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What Every Doctor Should Know About Litigation

*A Primer on How to Win
Medical Malpractice Lawsuits*

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SUMMARY

This chapter explains what you should know to best look out for yourself and how you should go about doing so. Its premise is that just as patients should not leave decisions about the best course of medical treatment exclusively to medical professionals, neither should you as a doctor or health care provider leave your fate as a defendant solely in the hands of your lawyer and insurer. No one representing you will be as affected as you are by the litigation in which you are a defendant; and, although your advocates are charged with looking after your best interests, your active and intelligent participation in how they do this is absolutely necessary if they are to be effective.

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INTRODUCTION: PURPOSE AND SCOPE

If you are a medical professional, chances are you will be sued during your career.¹ Whether named as a principal or peripheral defendant, once served with summons you or your professional liability insurer must pay for your defense and, should you lose or settle the case, for satisfaction of your liability. Understanding the essentials of litigation enables you to eliminate or at the very least minimize your liability and get on with your life. Not knowing this information leaves you with little or no control over your own destiny, a wisp to be buffeted about by the devil's breath of litigation.

This chapter explains what you should know to best look out for yourself and how you should go about doing so. Its premise is that just as patients should not leave decisions about the best course of medical treatment exclusively to medical professionals, neither should you as a doctor or health care provider leave your fate as a defendant solely in the hands of your lawyer and insurer. No one representing you will be as affected as you are by the litigation in which you are a defendant; and, although your advocates are charged with looking after your best interests, your active and intelligent participation in how they do this is absolutely necessary if they are to be effective. Most understand that "knowledge is power." We can also appreciate that sometimes, as the cliché goes, a little knowledge may be a dangerous thing. However, the information given here can—if properly digested—make your life safer and more secure from the slings and arrows of outrageous lawsuits.

¹ "No doctor is safe from Trial Lawyers, Inc. A 2002 *Medical Economics* survey of 1800 physicians found that 58% had been the target of a lawsuit." (*Trial Lawyers Inc—A Report on the Lawsuit Industry in America 2003*, Center for Legal Policy, The Manhattan Inst., 2003, p. 12); "The first medical malpractice suit in the United States was brought in 1794. However, it was not until the 1930's that the number of claims against doctors began to significantly increase. Medical malpractice claims continued to become more common in U.S. courts until reaching a peak in the 1970's, when there were so many claims that chaos ensued. It was said that there were approximately 'five malpractice suits filed annually for every 10 doctors.'" (Jason Leo, Note: *Torts – Medical Malpractice: The Legislature's Attempt to Prevent Cases Without Merit Denies Valid Claims* (2000) 27 *Wm. Mitchell L. Rev.* 1399, 1402–1403); "Prior to 1960, only one in seven physicians had been sued in their entire career; presently claims are filed against one out of seven physicians per annum." (Rima J. Oken, Note: *Curing Healthcare Providers' Failure to Administer Opioids in the Treatment of Severe Pain* (2002) 23 *Cardozo L. Rev.* 1917, 1968, fn. 252).