

You've Been Served: Lawsuit Survival Tips for Physicians

By: Douglas McCullough, Esq., Assistant Vice President, Claims, of The Doctors Company

A physician incurs nearly \$200,000 in medical student loan debt, graduates in the top 10 percent of her class, and dedicates the past 14 years to providing care to patients. One day, out of the blue, the local sheriff's office serves her with a lawsuit. Perhaps it is regarding a familiar patient, or maybe a patient the doctor cannot recall. Either way, her mind immediately leaps to: "What did I do wrong?" After the initial shock, the physician is flooded with emotions—fear, anger, betrayal, frustration, anxiety, humiliation, embarrassment. Even shame.

Chances are good that as a physician, you will find yourself in a similar situation. On average, each physician spends 50.7 months, or approximately 11 percent of an average 40-year career, on resolving medical malpractice cases—the vast majority ending up with no indemnity payment. That's the conclusion of a [study](#) by the RAND Corporation based on data provided by The Doctors Company, the nation's largest physician-owned medical malpractice insurer.¹ These findings suggest it is not a matter of if you'll be sued, but when—undermining the medical-school white-coat myth that if you do well in school and rely on your education, skill, and training, you needn't worry about malpractice.

By the age of 65, more than 75 percent of physicians in low-risk specialties and 99 percent of physicians in high-risk specialties have [experienced a claim](#)ⁱⁱ. Although it's a reality that the majority of physicians will face a malpractice claim, few are prepared when served with a lawsuit. I routinely survey up to 50 physicians at seminars devoted to litigation preparation—only two or three say they received relevant information about medical malpractice in medical school.

I make it a point to advise doctors to take these steps if a claim is filed against them:

- **Contact your medical malpractice carrier.** Typically, a lawsuit will name multiple defendants to include various treating physicians as well as medical facilities where alleged negligent care was rendered. The pool of defense attorneys who specialize in medical malpractice defense is a small one. Many malpractice carriers draw from the same pool of attorneys, so it is important to notify your carrier as soon as possible to ensure the right defense attorney is retained

on your behalf. The defense team is referred to as a "three-legged stool," including the physician, claim specialist, and defense attorney. All three need to work in unison to obtain the most favorable result.

- **Build your defense.** The attorney representing your patient has likely already developed a good portion of their case before you were ever aware of its existence. Therefore, it is critical you be an active member of your defense team to begin building your defense.
- **Be prepared for extended periods of perceived inactivity.** The legal process is inefficient and impossible to control. The litigation process typically lasts two to five years, with claims being filed a year to two years after a negative event of the date of discovery of an injury – depending on state laws. There will be flurries of activity, followed by long periods of perceived inactivity. Trust that your defense team is continuing to work on your behalf. Depositions are often scheduled, cancelled, and re-scheduled. Trial dates are routinely continued beyond the control of defense counsel. Knowing in advance these inefficiencies and inconveniences occur may alleviate frustration in the process.
- **Understand the plaintiff's strategy.** Don't believe that once you "educate" the plaintiff or, more importantly, the plaintiff attorney on the medical facts, they will drop the suit. The only time you will be given the opportunity to educate and explain the care you provided is at trial. The plaintiffs' bar is very skillful at taking testimonial "sound bites" and portions of the medical records to fit their narrative. By understating the plaintiff's strategy, you can assist in preparing an effective defense.
- **Become fully engaged in the process.** The key to ensuring a successful defense is preparation. Those physicians who managed to survive litigation, did so by becoming fully engaged in the process—approaching their case as an academic exercise as if they are sitting for a board exam.
- **Get professional coaching on how to be an effective defendant.** Physicians routinely describe the litigation process akin to a rollercoaster ride. Every physician will have some emotional reaction to becoming a defendant in

Continued on page 3

Congratulations Are in Order!!!



While our clients often tell us that the Answering Service is the best, we now have confirmation of that fact. We are proud to announce that the Jefferson County Medical Foundation Trust's Answering Service received the Award of Excellence from the Association of Teleservices International (ATSI) at ATSI's Annual Meeting in Charlotte, North Carolina, on June 14. The ATSI Award of Excellence program recognizes excellence in customer service – considering the caller first in all aspects of the call. The program involves a multi-month evaluation of answering services across the United States and United Kingdom by an independent evaluation group. The scoring criteria includes response time, courteousness of the operator, accuracy of the call, knowledge of the account, and overall impression of the call. ATSI President Josue Leon states "The ATSI Award of Excellence is one of the many ways businesses in our industry can measure their customer service levels as it relates to agent performance. Agents are evaluated on how they interact with callers based on established call-handling criteria."

