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# MEDICAL RECORDS DO'S & DON'TS

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## Do's ✓

- ✓ Record the patient's name on each page of the chart.
- ✓ Document all contacts with the patient. Include all telephone calls and all services rendered. Document all prescription refills.
- ✓ Chart the complete date (day, month, and year) on each chart entry. Initial and date each chart entry.
- ✓ Use black ink. It is best for photocopying purposes.
- ✓ Write legibly. Print each chart entry.
- ✓ Chart all information immediately (delays lead to inaccuracies).
- ✓ Describe clearly in each chart entry:
  - Mode of contact (i.e., telephone call, visit, etc.)
  - Reason for contact
  - Procedures done, or information/advice given
  - Outcome of contact
  - Follow-up taken
- ✓ Fill in every blank. Record negatives as well as positives.
- ✓ Use only "standard abbreviations."
- ✓ Chart precise amounts. Be particularly careful to accurately place decimals.
- ✓ Correct any error or mistake in charting by drawing a single line through the incorrect portion, then initial and date the correction.
- ✓ Identify, date, and sign any additions or corrections to the chart.
- ✓ Record an emergency contact mechanism for the patient and next of kin.

## Don'ts X

- ✗ Never use "liquid paper" or "white out," scribble over, cut off or in any other way obliterate a chart entry which has been made.
- ✗ Don't chart subjective comments about the patient (i.e., "Patient is crazy"). Instead, quote the patient's words, "I'm Napoleon Bonaparte," which describes the behavior instead.
- ✗ Don't chart names without describing their function in relation to the patient's future care. Chart "Referred to Bob Jones, MD for allergy testing." NOT "Referred to Bob Jones."
- ✗ Don't chart information that is not pertinent to the future care of the patient.
- ✗ Don't file a chart until it has been checked for completeness.
- ✗ Never alter records after a suit has been filed. DO NOT correct, clarify, add to, change, or modify an entry in any way.

### Record Corrections

Wrong:

120/80

Right:

~~110/70~~

120/80 (RC) 3/20/97

Wrong:

RT ANKLE IS ~~SORRY~~ SLIGHTLY SWOLLEN

Right:

RT ANKLE IS ~~SORRY~~ SLIGHTLY (RC) 3/20/97 SWOLLEN

# THE LAWSUIT

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## What is a Lawsuit?

A lawsuit for medical malpractice is a complaint filed in a County Court, Circuit Court, or Federal Court alleging negligence, causing damages to the plaintiff by one or more defendants.

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### WHAT TO DO WHEN YOU RECEIVE A SUMMONS & COMPLAINT

IMMEDIATELY NOTIFY FPIC! Call 1-800-741-3742, press 2 for the Claims Department, then press 1 for the Claims Examiner. If you are served, we only have a limited number of days in which to assign a defense attorney and prepare a response to be filed on your behalf; therefore, time is extremely important.

- Do not discuss the case with the patient, the patient's attorney, other physicians involved in care and treatment of the patient, or a hospital representative, such as the Risk Manager. These parties may be named as codefendants or called as witnesses, and things you say to them could later be used against you.
- You should gather and secure the patient's records, being sure no corrections or addenda are made by anyone.

### WHAT TO EXPECT

- You will receive a letter from FPIC advising you of the assignment of your case to a defense attorney. If an attorney was assigned during the pre-suit phase, that same attorney will usually handle your defense of the lawsuit.
- If the case has not already been investigated, you will be contacted by a FPIC Field Representative to arrange a meeting to discuss your medical records and care of the patient. Frequently, the assigned attorney joins in this meeting. You should prepare by reviewing the records and developing counter arguments to the allegations contained in the complaint. If possible, you should have available any literature pertinent to the case.
- You will be contacted by your assigned defense attorney to further advise you as to what to expect.

- During the course of discovery, depositions will be taken of all parties, experts, and witnesses. You are encouraged to attend as many of these depositions with your attorney as possible. Your experience and medical expertise can be very helpful to your attorney in preparing for depositions and countering any conflicting medical opinions. Your attorney will meet with you prior to your deposition to prepare your testimony.
- During mediation, the case may be settled, negotiations continued, or settlement discussions may come to an impasse with the opposing parties unable to reach a compromise.
- Your defense is a three-pronged matter involving your insurance company, your defense attorney, and yourself. We encourage your active participation in your defense.

### ANATOMY OF A LAWSUIT

- A complaint is filed by the plaintiff or plaintiff's attorney.
- An answer is filed by your defense attorney.
- Written discovery is completed (i.e., Interrogatories and Request to Produce documents is served on all parties).
- Depositions are taken of all parties and witnesses.
- Final discovery is completed and a trial date set. Your presence at trial is essential.
- Trial (win/lose).
- Post-trial motions and/or an appeal may be filed.

# THE DEPOSITION

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## What is a Deposition?

