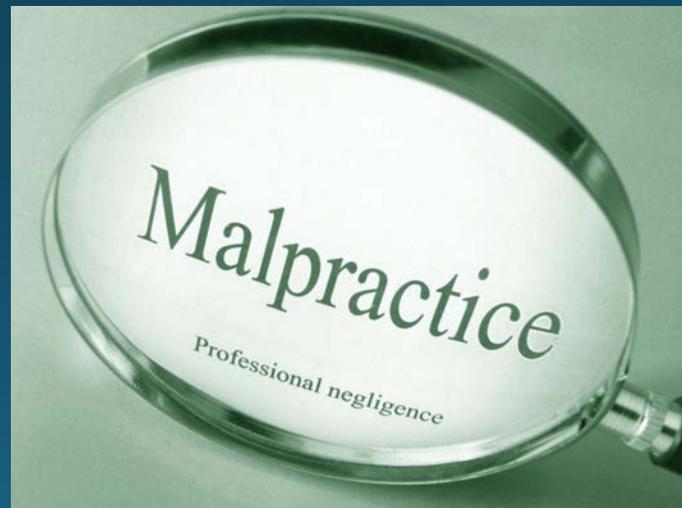




Malpractice Litigation Stress: Doctors Beware



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Disclosures

- I have no financial disclosures
- This presentation is the opinion of the author and does not represent the official policy or position of the Uniformed Services University, Department of Defense, or US Government



Poll # 1

Have You Ever Been Sued?