The JCMS, through its Foundation Trust, has been operating the Answering Service since 1986. We now have clients across the State from Mobile, Auburn and Montgomery, to Tuscaloosa, Gadsden and all points in between. Mary Whitehead, Director of Services, has overseen the Answering Service for most of that time and customer service has always been her number one priority. Some of our operators have been with us for decades and all of them deserve this prestigious industry recognition!



Upcoming Events

- | | |
|-----------------|---|
| Sept. 17 | Foundation Trust Meeting – 5:00 p.m.

Executive Committee Meeting – 5:30 p.m.

Board of Censors Meeting – 6:00 p.m. |
| Sept. 18 | The Wayne Finley 811 Breakfast Club Meeting –
The speaker will speak at 8:30 a.m. in the JCMS Board Room |
| Oct. 15 | Executive Committee Meeting – 5:30 p.m. |
| Oct. 16 | The Wayne Finley 811 Breakfast Club Meeting –
The speaker will speak at 8:30 a.m. in the JCMS Board Room |

Contact Juanita Pruitt at jpruitt@jcmsalabama.org for more information.

2018 JCMS Executive Committee

President

Leon C. "Bud" Hamrick Jr., M.D.

Immediate Past President

Katisha T. Vance, M.D.

President-Elect

Elizabeth S. Martin, M.D.

Vice President

P. Jeffrey Rickert, M.D.

Secretary-Treasurer

Justin Moellinger, M.D.

2018 JCMS Board of Censors

Scott W. LeCroy, M.D.

Marjorie L. White, M.D.

Paul J. O'Leary, M.D.

Weily Soong, M.D.

Nathan Douthit, M.D. (Resident)

***Censors, also serving
on Board of Health***

Max Michael, III, M.D.

Joshua B. Miller, D.O.

Yocunda D. Clayton, M.D.

Sylvie R. Stacy, M.D.

Hernando Carter, M.D.

2018 JCMS Ethics Committee:

John P. Young, M.D.

Emily B. Casey, M.D.

Rishi Kumar Agarwal, M.D.

James L. Casey, M.D.

John G. Touliatos, M.D.

Robert H. Yoe IV, M.D.



901 South 18th Street
Birmingham, Alabama 35205

Continued from page 1

a malpractice lawsuit. It's important to identify and become aware of your emotions in order to develop appropriate coping mechanisms. Physicians who develop effective coping mechanisms have a greater chance of successfully navigating the rigors of litigation.

- **Work on alleviating stress.** Remember you are not alone. Focus on the multitudes of patients you help daily. While you can't divulge details of the litigation to family and friends, talk to them about how the claim is affecting you. And continue to participate in the personal interests and activities that provide you with joy.

To be thoroughly prepared, you must know the medical record. You must also practice for your deposition, know your deposition testimony, and read depositions of other defendant physicians

and experts—all while caring for your patients and yourself. This is no small task, but successfully defending your professional reputation is worth it.

For more tips, read [Malpractice Claims Consume Years of a Physician's Career](#). Further insights from doctors who have experienced litigation are available in The Doctors Company's [What to Expect from Litigation](#) video playlist.

Sources:

i Seabury SA, Chandra A, Lakdawalla DN, Jena AB. On average, physicians spend nearly 11 percent of their 40-year careers with an open, unresolved malpractice claim. *Health Affairs*. 2013;32(1):1-9.

ii Jena AB, Seabury S, Lakdawalla D, Chandra A. Malpractice risk according to physician specialty. *N Engl J Med*. 2011; 365:629-636. doi: 10.1056/NEJMsa1012370.

Service Animals in the Medical Practice

By: Brandy Boone, JD, Director, Education & Client Guidance, of ProAssurance Companies



Animals are rarely seen in physician offices, so it may take patients and staff by surprise when a person walks in with an animal. Many physicians and their staff actively discourage the presence of animals within the office for cleanliness and hygiene reasons—as well as the potential safety threat from an uncontrollable animal. However, medical practices that prohibit all animals from their premises under any circumstances risk facing allegations that they have violated the Americans with Disabilities Act (ADA).

Since medical offices or clinics are defined as “places of public accommodation” by Title III of the ADA, they are prohibited from discriminating against individuals on the basis of disability; they must make policy, practice, and procedure accommodations for service animals of people with disabilities.¹

The U.S. Department of Justice defines a service animal under the ADA as a dog that is individually trained to do work or perform tasks for a person with a disability—although as of 2010, miniature horses have been included as an exception to dogs in that definition.² The Department of Justice has also issued guidance on the use of service animals in places of public accommodation, which includes the following elements:

- It is only permissible to ask the handler whether the animal is required for a disability and what tasks the animal has been trained to perform. Inquiries about the individual's disability or the animal's certification are prohibited.³
- Neither allergies nor fear of dogs are considered legitimate or valid reasons for denying services or access to premises to individuals using service animals.
- A handler of a service animal may only be asked to remove the animal from the premises for two reasons: (1) the handler takes no action to attempt to manage an out of control animal or (2) the animal is not housebroken.⁴

