

## **So, You Have Been Sued!** *An Information Paper*

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### **Introduction**

If you are reading this, you probably have received notice that you have been named in a malpractice suit. Welcome to a distinguished group of your peers! It is the rare emergency physician who will not be sued during her or his career. During the course of your suit, there will be many personal, professional, financial, and legal issues you will face. There are numerous articles, web sites, books, and organizations offering worthwhile advice on how to survive a medical malpractice lawsuit. Some of these sources will be referenced later. This article is intended to be a practical resource to help you navigate the best possible course through the uninvited and unwelcome process of malpractice litigation. While it is the goal of ACEP to provide support and general guidance, legal advice and representation can only come from your attorney.

#### **A. Let's Start First with the Basics**

##### **1. Are all notices from an attorney a lawsuit?**

No. An attorney letter may be a simple request for medical information or medical records. Even if it is only a letter from an attorney requesting information, be careful! Do not express opinions that are not already contained in the medical record and do not express opinions about the care and treatment of other treating physicians. It is best to check with your risk manager, insurance

company or (if you have one) your defense attorney prior to responding to any correspondence from a potential plaintiff attorney.

Other letters may be a legal notice of intent to sue. These letters are sent in order to extend the statute of limitations by a certain statutory period. These notices are normally forwarded by certified mail and will indicate that the patient is considering a suit against you.

And, finally, the ‘letter’ may be a lawsuit!

## **2. What is a lawsuit anyway?**

In the legal system, the formal name for a lawsuit is a ‘complaint.’ The complaint will state the name of the patient (plaintiff) and the doctor(s) and hospital(s) called the ‘defendants.’ The law requires that a complaint be a short and plain statement of the facts which form the basis of the claim against you. However, many times it will be difficult for you and your attorney to figure out the theory of plaintiff’s case against you until your lawyer is able to formally question the plaintiff and the plaintiff’s expert.

The complaint is supposed to state how you fell below the standard of care when providing medical treatment for the patient; how that failure of medical treatment caused injury to your patient; and, what damages directly resulted from the breach of the alleged standard of care.

In many states, the amount of an award for damages will be limited. On the other hand, in most complaints the damage claim demand will be potentially unlimited. You cannot assume that the damages requested in the complaint are the limit of what is really being requested.

All notices and complaints should be immediately forwarded to your insurance agent and/or insurance company. Never fail to send an “intent to sue letter” or a formal court complaint to the insurance agent and/or insurance company right away! You must formally respond to a claim within a certain time limit, or a default judgment will be taken against you. Furthermore, if you have a “claims made” liability policy, your notice of the existence of any type of claim can be critically important in determining whether or not you are covered. Notification of your insurer should occur as soon as you receive any indication of a possible or pending claim, and it is advisable to secure proof that it has been received (e.g., certified letter, return receipt requested). You should also immediately notify risk management for both your group and hospital.

## **3. How does a civil suit differ from a criminal suit?**

Most cases are civil suits which can only result in money judgments or money damages. In civil cases, private attorneys are retained by the patient or the estate of the patient to file a civil complaint and, unless self-insured, the case will normally be defended by an attorney selected by your insurance company.

In a criminal case, you can lose your freedom. In other words, you can be put in jail for a criminal act which leads to a conviction. In addition, there can be a criminal fine along with jail time. Criminal claims are normally prosecuted by the state attorney general, county prosecutor or a municipal prosecutor. The state, county or municipality will usually be the complainant/plaintiff and the alleged criminal will be the defendant.

## **4. What are the basic steps of the litigation process?**

As previously stated, the case begins with a complaint filed in court. The complaint will end up in the hands of your lawyer who will file an answer on your behalf. You will receive various requests

for “discovery” of information, in the form of questions (interrogatories) or demands for documents from the plaintiff, and your lawyer will also be sending questions and document requests to the plaintiff’s attorney.

After there have been responses by both sides to the interrogatories and document requests, depositions of the parties (testimony under oath) will be scheduled. Normally, this will be done at the convenience of the parties and the lawyers. Your deposition will probably be taken at your lawyer’s office and the deposition of the plaintiff will be taken at the office of the plaintiff’s lawyer. Your deposition will be the most important involvement by you until trial. If you have gone through the deposition process on prior occasions, one preparation session may be all that is necessary. On the other hand, if this is your first lawsuit, it may take several conferences with your attorney to get properly prepared. At times, you may be videotaped so that you can see how you present yourself.