1. No
2. Yes – once
3. Yes – twice
4. Yes, more than twice

Emergency Medicine as a Specialty

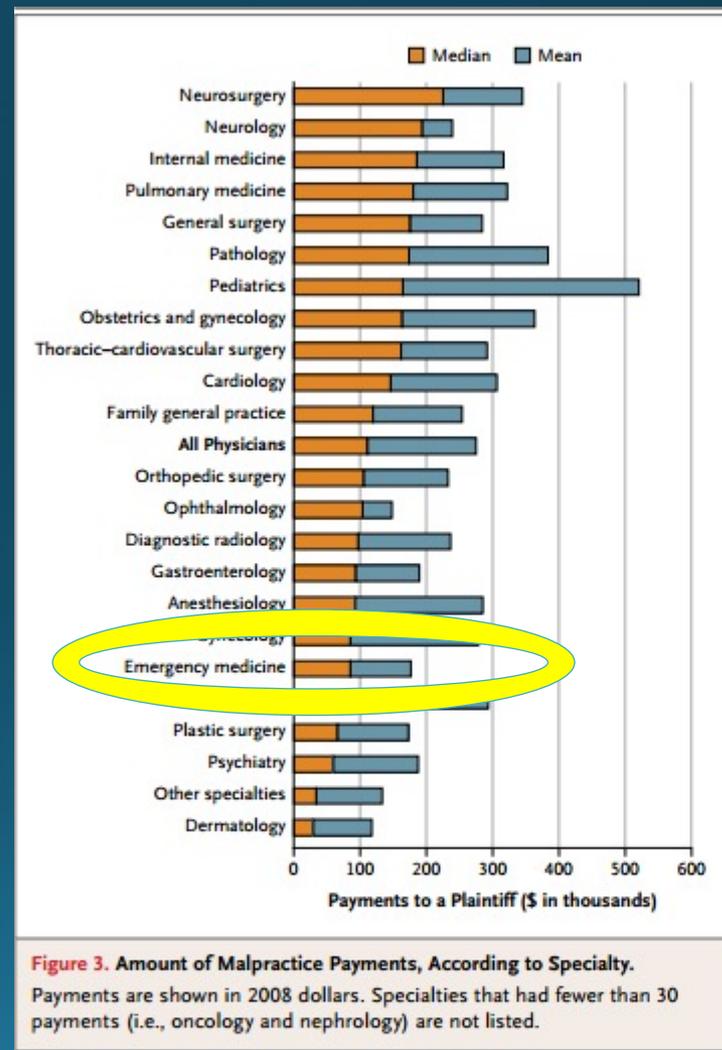
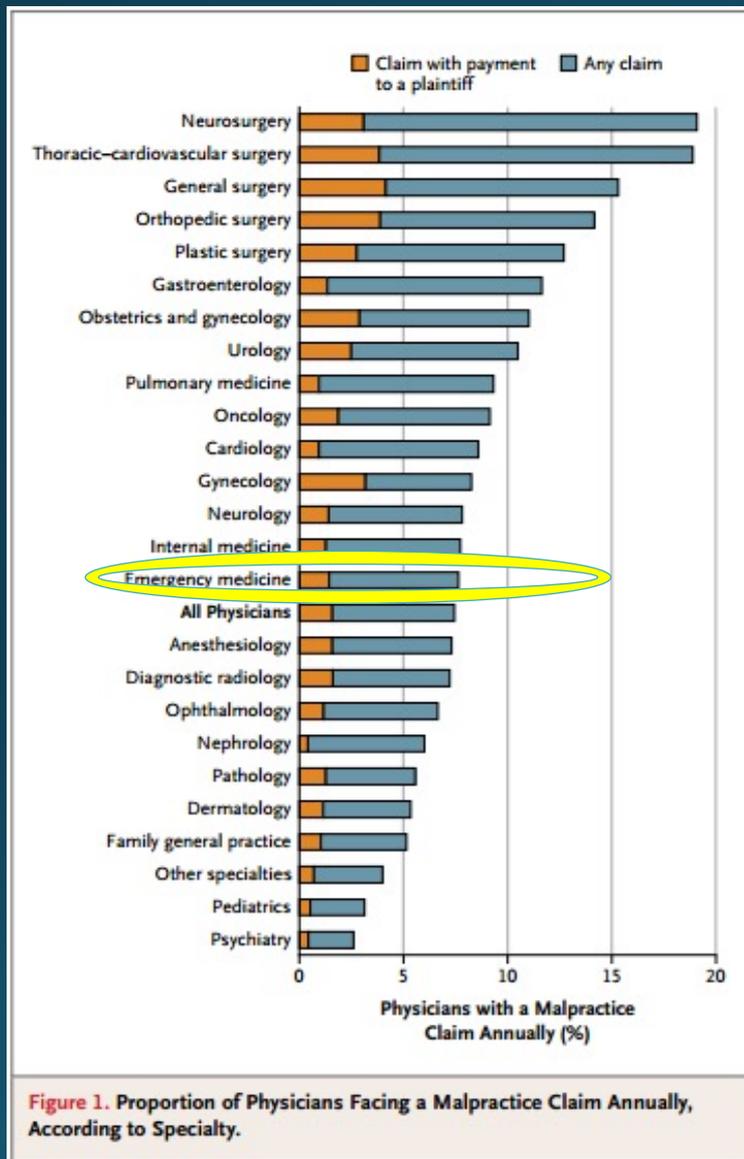


Figure 3. Amount of Malpractice Payments, According to Specialty. Payments are shown in 2008 dollars. Specialties that had fewer than 30 payments (i.e., oncology and nephrology) are not listed.

THE PRACTICE OF EMERGENCY MEDICINE/ORIGINAL RESEARCH

Provider and Practice Factors Associated With Emergency Physicians' Being Named in a Malpractice Claim



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Table 1. Characteristics of emergency physicians with and without malpractice claims.