A deposition is testimony that is given under oath before a court reporter. Depositions are important in the preparation of a case for trial.

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Depositions also:

- Freeze testimony and can be used to impeach your credibility if you deviate from them later. Generally, the same questions are asked at trial. If the answers given at trial are different from those given during the deposition, your credibility could be challenged.
- Are used to discover the facts of the case and to uncover additional witnesses.
- Are used to narrow the issues of the case.
- Allow the attorneys to develop the facts, evaluate the merits of the case, and when appropriate, attempt to settle the case out of court.

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***Your deposition in one of the most important steps in preparation for trial.***

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### HOW TO PREPARE FOR A DEPOSITION

- Review and become familiar with all the records and facts of the case.
- FOLLOW YOUR DEFENSE ATTORNEY'S INSTRUCTIONS. Your attorney will meet with you prior to your deposition to discuss the medical aspects of the case, your treatment, and the likely areas of inquiry.
- If you do not feel well prepared, let your attorney know. Your attorney will work with you further, or cancel and reschedule your deposition.

### HOW TO GIVE A DEPOSITION

- *Always tell the truth.* Do not try to cover a mistake. If you make an error, simply say so and correct your statement.

- *Think before you speak.* Listen to the question and formulate your answer in your mind before speaking.
- *Do not volunteer information.* Answer only the question asked. If you do not understand the question, say so. The examiner will rephrase it.
- *Do not guess.* If you do not know or do not recall, say so.
- *If information is in a document which is an exhibit, ask to see the document.* This is not necessary if you are certain of your answer.
- *Do not let the examiner put words in your mouth.* Do not accept his characterization of time, distance, personalities, events, etc.
- *Pay particular attention to the introductory clauses preceding the question.* Leading questions are often preceded by statements that are either half-true or contain facts that you do not know to be true. Do not let the examiner put you in the position of adopting these half-truths or unknown facts.
- *Do not add to your answers because the examiner looks at you expectantly.* If you are finished with an answer and the answer is complete, remain quiet and do not expand upon it.
- *Never express anger or argue with the examiner.* If a deposition becomes unpleasant, your attorney will handle it.
- *If you are interrupted, let the examiner finish.* After the interruption, firmly but courteously state that you were interrupted, that you had not finished your answer to the previous question, and then answer that question.

Your attorney will undoubtedly have other more detailed suggestions regarding your deposition and is best qualified to advise you in legal matters. Listen and do not hesitate to ask any questions you may have relative to the case.

Following your deposition, you will receive a copy of the transcript and be asked to sign it. Be sure to read your testimony carefully. If you find errors, inform your attorney immediately and request that corrections be made prior to signing and returning the transcript.

# LICENSE INVESTIGATION DEFENSE COVERAGE

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## What is License Defense Coverage?

Generally speaking, this is defense coverage for an investigation of your professional practice by your State Licensing Agency that is initiated by a complaint from a patient or other consumer, a peer review panel, or a closed claim.

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### WHAT TO DO IF YOU RECEIVE A NOTIFICATION OF INVESTIGATION BY YOUR STATE LICENSING AGENCY

- IMMEDIATELY NOTIFY FPIC! Call 1-800-741-3742, press 2 for the Claims Department, then press 1 for the Claims Examiner. There is a limited time in which to assign a defense attorney and prepare a response, therefore, reporting on a timely basis is critical.
- DO NOT ATTEMPT TO HANDLE BY YOURSELF. Even though the letter giving you notice may appear friendly, do not be fooled. You are being notified by a professional investigator that disciplinary action may be taken against your license. Your license to practice is at risk and it is essential that you have the assistance and expertise that only an experienced and knowledgeable attorney can bring to your defense.

NEVER agree to meet or discuss a case over the telephone with an investigator. Your attorney will respond to any requests.

### WHAT TO EXPECT

- If you have coverage, you will receive a letter from FPIC advising you of the assignment of an attorney to handle your defense with the licensing agency. If there is no coverage, you will be advised.
- If you have coverage, you will be contacted by your assigned attorney to further advise you regarding what to expect. Your attorney will prepare a response to the letter of notification within the required time period.
- Determining the extent of your medical education, training, and experience is important to the State Licensing Agency. You may be asked to submit a current Curriculum Vitae with the response to the notice of investigation.

- Your attorney will need a good quality copy of your entire chart. Do not alter your file in any way. Changes made to original entries will destroy your credibility and greatly harm your position. If there is text material or authoritative literature supporting your course of treatment, make a copy for yourself and for your counsel.

