
THE LITIGATION PROCESS AND YOUR DEFENSE

Being sued, or notified of a patient's intent to file a suit, is traumatic. However, what you do and don't do, prior to and at the time a suit is filed, can mean the difference between winning and losing. Below are some suggestions about how to adequately protect yourself if you are sued, or if you suspect that a suit is forthcoming:

1. DO immediately notify your PRMS claims representative, (800) 245-3333) if:

- a patient complains or threatens to sue you
- there is a serious untoward or adverse event
- an attorney, hospital, HMO, or other person or entity advises you of an investigation of a possible claim
- an attorney requests your treatment records
- an attorney requests a deposition
- you are in receipt of suit papers
- you are not sure if your situation falls into any of the above categories

Be prepared to provide specific information about the treatment of the patient and to forward copies of the legal documentation and treatment records to PRMS.

Don't delay. Many legal pleadings require a formal legal response within a certain time limit. You should immediately forward all legal documentation to your PRMS claim representative. Let PRMS and your defense lawyer handle everything for you.

2. DO NOT discuss any aspect of the patient's treatment with anyone except a representative of your insurer and your assigned defense attorney.

Do not communicate with the patient or his/her attorney, under any circumstances. Any information you may impart can be used against you later.

Do not discuss your case with your friends, family, or colleagues. Such discussions may be discoverable and can be used against you later.

3. DO NOT alter your treatment records in any way.

Often the plaintiff's attorney will already have a copy of the record before you are notified of a suit, and then subpoena them from you or another source in order to check for alterations. Any changes will destroy your credibility and can render a defensible case indefensible.

Alteration of records is a crime in many states.

Keep all correspondence with your insurer and your defense attorney, along with any additional notes made in anticipation of litigation, in a file separate from the patient's record. Do not release this information to anyone without the approval of your attorney.

It is important to develop good record keeping habits early. In litigation, it will often be your word against the word of the patient or the patient's family. Good treatment records are critical. However, if you review your records and find them lacking, DO NOT, under any circumstances, add, delete, or change them IN ANY WAY. Poor records will hinder a case, but altered records will destroy your credibility completely.

4. DO cooperate with your assigned defense attorney.

PRMS will assign an experienced psychiatric medical malpractice defense attorney to represent you. The defense attorney represents you, not the insurance company.

Assist in the development of your defense by providing information about the patient's treatment and copies of requested documents, and by analyzing records and expert opinions.

Be prepared for your deposition and trial testimony. Rehearse with your lawyer. Review and be thoroughly familiar with the patient's medical records.

Be prepared to take time away from your practice. Lawsuits are very time consuming and very demanding, but you must participate fully in order to achieve the most positive results.

5. DO be patient.

Most lawsuits can last anywhere from one to four years, often with no appreciable activity for extended periods of time. You may feel that you don't belong in the lawsuit and that the allegations have no merit. However, a certain amount of discovery must be completed before a court will consider dismissing you from the suit.

Never hesitate to contact your defense attorney or your PRMS claims representative to check on the status of your case.

Compliments of:



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