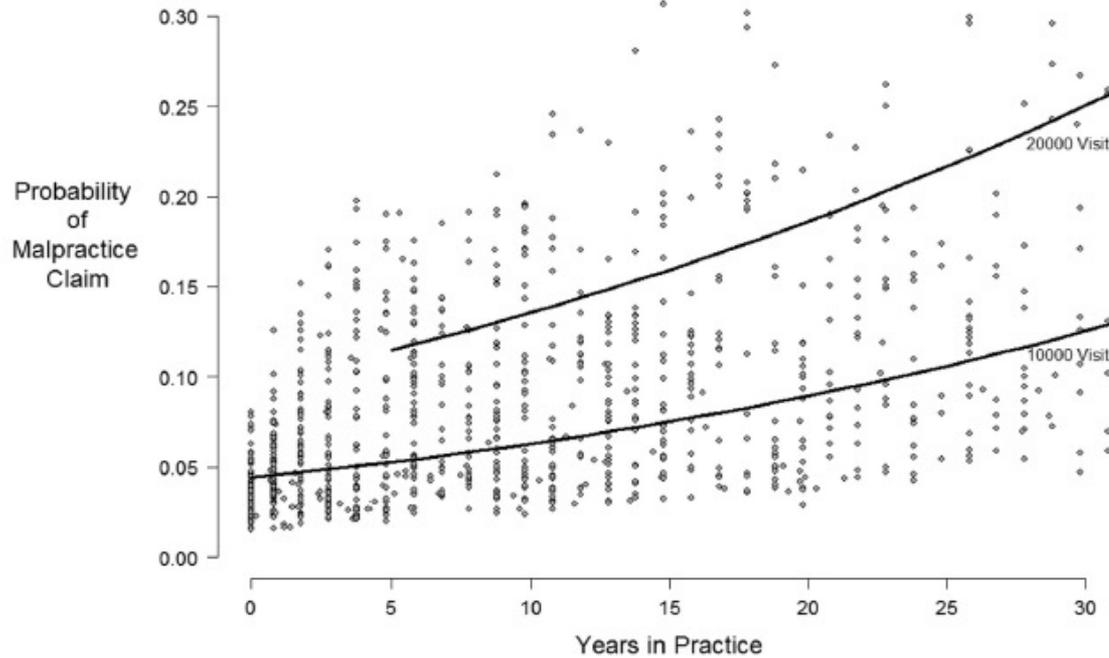
Variable	Physicians With No Malpractice Claims (N=939)	Physicians With 1 or More Malpractice Claims (N=90)	Odds Ratio (95% CI)*
Physician characteristics			
Total years in practice (SD)	11.8 (9.4)	15.7 (9.2)	1.04 (1.02–1.06)
Board certification in emergency medicine (N, % yes)	758 (80.72)	81 (90)	1.14 (0.49–2.69)
Predominantly night practice (N, % yes)	53 (5.6)	6 (6.7)	1.31 (0.50–3.44)
Operational characteristics			
Total number of visits (IQR)	7,572 (3,471–13,501)	13,787 (10,282–17,352)	1.09 (1.05–1.12) [†]
Median monthly physician Press Ganey percentile (IQR)	60 (25–90)	60 (30–90)	1.00 (0.99–1.01)
Median monthly RVUs/h (IQR)	9.6 (8.6–10.6)	9.78 (8.8–10.7)	1.00 (0.87–1.15)
Median monthly admission percentage rate (IQR)	20 (13.6–26.5)	18.6 (13.4–23.8)	2.92 (0.32–26.9)
Work at multiple facilities (N, % yes)	217 (23.1)	26 (28.9)	1.34 (0.63–2.87)
Jurisdictional characteristic: ACEP report card			
Grades A and B	States: 2/15 (13.3%) Physicians: 188/939 (20%)	States: 2/15 (13.3%) Physicians: 27/90 (30%)	[Reference]
Grades C, D, and F	States: 13/15 (86.7%) Physicians: 751/939 (80%)	States: 13/15 (86.7%) Physicians: 63/90 (70%)	0.65 (0.27–1.54)

CI, Confidence interval; IQR, interquartile range; ACEP, American College of Emergency Physicians.

*Odds ratios represent the results of multivariable analysis for physician-level risks of being named in one or more malpractice claims during the study period.

