

Book Review:

Medical Malpractice: How to Prevent and Survive a Suit

By Richard A. Geline, MD, and William J. Holt, MD

The legal arena is as mysterious and scary to physicians as the operating room is to most patients. *Medical Malpractice: How to Prevent and Survive a Suit* attempts to reduce the fear and the mystery surrounding a medical liability lawsuit by educating physicians about the medical liability legal process.

Written for practicing physicians, this is not a textbook but a guidebook. Although it is written in a casual style, it does not skimp on details. Most of the editors—Richard J. Nasca, MD; Lee A. Whitehurst, MD, JD; Louise B. Andrew, MD, JD, FACEP; and David E. Attarian, MD, FACS—are orthopaedic surgeons, and the contributors include attorneys, risk management experts and other physicians.

In 30 short, readable chapters—beginning with a discussion of why patients sue and how to be protected in these lawsuits—the book discusses each of the participants' roles in a lawsuit and the steps involved in the process. It also tackles important issues such as good communication and proper documentation, and more substantive legal issues such as the elements of a lawsuit,

standard of care and proximate cause.

Excellent advice is provided regarding the defendant physician's conduct during the course of a lawsuit, including the need to be active, informed and part of his or her defense. The importance of the deposition and evaluating the expert witness are also covered. Other chapters deal with alternative dispute resolution, asset protection and interactions with your state disciplinary board. The book also discusses the emotional stress of a lawsuit and how to manage this stress.

As in any multiauthored volume, there is some repetition of information and variation in style, but the editors have kept this to a minimum. Most chapters are factual, but some are very anecdotal and based solely upon the author's personal experience.

Overall, *Medical Malpractice: How to Prevent and Survive a Suit* is a source of valuable information. Its casual style makes the subject less intimidating, while its comprehensive approach provides a wealth of information. This book should certainly help any physician who is currently in the midst of a lawsuit and those who simply want to be less mystified by the legal process.

Nasca RJ, Whitehurst LA, Andrew LB, Attarian DE (eds.): *Medical Malpractice: How to Prevent and Survive a Suit*. Brooklandville, MD, Data Trace Publishing Co., 2005.

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Orthopaedic Risk Manager

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Comments and input are welcome. E-mail your comments to feedback-orm@aaos.org or contact this issue's contributors/reviewers directly: Richard A. Geline, MD, at rge-line@sbcglobal.net; William J. Holt, MD, at wholtmd@rnet.com; Murray J. Goodman, MD, at mj-goodman@comcast.net; Richard S. Crisler, JD, at rcrisler@lemle.com

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case, its verdict will be for the physician. If the jury concludes that the plaintiff and defendant have set forth equal arguments, but that the plaintiff failed to meet the burden of proof, the law compels the jurors to rule in favor of the defendant physician.

Proposals for reform

Whether a preponderance of the evidence will remain the minimum show of proof required of malpractice plaintiffs is now part of the debate over medical liability reform. The current medical liability insurance crisis has sparked many proposals designed to lower medical liability insurance premiums.

For example, President George W. Bush has proposed capping noneco-

nomic damages at \$250,000. Others have proposed limiting contingency fees for plaintiffs' attorneys and/or reducing the statute of limitations for medical liability.

A proposal to establish a more stringent burden of proof in medical negligence cases has also garnered support and is currently being debated in several state legislatures. It would establish a burden of proof in medical liability cases that is not so strict as the criminal standard of "proof beyond a reasonable doubt," but that is certainly higher than the civil standard of a "preponderance of the evidence."

The most common proposal is for evidence that is "clear and convincing." Clear and convincing evidence has been defined as evidence that produces a firm belief or conviction that the allegations

raised by the plaintiff are true. With this standard, the jury would have to find that the plaintiff presented evidence sufficient to be deemed clear and convincing to render a verdict in favor of the plaintiff.

Whether the current drive to provide physicians with increased protection from overly generous juries will be successful is an open question. Any progress will be made slowly and undoubtedly will be subject to court challenges. Until then, physicians who are accused of medical errors will be faced by plaintiffs who only need a preponderance of the evidence to win their cases.

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