Your attorney will also seek your input and assistance on expert selection. In order to prosecute a medical malpractice case, each side will identify medical experts, normally in the field of the alleged injury. However, in certain emergency medicine cases you may identify experts in different specialties. For example, in a case involving a delayed diagnosis of an impending myocardial infarction, you may have as many as three medical experts which would include: 1) an emergency physician, 2) a cardiologist, and 3) a pathologist. Normally, it is difficult to evaluate the strengths and weaknesses of a case until after the expert witnesses have been deposed (made statements under oath).

In some cases, something called a “Motion for Summary Judgment” will be filed on your behalf. The intent of this motion is to cut the proceedings short. This may occur when the other side is unable to produce a competent expert. However, very few cases are disposed of by way of motions.

In the past ten years, there has been a big push by the courts for alternative dispute resolution (ADR). This may include non-binding arbitration or mediation. Some courts force ADR, but the court cannot force you to settle. In some circumstances, the court may appoint the arbitrator and/or mediator. In other cases, the parties may get together to jointly hire a mediator to assist the parties to an ultimate resolution. The fact that a case is arbitrated or mediated does not necessarily mean that a successful settlement will be achieved or that the case should necessarily be settled. Many arbitrations/mediations do not result in settlement and the case will then proceed to trial.

The trial will be attended by you and your attorney. You will need to be there during the entire trial. Medical malpractice trials typically run from one to three weeks.

**5. How long does the process usually take?**

In most states and most courts, a trial will be scheduled within a year after the filing of suit. In courts that are run efficiently, a trial may be scheduled in less than six months from the date of the filing of the complaint. There are extreme ranges depending upon the state and locale, as well as the zeal of the attorneys to process the case. The range can run from less than a year to as much as four years or longer.

**6. What are the possible outcomes of my suit?**

After the complaint is filed, many cases are voluntarily dismissed by the plaintiff’s attorney. Why does this happen? Frequently, the attorney does not get the case until just before the running of the statute of limitations. The attorney will file the suit and then send it out to an expert. On some of these occasions, the expert will tell the attorney that his client does not have a case against you. This may result in a voluntary dismissal. Sometimes, the case will be voluntarily dismissed by the

plaintiff's attorney because they are not ready to proceed, and if allowed by the statute of limitations, it can be refiled, normally within a one-year period. Sometimes, the court will dismiss the case with prejudice for lack of prosecution by the plaintiff. As stated above, some cases will be dismissed by the court on summary judgment if the plaintiff fails to produce a competent expert to say that you did something wrong in your care and treatment of the patient.

Other cases will result in settlement. Settlement is a legal maneuver which allows for a case to be terminated without a trial, usually on payment of a certain amount of money to the plaintiff. In general, you will have a right to 'consent' or 'refuse to consent' to settlement. Most insurance policies give you this right, though not all. It is important to know your policy on this point, preferably before a suit is brought! Normally, there will be a little disagreement between you and your attorney as to whether a case should be settled or go to trial.

A 'verdict' means that the case has gone to trial and the jury has made a decision. The verdict is the jury's decision as to whether or not you met standards of care or fell below standards of care; and if you fell below standards of care, whether you caused an injury; and finally, the amount of the money damages which will be paid as a result of the injury.

**7. What should I do with the legal papers I receive?**

You should immediately notify your insurance agent or the insurance company. If you are with a self-insured group, you should immediately contact risk management for your group. You should also mark your calendar to follow up and make sure the legal papers are being promptly handled by the insurance agent, insurance company, or risk management.

**Do not** depend on your office staff to properly handle the legal papers. **Do not** put these legal papers in the same stack as other reports and correspondence. Failure to properly respond to a civil complaint can result in a default judgment against you. In turn, this could cause your insurance company to refuse to defend you and refuse to pay for any judgment. In addition, a default judgment means that you cannot even defend yourself on the issue of whether or not you did something wrong!

**8. Should I keep the original or make copies?**

Generally, I would make a copy and send the original to the agent, insurance company, or risk manager. However, in today's world, there is little difference between an original and a copy of a civil complaint.

**9. What should I do first when I receive a legal notice or correspondence?**

Immediately forward the legal notice or correspondence to the insurance agent, insurance company, or risk manager.

**10. Who should I contact?**

Contact risk management for your group and at your hospital and your insurance carrier as soon as you receive any indication that you are going to be sued (such as a subpoena, a request for records, or a claim). When a claim is actually received by your insurer, you will be assigned a lawyer to help you with your defense. The more time you can provide to your lawyer and risk manager, the better able they will be to help you with your case, and the better job they can do on your behalf.