[†]Odds ratio per 1,000 visits. Hosmer-Lemeshow statistic for logistic regression model: 8.905.

Predicted Probability of Malpractice Claim



Predicted Probability of Malpractice Claim

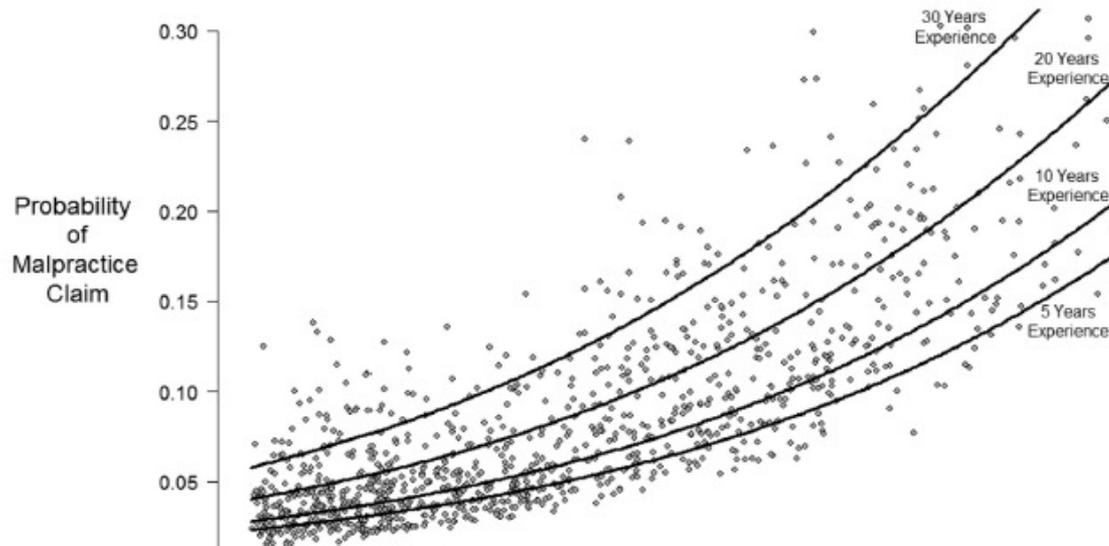
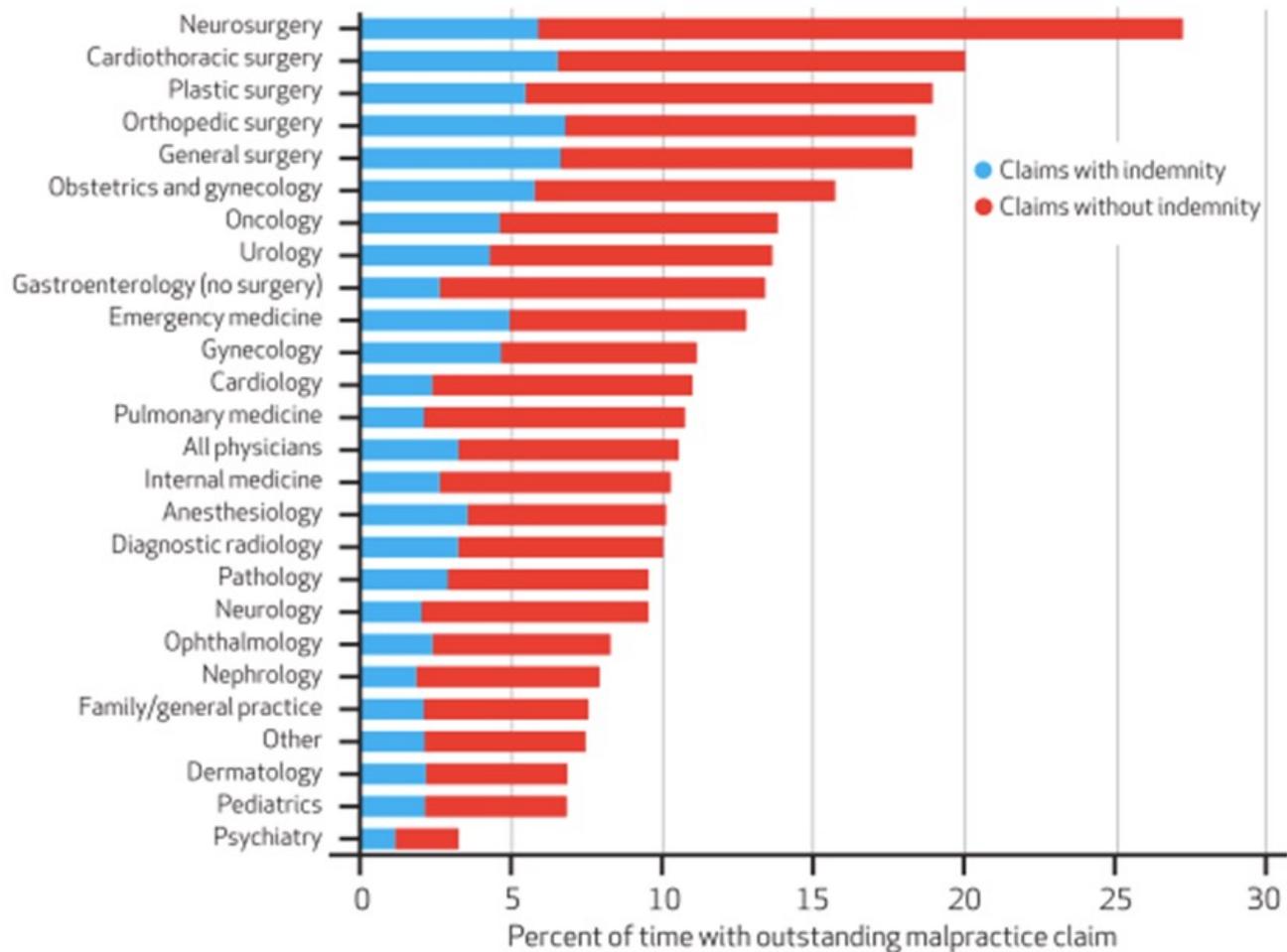


