interest.

I am being compensated for my time by Academic Group at the same rate they pay for our litigation services.

What is Academic Group?

What is ESIS?

What is Eagan & Heimer?

Presenter

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Eagan & Heimer, PLLC, Partner

Tulane University School of Law, *cum laude*, 1997

Representing Health Care Professionals for over 20+ years in private practice.

Trial attorney with verdicts in 33 medical malpractice cases (31 defense verdicts, 94% success rate)

Instructor with the Jacobs School of Medicine, Department of Psychiatry, Forensic Psychiatry Fellowship



Basics of Medical Malpractice

- **Elements of a claim for medical malpractice:**
- A. Liability
 - Was there a deviation from the Standard of Care?
 - Battle of the Experts
- B. Proximate Cause
 - What does it mean?
 - Examples of a Proximate Cause Defense
- C. Damages

What do I do if I get sued?

- As a resident: report the claim immediately to your residency supervisor, the hospital will assign the case to an attorney who will represent you.
- As an attending: report the claim immediately to your professional liability carrier (Academic Group), who will assign an attorney to represent you. Use www.academicgroup.com and click on “Report Claim” and fill out the form. E-mail legal papers to claimsreporting@academicgroup.com
- Emotions of being sued

DISCOVERY

- **What happens next?** Your lawyer will file an ANSWER and meet with you to discuss your defense. Your help in investigating and analyzing the claim is **critical** to your defense.
- Your lawyer will then gather and analyze the patient's medical records and evaluate the claims being made in the lawsuit.
- Claims examiner at ESIS remains directly involved in your defense and is available to assist you in any way.

- **DEPOSITIONS** – are taken of all parties to the case (plaintiff and defendants) as well as non-parties with relevant information.
- **WHAT IS A DEPOSITION?** Each party is allowed to question the other parties to the lawsuit, under oath, about their participation in the care of the patient.
- Prior to your deposition, you will meet with your attorney who will review the case with you and prepare you for your testimony.
- Academic ELM Courses
- **EXPERTS** – your attorney will retain an expert who will render an opinion regarding whether your care deviated from the standard of care. They might also retain an expert on proximate cause and/or damages.

Resolution of the claim

Voluntary Discontinuance – occasionally after discovery, plaintiff's counsel will voluntarily drop the case against some or all defendants.

Motion Practice – at the close of discovery, your attorney might make a motion for summary judgment asking the court to dismiss the case.

Settlement – after discovery is complete, you and your attorney will discuss whether you want to consent to attempt to settle the case.

- Consent Clause

Trial – each side presents evidence to a jury, who renders a verdict in favor of one of the parties. In medical malpractice cases in New York State, defendants win approximately 80-85% of the cases that go to verdict.

TOP PSYCHIATRY CLAIMS

Failure to diagnose and treat suicidal ideation – discharge, AMA

Improper relationship

Breach of confidentiality

Failure to diagnose medical issue (turfing)

Patient on patient violence

Medication Errors

Influencing Outcomes

○ **Communication**

- Between Attendings, Residents and Staff. Medical care is highly collaborative, where teams of professionals must work together and keep each other informed about how patients are progressing and any developments.
- When covering for your colleagues, be sure to give and receive all relevant information and **DOCUMENT**.
- Dealing with Consultants from another Department
- Handoffs within the Team
- Supervision issues - Ambiguity of responsibility

- **FINGER POINTING**
- In notes of the care rendered prior to transfer or between departments.
- In lawsuits

Charting

- Critical to chart accurately and detail important info
- Perfect charting is impossible
- Electronic Medical Records – Write a story, do not just check boxes. Chart as if you will forget the patient.
- Do not copy and paste! Make original entries.
- Charting Adverse Events
- NEVER revise notes after a complication. Make an addendum if appropriate.
- NEVER criticize another health care provider in your note unless it is absolutely unavoidable.

How can I avoid getting sued?

- Strong patient relationships before and after a complication
- Good documentation/charting
- Good communication with nursing staff and consultants

- WHAT RESOURCES ARE AVAILABLE IF I RUN INTO AN ISSUE?
- Academic Legal Advice Line - Call an attorney after bad outcome to discuss what happened and get advice on how to handle. Toll free: (855)444-0554 (call for legal advice, report claims to www.academicgroup.com)

NYS Office of Professional Medical Conduct (OPMC)

- Investigates misconduct by physicians. They are obligated to investigate any complaint they receive.
- Can limit, suspend or revoke your license, impose a fine and issue reprimands or censure – much worse than a malpractice case.
- **Most malpractice insurance policies will provide defense counsel for disciplinary matters.**
- You have the right to counsel and should **NEVER** speak to an investigator without an attorney.
- If you receive a letter from any government agency requesting an interview about a patient, immediately report it to your malpractice carrier and you will be assigned an attorney.

Non-Party Deposition

- **Subpoena** – you are required appear in person to give a deposition, or produce specified documents. If you are served with a subpoena, contact your malpractice carrier, and a lawyer will be assigned to assist you with complying with the subpoena.
- **Never** just “show up” at a deposition, especially if it is a medical malpractice case, or you could wind up unwittingly harming the defense of the defendant-physicians, and potentially making yourself vulnerable to a claim.
- If you are served with a subpoena by a defendant-physician, your attorney will assist you in determining whether you can help the defendants.

Residents Becoming Attendings

- Your first contract - Get a lawyer
- Medical Malpractice Insurance –
Make sure you have it (difference
between claims made and
occurrence policies).

Case Review – Stroke Patient

QUESTIONS?

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