


DEFENDING DOCTORS



HELPING YOU DEFEND YOUR CARE IN A LAWSUIT

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LESSON ONE

Understanding the Legal System, Participants and Process

- Your Knowledge of the legal system will reduce stress from your unwilling participation in litigation.
- Who is involved in this process?
- How and when does the process work (and hopefully end)?


The State Court System

- State Court or Superior Court
- Venue – Place of Suit
 - Where Individual Defendant(s) reside
 - Location of Corporate Agent for Service





The Participants

- 1. The Judge
 - Elected by Voters or Appointed by Governor
 - Judicial Circuits
 - Motions and Trial Judge are the Same
 - Decide Questions of Law
 - Hears all Motions – Pre-Trial and Trial
 - Determines Issues to be submitted to Jury
 - Oversees Trial





The Participants

- 2. Plaintiff(s) – People Doing the Suing
 - Patient, Estate Representative
 - Has the burden of proof at trial
- 3. Plaintiff's Attorney – Not your Friend
 - Spokesperson for Plaintiff - Paid on contingency (Most common) or by the hour (Rarely)
 - Advance all expenses (usually)

The Participants

- 4. The Defendant(s) – YOU!
 - Those who have been sued – Individuals, PA, and Institutions (Hospital)
 - Do not have the burden of proof at trial on most issues (but may have the burden on motions and affirmative defenses)
- 5. Defendant's Attorney – ME!
 - Spokesperson for the Defense
 - Paid by the hour or by the task

BEHIND THE SCENES Your Defense Team

■ Insurance Claims Representative

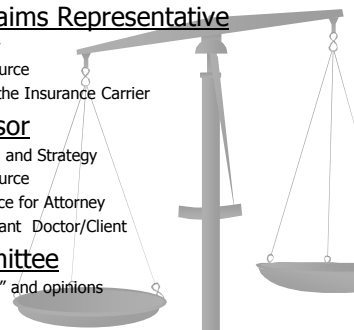
- Coordinates Strategy
- Expert Witness Resource
- Your Advocate with the Insurance Carrier

■ Medical Advisor

- Gives Medical Advice and Strategy
- Expert Witness Resource
- Educational Assistance for Attorney
- Resource for Defendant Doctor/Client

■ Claims Committee

- Another Set of "eyes" and opinions



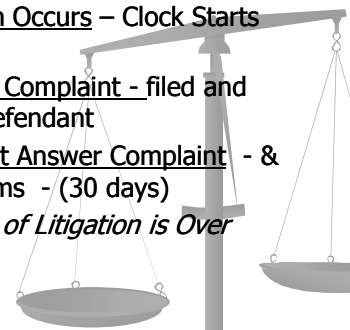
How and When Does the Process Work

■ Act or Omission Occurs – Clock Starts Running

■ Summons and Complaint - filed and served upon Defendant

■ Defendant must Answer Complaint - & file counterclaims - (30 days)

■ *The Quick Part of Litigation is Over*



IS IT STILL GOING ON?

■ Discovery process - (Minimum 6 months)

■ Written Discovery – Interrogatories, Request or Subpoena for Production of Documents, Request for Production (30 days to respond)

- Depositions of Fact witnesses
- Depositions of Expert Witnesses



DOES IT EVER END?

■ Mandatory Mediation – In some Counties

■ TRIAL – 180 day minimum time, 1.5 to 2 years from filing of Complaint in real world

■ POST TRIAL MOTIONS – 2 – 4 months

■ APPEAL – 6 Months to a Year

■ Total Time – 2 -3 YEARS



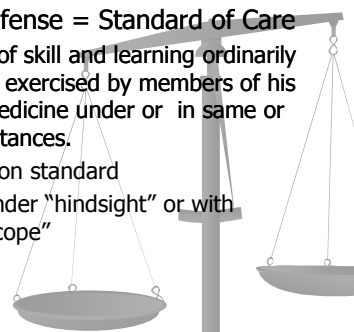
LESSON TWO

How Do We Defend this Case?

■ First Line of Defense = Standard of Care

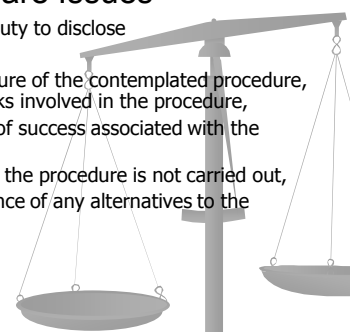
■ "That degree of skill and learning ordinarily possessed and exercised by members of his own area of medicine under or in same or similar circumstances."

- NOT a perfection standard
- NOT judged under "hindsight" or with "retrospecto-scope"

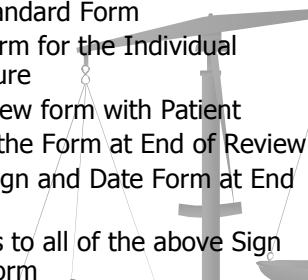


Beware of Informed Consent in Invasive Procedures Standard of Care Issues

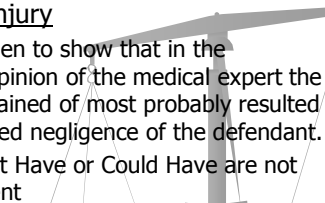
- A physician has a duty to disclose
- "(1) the diagnosis,
- (2) the general nature of the contemplated procedure,
- (3) the material risks involved in the procedure,
- (4) the probability of success associated with the procedure,
- (5) the prognosis if the procedure is not carried out,
- and (6) the existence of any alternatives to the procedure."



