

Malpractice And The Doctor

THE OTHER ISSUES

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In The Beginning

- **The Doctor - Patient Relationship**
 - Contractual in nature with professional responsibilities
 - Protect yourself with contract provisions
 - ✓ **Mandatory binding arbitration/waiver of jury clauses**
 - ✓ **Hold-harmless for third party acts**
 - ✓ **Pay attorney fees, costs, your time, if doctor prevails**
 - ✓ **Etc**
 - Selection of patients through contract provisions
 - ✓ **Do you want one who wants to be able to sue you**

Which Individual Do You Want As A Patient



WARNING

- No Collusion - That means no getting together among yourselves and agreeing that you jointly will implement the patient contract
- Restrictions discussed herein
- Possible antitrust violation
- However, you can individually decide to implement patient contract restrictions and each is entitled to do so - even as to current patients



YOU AND YOUR INSURANCE POLICY



Defense Costs And Expenses Inside Or Outside Of Your Policy Limits

- Provisions of your policy which relate to its limits
- Inside - you may not have much left to pay off a judgment with
- Outside - the cost and expenses of your defense do not eat at your policy limits, which are available to pay off a judgment. This permits you to pay off your judgment and practice medicine



Your Right Not To Settle

- Many policies do not afford you the right to agree or not to agree to settle or defend - The carrier can force the settlement
- Even if you complied with all standards of care and the claimant is a malinger
- This can make you very unhappy for more reasons than you may imagine as you shall see



What Do You Want???

- You Want A Right Not To Settle Provision
- Can Often Cost More \$\$\$
- Gives You The Right To Decide If You Want To Go To Trial
- Defense Outside Policy Limits Provision
- Will Cost More \$\$\$



Your Insurance Paid Attorney

- Complications - your attorney is paid for by the insurance company and wants to stay on their list of approved attorneys - Possibly Inherent Conflict of Interest - even when they want to be conscientious



Time Is \$\$\$

- If insurance company can settle for what it perceives to be a reasonable amount - it is in the Company's interest to settle



The Insurance Company's Benefits

- It Avoids the uncertainty of a Big Litigation Judgment
- It Avoids the Costs of Litigation - experts, attorneys, depositions, etc



What Is In It For You??

- We will soon see what is possibly inherent in a settlement for you and it is not a smiley face



You May Not Want To Know And It Is Not The Kitten

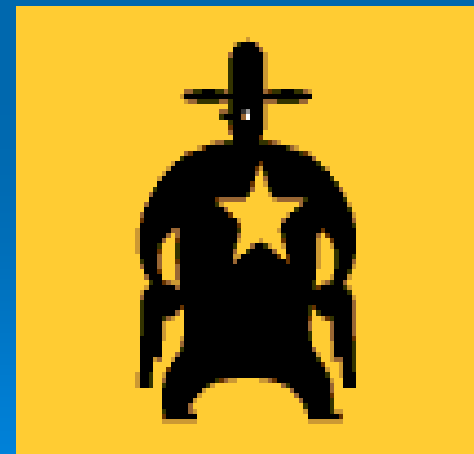


A Side Issue - What About Insurance Premiums?

- Insurance Companies make their profits and suffer their losses on the financial markets - not as the result of the relatively small sums incurred due to malpractice suits
- The Insurance Companies use costs of malpractice suits as a red herring to justify increasing rates in order to show a profit (Or Reduce a Loss) without admitting that their investment strategies failed in the various markets - at the same time, they get even with Plaintiffs' Bar by blaming them

What If You Settle (or Are Forced To Settle) A Malpractice Claim Through Your Insurance Carrier ?

- Notification to various agencies as a reportable event
- Your Insurance Company can agree that standard of care was met but it is still required to make notifications
- National HealthCare Practitioner's Data Bank
- All your licensing boards
- Self-Reporting on questionnaires



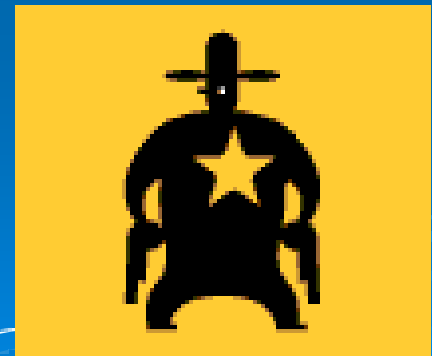
Who Accesses The Data Bank?

- **Who does not is the easier question**
- **Your applications for third party payment participation agreements have provisions for release of information and that include the data bank**
- **Same with your hospital privileges and HMO renewal and applications**
- **Same with your malpractice insurance application**
- **Same with government program participation applications**
- **Same with employment applications, etc, etc, etc**



You End Up Having To Defend Your Practice - Even If You Spent Years Building It Up

- Costs You Time
- Costs You Money
- Can Costs You Patients
- Can Costs You Privileges
- Can Costs You 3rd Party Payment Participation
- Can Cost You Your License
- Can Cost You Your Practice



What To Do?

- Partially bullet proof yourself with the best insurance policy that you can afford with a right not to settle provision
- Obtain a second legal opinion and counsel aside from that provided by your insurance appointed attorney



What Else To Do

- Further partially bullet proof yourself by having and using a good defensive Doctor - Patient Contract. Have it in place, in advance (OK even for existing patients) - Plaintiff's Attorney May Not Take Case if he feels he may have to arbitrate (can cost him more money and a more conservative venue)
- You need binding arbitration and/or waiver of jury clause because insurance company may not accept arbitration provision - in Maryland it may have to
- Make sure that the contract provides that it can cost the Plaintiff if he/she loses - i.e., cost of defense, attorney fees, your time, cost of increased insurance premiums, etc
- No guarantee how the Courts will receive it but it is still valuable

Additionally - What Else To Do

- Even if the enforceability of some of the Contract Provisions would be subject to litigation - it is additional litigation that Plaintiff's counsel does not want to deal with for he is working on a contingency arrangement
- The case may not even be accepted by counsel on behalf of the Patient - if the contract issues seem too problematic and the case does not promise a sufficient return

Appropriate Relationship With Your Patients

- Maintain a Good Relationship With Your Patients
- Exhibit Good Bedside Manners - Pay Attention To Them And Listen To What They Have To Say About Themselves- Its Good Medicine
- Always Follow Up With Appropriate Notices To Your Patients And Document Your File
- Remember You Are Responsible For Your Staff - Get Your Messages And Follow-Up On Them Or Have Someone Qualified To Undertake That Responsibility - Nurse, PA, Licensed Professional Etc

More About Dealing With Your Patients

- Document Your File Legibly As To Your Treatment Plans And Thoughts
- Document Your File Legibly As To Instructions, Recommendations, Information And Test Results You Provide Your Patients
- Refer Problematic Patients To Specialists
- If You Are A Specialist, Don't Forget Possible Referrals To Our University Medical Schools For Extra Tough Cases

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- Dedicated To All Of
The Dedicated
Physicians Who Have
Fallen To The System



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