**11. Who will assign my defense attorney?**

Normally, you will have little or no input in the assignment of your defense attorney. Your insurance carrier will make this assignment. However, you may know the more experienced

defense attorneys in your area. If they are willing to work for your insurance company, your request to be represented by one of them may be honored by the insurance company.

**12. Will my defense attorney contact me, or do I call him/her?**

Your defense attorney will normally contact you by letter, telephone or both.

**13. What if I am not satisfied with the attorney selected?**

Many times, after receiving a claim which says that you fell below the standard of care, you will be upset, hurt, and possibly even ready to quit the practice. Give yourself some time to calm down, learn the true facts of the case, and become acquainted with your selected attorney. Get to know the attorney's personality and ability to represent you. If you have concern with the attorney's representation, express that concern immediately with the attorney. If the personality conflict or dissatisfaction with representation continues, call the insurance carrier who appointed your attorney and strongly express your concern. Before doing so, however, be sure your frustration is with the attorney representing you and not due to the fact that you have been sued. Usually, the insurance company will appoint new counsel if your dissatisfaction is justified.

**14. What if there is an apparent conflict between my attorney and someone else in the case?**

Conflicts can be handled several different ways by your attorney. First, if you feel there is a conflict, you need to discuss it with your attorney. Often times, the attorney will represent more than one doctor in the case. For example, on repeated emergency room visits within a short period of time, several doctors may be involved. Generally, it is better to have one attorney representing all of the physicians, especially if they are all within the same specialty and the same group and there is no real negligence involved on the part of anyone. However, if you feel that your interests are best served by separate counsel, you must express your opinions to both the attorney and the insurance company. Representation will then be split, and a new attorney will be appointed either for you or the other doctor.

**15. What can I tell my attorney?**

Tell your attorney everything you know about the case. Anything that you tell your attorney is privileged and cannot be disclosed to any third party by your attorney. This is known as the "attorney – client privilege". You should definitely tell your attorney about any 'problems' that may exist regarding your care and treatment. Also tell your attorney about any problems you feel may exist regarding other caregivers.

**16. Who can I talk to about my suit?**

Don't discuss the details of the case with anyone except your lawyer, your spouse or a counselor. You may discuss your feelings about getting sued, but not the details of the case. Discussions with anyone else can be discovered by the plaintiff's lawyer. When asked by the plaintiff's attorney under oath if you discussed the case with anyone, you want to be able to answer, No. You don't want friends and colleagues to be dragged into court to testify about what they recall you told them about the case.

**17. Can I participate in selection of the defense expert?**

Absolutely. However, the selection of the defense expert cannot be a friend, relative, or someone with whom you have regular contact. The defense expert must be truly 'independent.' Expect your attorney to ask you if there is someone that you have in mind who is a leader in your field with quality credentials and medical/legal experience. If s/he doesn't ask, volunteer. Remember, this is your case. You should participate with your attorney in your defense from beginning to end.

**18. Are Peer Review documents protected?**

Yes. In most states, Peer Review documents are protected by statute. This protection is necessary since open and honest discussion is required in Peer Review. Occasionally, the other side will seek to obtain Peer Review documents. On rare occasion, the court will order that the Peer Review documents be examined ‘in camera.’ This means that the court will look at the Peer Review documents without the attorneys or parties. Peer Review documents are almost always protected as long as they have not previously been voluntarily disclosed to third parties.

**19. Something important was left out of the patient’s medical record. Can I change or add something now?**

Don't alter your medical record. Don't go back and change the record in any way. Changes can always be detected, and if that happens, your credibility will be in serious question. Without credibility, you do not have a defense. However, you can make a careful note of what was left out or incorrect and add it as an addendum CLEARLY labeled as such and dated as of the writing (not the clinical interaction). Check with your attorney to see if an addendum would be advisable at this late date or could be misinterpreted. Have the attorney review the addendum if it is advisable.

**20. Can I just call the patient, the patient’s family, or the plaintiff attorney to explain what really happened?**

Don't call the plaintiff or the plaintiff's attorney to see if you can simply explain what happened so that the suit will go away. It is too late for this. What you say may be used against you later.

**B. Now Let’s Consider Some Questions About Financial Issues**

**1. For what expenses is my professional liability insurance company responsible?**

Depending on the language of your insurance contract, the insurance company typically pays the defense costs, any settlement or judgment payments, and sometimes compensation for your time spent during trial.