In 2011, a physician's office in Florida reached a settlement agreement with the Department of Justice following a complaint; an individual stated he was treated inappropriately at the office because of his service animal. The individual in question was not asked to leave or remove his service dog from the premises. His complaint was based on comments by the office staff about the dog's presence and inquiries about the dog's training or certification. Under the settlement, the physician's office was required to establish a service animal policy, provide effective notice of the new policy, retrain office staff, and pay the complainant \$500.00.⁵

Physicians or medical office staff may access the Department of Justice's resources on service animals at https://www.ada.gov/service_animals_2010.htm and https://www.ada.gov/regs2010/service_animal_qa.pdf.

Sources:

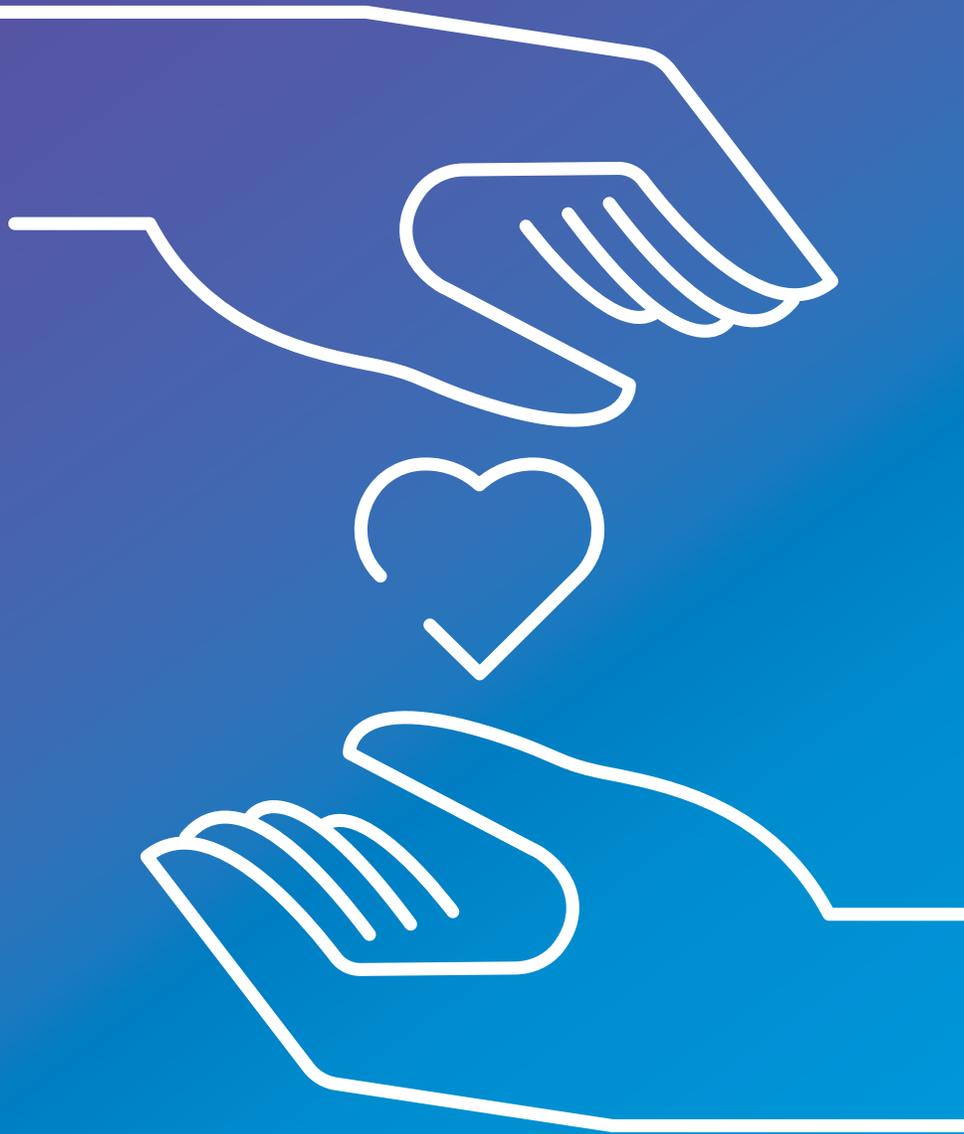
1 42 U.S.C. § 12188, et seq.; 28 CFR § 36.104

2 42 U.S.C. § 12188, et seq.; 28 CFR § 36.104; 28 CFR § 35.136(i)

3 28 CFR § 35.136(f)

4 28 CFR § 35.136(b)

5 http://www.ada.gov/berenson_settle.htm



Connected care. Superior outcomes.