Table 2. Characteristics of 98 included malpractice claims.

Primary Body System/Disease Process for Malpractice Claim*	No. (%)[†]
Neurologic	28 (28.6)
Gastrointestinal	15 (15.3)
Cardiovascular	9 (9.18)
Obstetrics and gynecology	9 (9.18)
Orthopedics	8 (8.16)
Respiratory	8 (8.16)
Other [‡]	21 (21.4)

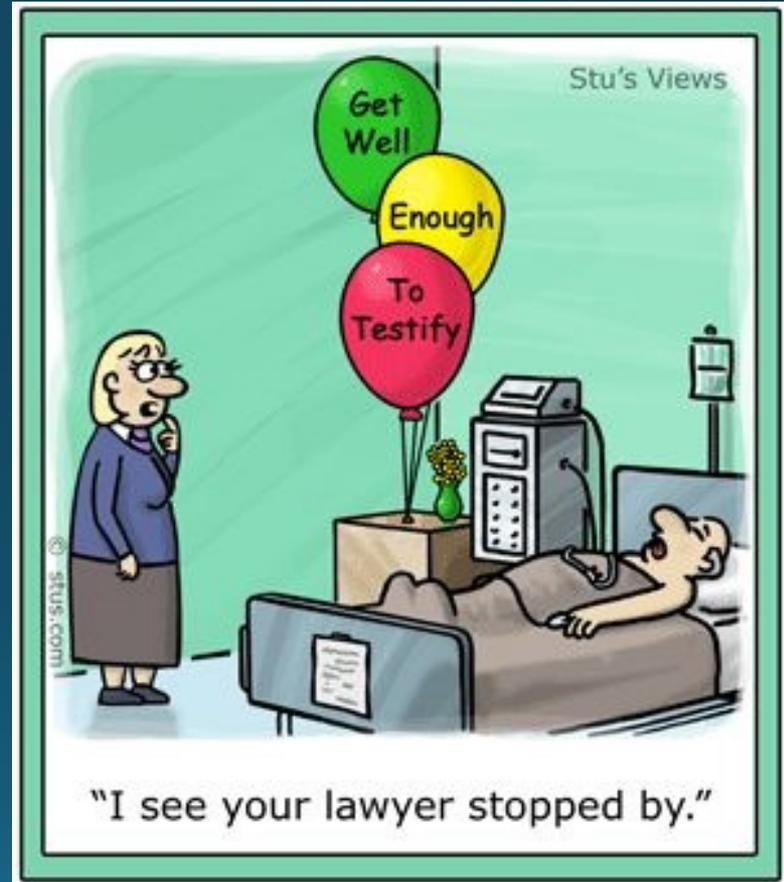
Proportion Of A Physician's Career Spent With An Open Malpractice Claim, By Physician Specialty