**2. Is there anything the insurance company will not pay for?**

Again, this depends on the details of your insurance contract. Usually malpractice insurance companies do not reimburse you if you hire your own personal attorney, or for full replacement of your income lost during the litigation process. They will also not pay for monetary awards which exceed your policy limits, or for punitive damages.

**3. What happens if the judgment does exceed the limits of my liability insurance policy?**

First, this rarely happens. Whether you are responsible for excess awards depends on the circumstances and conduct of your insurance carrier. If you ask the insurance company to settle this case within the policy limits before judgment and they refused, you probably have a bad faith action against your insurance carrier for failing to settle within the policy limits.

Second, in the rare case that the judgment exceeds the policy limits in which you and your attorney thought you would win, you can still attempt to negotiate a settlement with the other side recognizing that any money paid in settlement above the policy limits will be yours. Bankruptcy is also an undesirable option.

Judgments which exceed the policy limits are exceedingly rare, as are cases in which the physician is required to pay any money out of his/her own pocket.

**4. When should I consider hiring my own personal attorney?**

You should hire your own personal attorney when it appears your case is going to trial and that there is a reasonable likelihood of a verdict in excess of your policy limits. In those cases, you should definitely hire your own personal attorney to review the case and make an independent determination as to your personal monetary exposure. You should also consider hiring a personal attorney if it appears that you are receiving ineffective assistance of counsel from the insurance company attorney, and the adjuster refuses to allow you to change attorneys, or if you need someone other than the insurance company retained attorney to negotiate with the insurer.

**5. Will my insurance company pay for an EMTALA violation?**

No, your liability (malpractice) insurance company will not pay for fines, settlements, or financial judgments which result from an EMTALA violation. Most insurance contracts will not pay for any judgment relating to allegedly illegal behavior. However, in some instances they will defend you, but seek payment from you if you are found guilty of such conduct. Read your contract carefully to determine whether such defense coverage is available. Some licensure actions may be defended by liability carriers if relating to an alleged malpractice claim.

**C. Here Are Some Common Questions Addressing the Repercussions When You Settle or Lose a Malpractice Lawsuit**

**1. What happens if I settle or lose my lawsuit?**

Although there are many repercussions to settling or losing your lawsuit, unless there are also criminal charges you will not go to jail! Remember, this is a civil lawsuit in which only money damages will be paid to the claimant by way of settlement or verdict. Once the settlement amount has been negotiated and agreed upon or the damage verdict has been rendered by the jury, your involvement is basically over.

The insurance company will pay the settlement in exchange for a dismissal of the lawsuit and a release of all claims against you. In the event the case proceeds to trial and the jury renders a money damage verdict which is within your policy limits, your attorney and the insurance company will decide whether to appeal or pay the verdict.

**2. Who is notified about my settlement or loss?**

In the event of settlement, regardless of the amount (unless you pay it all yourself), the National Practitioner Data Bank (NPDB) is notified of the nature of the case and the amount of the settlement or loss.

In many states, if the settlement or loss is over a certain amount, the State Medical Board is also notified. In the event of a number of settlements or losses within a designated period, the State Medical Board may decide to investigate your medical practice.

**3. Who reports me to these agencies?**

Under normal circumstances, your insurance carrier will report you to the NPDB or State Medical Board. Sometimes you can influence the wording of this report before it is sent. This should be investigated immediately upon any settlement or judgment. If you are practicing within a self-insured group, the representative of risk management of that group will have the responsibility of reporting.

**4. Can I contest or make any statement about my case?**

Yes, you can contest or request to make a statement about your case. By law, you will receive a copy of the report forwarded to the NPDB. You are allowed to supplement that report or argue that the report is incorrect.

**5. If I settle or lose my case, will I lose my license to practice?**

No. However, you may be subject to an investigation by the State Medical Board in the event you have a number of settlements or losses within a designated period of time or in the event that a patient makes a complaint.

**6. What will this mean to my insurance carrier?**

Insurance carriers profit from collecting premiums. They do not like to pay settlements or judgments! However, you have certain contractual rights with your insurance carrier, and they must comply with the insurance contract while you are an insured. Your insurance carrier will review internally whether or not they wish to keep you as an insured after expiration of your policy.

**7. What is likely to happen to my insurance premium rates?**

Your premium rates will certainly go up. This will be dependent upon the amount of the settlement, the current economic strength of your carrier, and other world events outside of your control.

**8. What information and records regarding my case should I save?**

As distasteful as it may be, you should save the complaint, settlement documents, release, and, if the case goes to trial and is lost, the verdict and judgment entry.