HealthSouth Corporation and Encompass Home Health & Hospice have combined our post-acute strengths into Encompass Health. As part of a nationwide network, we are redefining expectations for how providers work together to create better patient experiences and deliver unparalleled outcomes. As a coordinated care team, we set the standard for the future of rehabilitation.



**Encompass
Health**

Rehabilitation Hospitals

Lakeshore • Shelby County

LEARN MORE AT [ENCOMPASSHEALTH.COM](https://www.encompasshealth.com)

IN MEMORIAM

THE JCMS WANTS TO ACKNOWLEDGE THE RECENT PASSING OF THE FOLLOWING JCMS MEMBERS:

ALBERT J. TULLY JR., M.D.
JUNE 3, 2018

DANIEL J. COYLE JR., M.D.
JULY 6, 2018

STEPHANIE MARIE HIGHTOWER, M.D.
JULY 2, 2018

JAMES L. NEWSOME, JR., M.D.
JULY 12, 2018

JCMS Welcomes the Following New Members

Austin S. Adams, M.D.
James R. Bowman III, M.D.
James R. Duncan, M.D.
Jennifer A. Hadley, M.D., Ph.D.
Ankrehah Trimble Johnson, D.O.
Austin Taylor Lutz, M.D.
Richard S. Martin, M.D.
Gregory W. McKinney, M.D.

Otolaryngology
Orthopaedic Surgery
Resident
Resident
Family Medicine
Urology
Radiology
Family Medicine

Marian E. Northington, M.D.
Paula J. Rookis, M.D.
Rachel Michelle Skains, M.D.
Elainea N. Smith, M.D.
Michael D. Smith, M.D.
Carla C. Stefanescu, M.D.
Andrew M. Strang, M.D.
Yoginder N. Vaid, M.D.

Dermatology
Urology
Resident
Resident
Orthopaedic Surgery
Internal Medicine
Urology
Pediatric Radiology

2018

JCMS Annual Barons Event



Special thanks to our sponsors:



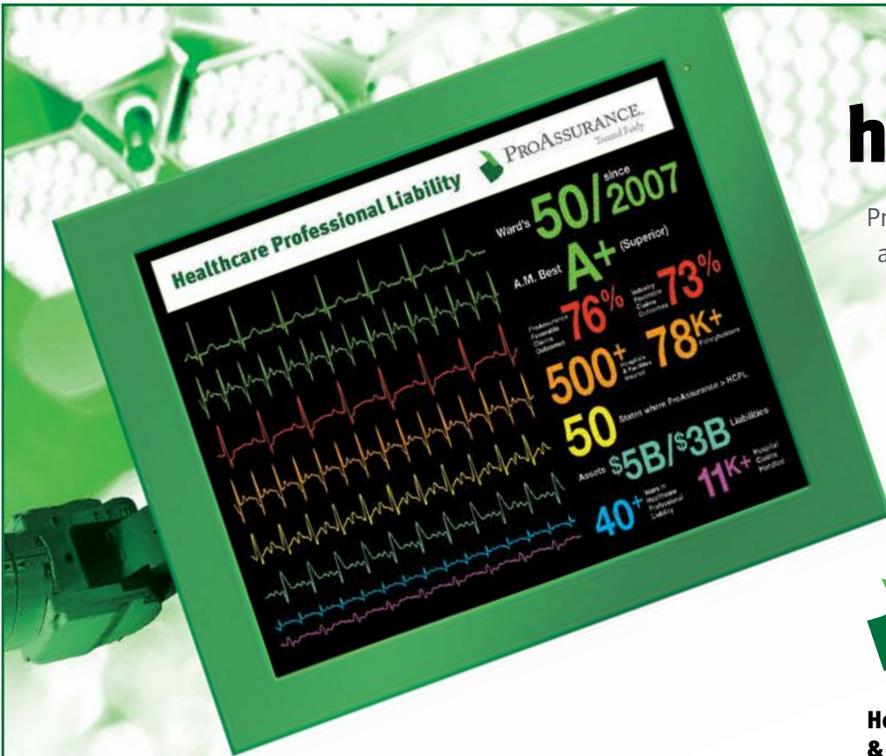
healthy vitals

ProAssurance has been monitoring risk and protecting healthcare industry professionals for more than 40 years, with key specialists on duty to diagnose complex risk exposures.

Work with a team that understands the importance of delivering flexible healthcare professional liability solutions.



Healthcare Professional Liability Insurance & Risk Resource Services



When you are **treated fairly** you are confident in your coverage • 800.282.6242 • ProAssurance.com

901 South 18th Street
Birmingham, Alabama 35205



Non-Profit Organization
U.S. Postage
PAID
Birmingham, Alabama
Permit No. 1442