

# THE HEALTHCARE PROFESSIONALS LEGAL CHECK-UP

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## YOU HAVE BEEN SUED. NOW WHAT?

**I**t happened. You were handed a summons and complaint. You have been sued. What happens next? How do you respond?

The odds of being sued as a healthcare provider are not well known. The New England Journal of Medicine reported in a 2011 article entitled "Malpractice Risk According to Physician Specialty" that an estimated 7.4% of all physicians had a malpractice claim brought against them per year. The actual number may well be greater, given that the sample included

**ANYONE  
CAN SUE ...**



**...NOT ANYONE CAN WIN.**

only medical providers insured with a "large professional liability insurer with a nationwide client base." Now, however, it is *your* name on the summons and complaint listed as "Defendant."

The complaint is just that, a written listing of what the patient or the patient's family, if they are deceased, claims against you. As the party bringing suit, the Plaintiff is seeking to recover money "damages" against the Defendant, you, for breach of the standard of care. A brief history of the treatment at issue will be set forth within that document. You may well find this section incorrect, with many of the claims seemingly drawn from a misunderstanding of your role or the actual care you

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Christina Alexander is a partner at Hutchison & Steffen within the Firm's Healthcare Professionals Advocacy Group. She practices primarily in medical malpractice, healthcare professionals advocacy, insurance litigation, personal injury, and professional liability defense.

Christina and other attorneys at the Firm work closely with healthcare professionals (including physicians, chiropractors, dentists, and nurses) and healthcare organizations on a range of legal issues, from practice formation and compliance and employee relations, to practitioner licensing and board representation, to collections, creditor rights, and asset protection.

This newsletter highlights topics of interest for healthcare professionals. We invite you to contact the Firm to learn more.



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provided to the patient. Filed jointly with the complaint will be an affidavit from a healthcare provider, hired by the Plaintiff, who claim that they are familiar with the standard of care of your area of practice and having reviewed the patient's medical records, believe that you breached the standard of care. It can be distressing to read an affidavit from another which casts such aspersions upon you. However, this is not evidence, it is not fact; it is just the opinion of someone hired with the knowledge at the time of review that the goal is to find your care wanting.

After being served with the complaint, there are certain steps you must take to protect your interests. The most important are to notify your professional liability insurer, contact your attorney, notify any licensing authorities, segregate the patient file, and if the Plaintiff remains an active patient, discharge from your care.

Most insurers will require that you notify them upon notice of a claim. Being served with a complaint is certainly that. Failure to promptly notify your insurer, depending on how your policy is written, subjects you to a denial of coverage. Do not take that risk; notify your insurer immediately of this claim.

Your insurance company will then assign a defense attorney to represent your interests in defending against the claim. It is very important that you have counsel who are familiar, not simply with the litigation process, but also with what is required of defending against a professional malpractice claim, a subspecialty focused only on the defense of healthcare providers.



Nevada requires that a physician notify the Board upon service of a civil complaint. Not all states require such notice; however, as a licensee, it is your responsibility to promptly notify all licensing agencies in states which require this notice where you are licensed, even if your license is no longer active.

You will next want to segregate the patient chart. The letters to your insurer, copies of the complaint, and any documents regarding the claim or litigation must not be included in the patient chart. Staff should be notified that the chart is to remain segregated. Any correspondence from your attorney, insurer, or the Board of Medical Examiners should be kept separate and apart from the patient chart at all times.

Finally, you cannot continue to provide care to a patient who has sued you. It is not as rare as you might imagine for a patient to want to continue to be treated by the same healthcare provider they are suing for civil damages. If necessary, you must sever the relationship and refer the patient to another.

Being sued is not pleasant. However, you are not alone, and your attorney will be there every step of the way. Anyone can sue...not anyone can win. ■

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