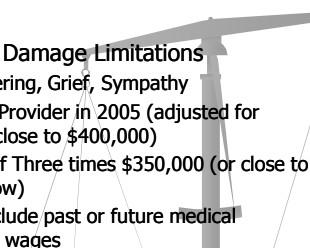
How To Improve Informed Consent

- Start with a Standard Form
 - Modify That Form for the Individual Patient/Procedure
 - Personally Review form with Patient
 - Sign and Date the Form at End of Review
 - Have Patient Sign and Date Form at End of Review
 - Have a Witness to all of the above Sign and Date the form
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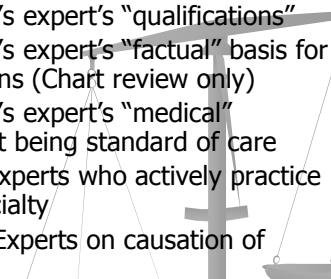
Second Line of Defense

- Causation of Injury
 - Plaintiff's burden to show that in the professional opinion of the medical expert the injuries complained of most probably resulted from the alleged negligence of the defendant.
 - Possible, Might Have or Could Have are not legally Sufficient
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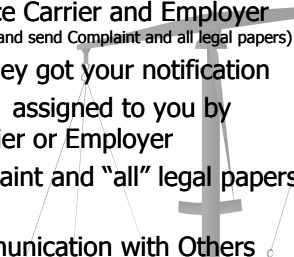
Third Line of Defense

- Damages
 - Non-Economic Damage Limitations
 - Pain and Suffering, Grief, Sympathy
 - \$350,000 Per Provider in 2005 (adjusted for inflation now close to \$400,000)
 - Maximum of of Three times \$350,000 (or close to \$1,200,000 now)
 - DOES NOT include past or future medical expenses, lost wages
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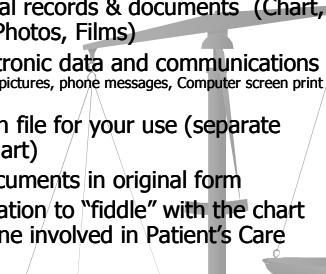
Ways We Attack the Plaintiff's Case

- Attack Plaintiff's expert's "qualifications"
 - Attack Plaintiff's expert's "factual" basis for medical opinions (Chart review only)
 - Attack Plaintiff's expert's "medical" opinions as not being standard of care
 - Use Defense Experts who actively practice in area of specialty
 - Use Defense Experts on causation of injury
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What Do I Do NOW that I have been Sued?

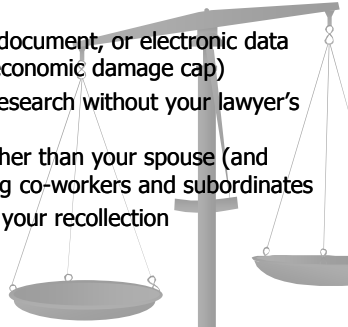
- Notify Insurance Carrier and Employer
(verbally and in writing and send Complaint and all legal papers)
 - Confirm that they got your notification
 - Contact lawyer assigned to you by Insurance Carrier or Employer
 - Forward Complaint and "all" legal papers to your lawyer
 - Minimize Communication with Others
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OK, I have done that. What next?

- Gather all physical records & documents (Chart, Billing Records, Photos, Films)
 - Preserve all electronic data and communications (Email, programs, billing, pictures, phone messages, Computer screen print out)
 - Create a litigation file for your use (separate from patient's chart)
 - Keep original documents in original form
 - Resist the temptation to "fiddle" with the chart or talk to everyone involved in Patient's Care
 - RELAX
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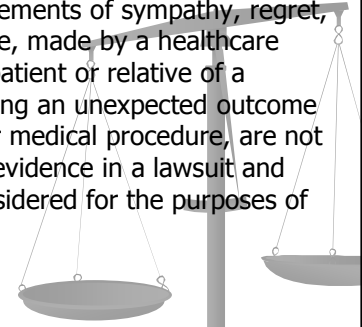
What Should I NOT Do (Before or After Suit)?

- Alter any record, document, or electronic data (May waive non-economic damage cap)
- Do independent research without your lawyer's o.k.
Talk to anyone other than your spouse (and lawyer) – including co-workers and subordinates
- Fill in the gaps of your recollection



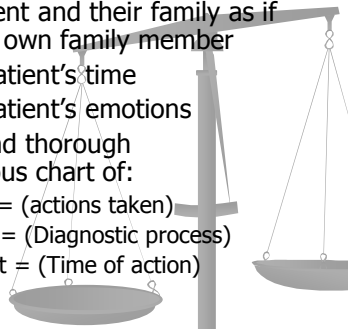
Some help from the Legislature

- Generally, statements of sympathy, regret, and condolence, made by a healthcare provider to a patient or relative of a patient regarding an unexpected outcome of a surgery or medical procedure, are not admissible as evidence in a lawsuit and cannot be considered for the purposes of liability.



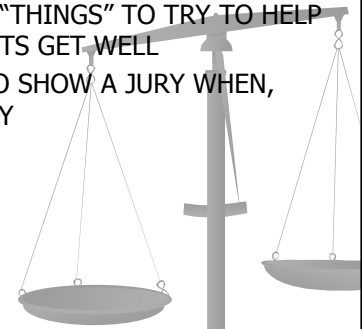
How can I prevent this from happening

- Treat your patient and their family as if they were your own family member
- Respect your patient's time
- Respect your patient's emotions
- Keep a good and thorough contemporaneous chart of:
 - What you did = (actions taken)
 - Why you did it = (Diagnostic process)
 - When you did it = (Time of action)



FINAL THOUGHTS

- DOCTORS DO "THINGS" TO TRY TO HELP THEIR PATIENTS GET WELL
- OUR JOB IS TO SHOW A JURY WHEN, HOW AND WHY



My BIO

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