## OUTLINE OF THE STATE LICENSING AGENCY PROCESS

Although the procedures and alternatives may vary in each state, the following is a summary of the general course of events:

- A complaint is received by the State Licensing Agency and notice is sent to the practitioner.
- A response is formulated by your defense attorney. You may or may not submit to an interview; that decision will be made in consultation with your attorney. Frequently, a written response is sufficient.
- Completed investigations are reviewed during a screening evaluation, and standard of care cases are referred to medical consultants for review.
- After the case has been reviewed for legal and medical issues, it is forwarded to the board or committee for determination of merit.
- If merit is found in the complaint, you will then attempt to resolve the matter using the advice of your counsel. The matter may be resolved either through an informal process or agreement, or all the way through a formal hearing following the process prescribed in your state.
- The matter will end with dismissal of the complaint or an order imposing discipline. Discipline may vary from a fine, a letter, or reprimand up to suspension or revocation of your license.
- Depending upon the state laws where you practice, the process may be completely or partially confidential through the investigation portion of the process. However, the hearing process and disciplinary process may be required to be open to the public. Some state licensing agencies will now publish on the Internet certain disciplinary information. The goal of your attorney is to have the case closed or dismissed prior to it reaching the non-confidential stage.

# TERMINATING THE DOCTOR/PATIENT RELATIONSHIP

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After establishing a relationship with a patient, the physician may not withdraw from treatment without risking allegations of abandonment, which may incur a liability for damages. The physician has an obligation to continue treating the patient until the patient's condition no longer warrants treatment; the physician and the patient mutually agree to discontinue treatment by the physician; or the patient discharges the physician. In addition, the physician may unilaterally withdraw from treatment if the patient is given appropriate notice of the physician's intent to withdraw and an opportunity to secure a competent replacement.

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## WHAT JUSTIFIES WITHDRAWAL?

In looking at this question you need to recognize the concept that a physician has the right to withdraw from the care of a patient. If appropriate procedures are used, the physician may do so for any reason, without abandonment occurring.

However, there are situations where physicians have sought to withdraw immediately without taking appropriate steps. The more commonly encountered situations are the non-payment of a bill by the patient; the failure of the patient to keep follow-up appointments or follow medical advice; or the threat of a suit by the patient. Under these circumstances, it may be prudent for the physician to terminate the relationship.

## HOW TO AVOID ABANDONMENT

The next question presented is what steps must a physician take to avoid abandoning the patient? The first is to consider the patient's condition. If the patient requires treatment at the time, the physician should render care, stabilize the patient, and only then consider withdrawal. To withdraw from a patient who needs immediate care risks not only injury to the patient, but also a suit for abandonment and possible disciplinary action.

If the patient is in a non-emergency condition, the physician should provide the patient with notice of intent to withdraw. The notice must inform the patient of the need for follow-up care and give the patient sufficient time to obtain the care. The length of time will vary according to the circumstances. In the interim, the physician should remain available to treat the patient should the condition become acute.

Finally, the notice should always be documented. The best method is to discuss it with the patient orally and follow up with a letter sent certified mail, return receipt requested.

A copy of this letter and the return receipt should be maintained in the patient's chart. If it is impossible to discuss the matter orally with the patient, then the letter should provide sufficient protection.

The physician should review the provider contract for the health insurance carrier on the patient to be discharged. Some contracts contain limitations or prohibitions for discharging their member/your patient.

**In short, the following elements need to be addressed in the letter to the patient:**

1. A statement of intent to withdraw from treatment;
2. A designated date for the withdrawal (we recommend 30 days, however state laws may differ, please check with your state society or an attorney);
3. An agreement that the physician will continue treatment through the withdrawal date;
4. An agreement that the physician will see the patient for a specified period of time or until they can find a new physician.
5. A referral of the patient to an appropriate source where the patient can find a new physician.

As a courtesy, the physician should inform the patient that a copy of the patient's medical records will be sent to the subsequent treating physician. The letter must be sent by certified mail, return receipt requested. If the patient refuses the certified letter, the physician should place the letter in the patient's records and another letter should be mailed by regular mail. These steps should be documented in the patient's medical record. The regular mail letter will then serve as proper notice.

On the following page there is a sample letter informing a patient of an intent to end treatment services.

State laws may require modification of these terms and a quick check with your state or local medical society would be appropriate.

## SAMPLE LETTER OF PHYSICIAN'S INTENT TO WITHDRAW

Date

Dear (Patient's name):

This letter is to inform you that I am no longer able to continue as your physician. (Here you may insert the basis for your decision to terminate services if you feel an explanation is necessary.)

As you are aware, you are suffering from a condition that requires further medical attention. I recommend that you contact a physician to provide those services to you without delay. During the interim, but for no longer than 30 days from the date of this letter, I will continue to provide you with routine or emergency medical care.

At your request, I will provide either you, or the physician you select, a copy of your complete medical record. Please sign and return to me the attached medical record authorization. If you have a problem selecting a physician, I suggest you contact the medical society for a list of physicians practicing in your local area.

Very truly yours,

\_\_\_\_\_, MD