**9. What information should I disclose when I apply for insurance and hospital privileges in the future?**

You will be asked questions regarding all past lawsuits. You will need to disclose these lawsuits and how they ended, ie, dismissal, settlement, or verdict. More or less details may be demanded.

**D. The Following Discourse Addresses Common Questions About Your Preparation for the Legal Process**

**1. What should I read, if anything, in preparation for my testimony?**

Do be an expert about your case and the associated medical literature by the time of your trial. How much expertise you acquire before your deposition is something to discuss with your lawyer. As a general rule, you do not want to educate the opposing attorney during your deposition. Yet you need to be knowledgeable about the condition in order to educate your own attorney in preparation for the case. You want to be a knowledgeable witness for the jury in your defense. If the plaintiff's lawyer asks you in front of the jury if there is anything new in the treatment of X, Y and Z, you want to be able to mention that NEJM article from 3 months ago on the subject. You want to help your lawyer understand the case. If asked whether you did research or reading to prepare for the case, you of course must answer truthfully. But if asked if what you read is authoritative or reliable, the answer is a resounding "No". You should testify that you use medical literature simply as a reference. This is because the plaintiff's lawyer will then quote something from what you read that is not beneficial to your case and attempt to portray you as not complying with your own "authorities". Any author can be right or wrong about any given issue.

**2. How familiar should I be with the medical records of my case?**

VERY familiar. In fact, you should be the most knowledgeable person in the case regarding the medical records. The reason for this is that the jury will often equate your knowledge of the case and your concern with the details with your care and concern for the patient. If you are not fully aware of all the details, the opposing attorney will be sure to plant the idea in the jury's mind.

You should also ask your attorney if he has any medical records of prior or subsequent medical care and treatment. Ask your attorney if he will prepare an indexed book of medical care and treatment of the patient so that you can take it home and review it when you have time. Knowledge is power. Therefore, the more familiar you are with the medical records of the case, the more comfortable you will be at the time you are questioned regarding your care or the care of other health care providers.

You do not have to memorize the medical records. They will always be available to review at the time of your discovery deposition or trial so that you can assure the accuracy of your testimony.

**3. When and how often should I meet with my defense attorney?**

There should be an initial meeting with your defense attorney shortly after the case is filed. At this meeting, you can get to know each other and generally discuss the case.

After the initial meeting, most of the discussions can take place over the telephone until you are being prepared for your discovery deposition.

Many times, the number of meetings is based both on your experience with litigation and the complexity of the case. Your attorney will always be willing to meet with you when needed. Do not think you are a pest by asking for a meeting.

**4. How should my defense attorney best prepare me for my deposition and trial testimony?**

Your attorney should spend all the time you feel that you need in preparation for your appearances. S/he should educate you not only to the process and likely questions to be asked, but also as to your dress, demeanor, and any particular pitfalls to avoid during testimony. Your attorney should also go over what to bring and NOT to bring to the proceeding. She/he should be willing and able to give you feedback about what kind of a witness you will make on your own behalf, how you can improve your performance, and how to practice prior to the proceeding. If the attorney is unwilling or unable to provide you with as much preparation as you would like, it can be valuable to procure a consultant who can provide professional "depo prep" in conjunction with your defense attorney.

The main difference between preparation for your discovery deposition and preparation for trial testimony is the fact that you will be able to correct your past mistakes when preparing for the trial testimony. By the time you prepare for trial testimony, you will not only have read the medical record, you will also have reviewed and re-reviewed your discovery deposition; the depositions of your expert and the opponent's expert witness(es); and, any other discovery depositions. You will be totally familiar with all of the medical issues. You will normally be asked to be present during the entire trial which will usually take between one and three weeks, depending on the type of case.

**5. What is my role during my deposition, or testimony at trial?**

At deposition, you are the 'star of the show.' You will receive little help from your attorney since he/she cannot tell you what to say. However, this will have been done during preparation sessions.

At trial, your attorney will do most of the work, but you will get your input. The team approach works best. You may make suggestions for questions. Involve yourself as much as possible.

**6. Are juries influenced by how I look, talk, and act?**

Absolutely. Dress is important and your attorney will probably ask you to wear business attire. Your demeanor is critical. Arrogance is the kiss of death. Your attorney will tell you more than once to look the jurors in the eye and talk to them--not as doctors but as people.

