

Going to Court? Preparation and Records Are Key

BY ROXANNE NELSON
Contributing Writer

BOCA RATON, FLA. — Medical malpractice suits are common, and many physicians are unaware of the procedures and protocols involved in building a strong defense, Cliff Rapp said at the annual meeting of the Florida Society for Dermatology and Dermatologic Surgery.

The law is less concerned with rightness or wrongness than it is with justifiability. "You have to understand this going in. The legal system is about money, and you will be the pawn," said Mr. Rapp, vice president of risk management for First Professionals Insurance Co., in Jacksonville, Fla.

Early preparation is the key, he explained. Medical records will become evidence, and early on, the plaintiff's attorney will review the records to see if there are sufficient holes to bring it to court. In fact, a request for medical records is the first indication that something is going on.

It is essential not to ignore or be late with a request for records. "They usually ask you to provide a copy within 10 business days. And never alter your records. It's a crime, so just don't do it," Mr. Rapp said.

Keep the patient's chart separate from other records and create a separate personal file. "And never contact the patient's attorney directly," he said.

The 90-day presuit screening process begins with the notice of intent letter. During this period, the physician can admit guilt, deny any wrongdoing, or arbi-

trate. At the conclusion of the presuit, the claimant has 60 days or the remainder of the statute of limitations to file suit.

"Usually, if you don't settle, this will be the end of the lawsuit," Mr. Rapp said.

If the patient does pursue it, the physician must become his or her own best expert. Educate your defense team, Mr. Rapp pointed out. Invest the time to conduct research, evaluate medical literature, and obtain current seminar material.

You also need to work with your attor-

ney, he explained, and should be honest, up front, and participate in your defense.

"The No. 1 mistake made during the deposition is being unprepared," Mr. Rapp explained. "The No. 2 mistake is not listening to the question, and the No. 3 mistake is trying to 'outsneak' the plaintiff's attorney."

Mr. Rapp strongly suggests that the physician visit the courtroom ahead of time and scope it out. Don't let the day of the trial be your first time there, he advised.

Attendance is mandatory at the trial, and it is important to give the right impression, he said. This means appearing on time, being conservative in dress and demeanor, and not arriving at the courthouse in a flashy, expensive automobile. "Arrive and leave with your attorney," he said.

Once the trial is underway, participate in your defense. It is important to pay attention to every detail, Mr. Rapp emphasized, and to take notes as well as to alert your attorney to any mistakes. ■

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ization, on the practice's income streams using a variety of assumptions. Guideline comparison uses various publications, databases, and other records of transactions to compare your practice with other, similar ones that have changed hands in the past.

Two newer techniques that some believe provide a better estimate of intangible assets are the replacement method, which estimates the costs of starting the practice over again in the current market, and the excess earnings method, which determines the average earnings of a practice within your specialty and then measures how far above average your practice's earnings are. The theory behind the latter method is that a practice with above-average earnings is more valuable than an average one.

Whatever methods are used, it is important that the appraisal be done by an experienced financial consultant, that all techniques used in the valuation be divulged and explained, and that documentation is supplied to support the conclusions reached. This is especially important if the appraisal will be relied upon in the sale of the practice. We'll talk about that next month. ■

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