**E. There are Likely to Be Personal Issues Which Arise During the Course of Your Suit - These are Common Issues to Acknowledge and Deal with in a Constructive Manner**

**1. What might I feel during the early stages of my suit? Right now, I am shocked and can't believe they sued me!**

You will feel shock, anger, disbelief, anxiety, and very possibly depression. You may very well experience physical as well as psychological symptoms. Be aware that some of these feelings will very likely spill out into your ongoing patient interactions. Evidence suggests that your likelihood of being sued again in the immediate aftermath of being served with a suit is quite high, probably based upon some of these behaviors. You will likely begin to practice more defensive medicine and distancing yourself from patients who can be perceived as future litigants against you.

**2. I hear the suit may drag on for years! What am I likely to experience emotionally over time?**

The average suit is not resolved for up to four years. Suits tend to progress in stages, with fits and starts as deadlines are missed, events rescheduled, and new information is revealed. Each time you revisit the case after a period of quiescence can be like a vicarious re-traumatization, bringing back a bit of the initial shock and anger.

**3. Who can and should I talk to?**

Strongly consider seeking emotional support from another physician who has been sued. A malpractice suit is a very difficult emotional experience for physicians—one of the deepest personal and professional threats you can experience. Don't underestimate its possible negative impact on your professional life and emotional wellbeing.

**4. I think I am getting depressed, anxious, or panicky. When should I get professional help?**

There is perhaps no more appropriate reason for a physician to seek professional help than being faced with a malpractice suit. If fear or rumination about the case is beginning to impact your personal or professional life, it is time to reach out for support. If sleep, appetite, weight, or pleasure-seeking activities are being affected, it could be critically important to seek intervention. Early counseling can be lifesaving.

Listen to your family. They are often more attuned to the effect a case is having on a physician than the physician.

**5. How will my family generally react to me during this stressful time? What can they and I do to get through this as a family?**

Your family will not at first understand what is happening. If the case is being "tried in the press" they may even hear about it first from a highly unreliable source, or from someone other than yourself. Make it a point to sit down with them as soon as you know a case is pending and explain to them why you believe it is happening, what it means, and how they can help you to get through

it. Don't share details about the case except with your spouse. You can however explain in generalities and allay their fears that the worst will happen to you or that you are a bad doctor.

**6. How important are diet, relaxation, exercise and other wellness techniques?**

More important now than at any other time in your professional career. Prescribe a certain number of hours of sleep for yourself, and schedule recreation and down time just as you would clinical shifts. Pamper yourself with nutritious, satisfying foods and social occasions on which to enjoy them with people you care about.

**7. What can I do to help deal with the anxiety associated with depositions or trial testimony?**

Get as much preparation as you can, and practice with a professional and/or with a video camera. Use affirmations daily. What is an affirmation? **Look into your mirror each morning and say with conviction, "I am a competent and caring professional, and it shows in everything I do." Because you are, and it does.**

**8. After it's over, what can I do?**

Congratulate yourself on surviving one of the most predictable, yet least anticipated events in the life of any physician. Investigate asset protection and learn and practice immaculate risk management principles. Seek out others who are experiencing this for the first time and be a healing influence for them.

## **F. References (updated 2019)**

1. Litigation Stress  
<http://www.acep.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=30088>
2. Getting Sued: A Resident's Perspective  
<http://www.acep.org/content.aspx?id=22726&terms=getting%20sued>
3. Managing Malpractice Stress  
<http://www.magmutual.com/risk/articles/malpractice-stress1.html>
4. Coping with Litigation Stress  
<http://www.physiciansnews.com/1998/01/15/coping-with-litigation-stress/>
5. Adverse Events, Stress, and Litigation: A Physician's Guide by Sara C. Charles, MD; Paul R. Risch, JD - ACEP Bookstore  
<http://bookstore.acep.org/en/New/Legal-Issues/Adverse-Events-Stress-and-Litigation-A-PhysiciansGuide.aspx>
6. How to Survive a Medical Malpractice Lawsuit: The Physicians Roadmap to Success  
By: Ilene R. Brenner, MD - ACEP Bookstore  
<http://bookstore.acep.org/en/Legal-Issues/How-to-Survive-a-Medical-Malpractice-Lawsuit-ThePhysicians-Roadmap-for-Success/479785.aspx>
7. General Information on the Litigation Process, Discovery, Depositions, and Trials  
[http://www.thesullivangroup.com/risk\\_resources/deposition/deposition\\_2\\_litigation.asp](http://www.thesullivangroup.com/risk_resources/deposition/deposition_2_litigation.asp)

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