Anatomy of a Lawsuit

- Initial Complaint
- Discovery phase
- Motions Phase
- Settlement Phase

- Pretrial Phase
- Trial



Poll # 2:

What was the Outcome of Your Lawsuit?

- 1) The case was dropped or withdrawn
- 2) I was dropped as a defendant
- 3) The case was settled
- 4) The case went to trial
- 5) Not Applicable

65% of claims dropped or withdrawn

24% of cases are settled 7% claims result in a verdict

Defendant is favored 88% of time case goes to trial



Impact on the Physician



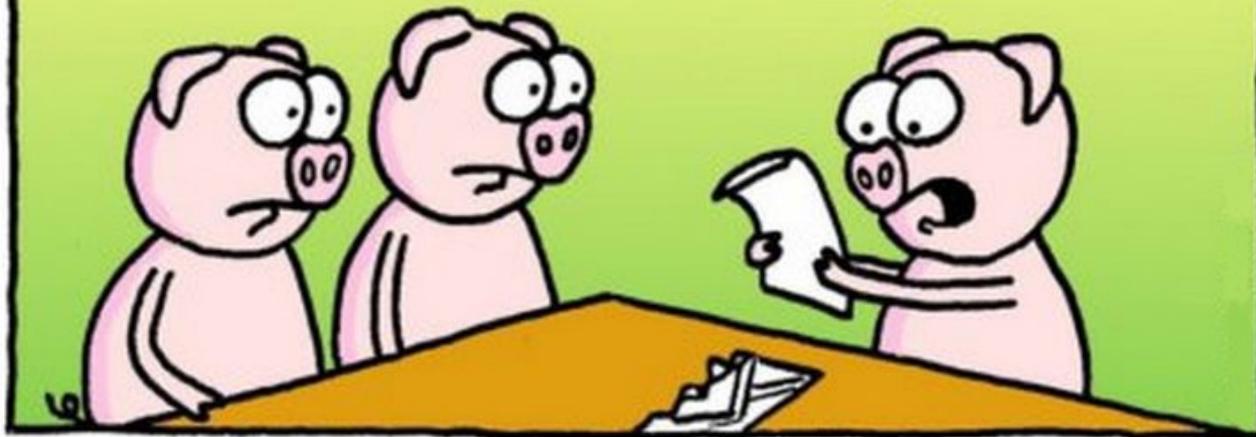
What am I Allowed to Discuss?



Impact on the Department



WE'RE BEING SUED BY THE BIG BAD WOLF. APPARENTLY HE INJURED HIS BACK ON OUR PROPERTY WHILE TRYING TO BLOW THE HOUSE IN.



The Deposition

- Given under oath
- A fishing expedition
- Assess credibility & demeanor of witness



Poll # 3: Did You Feel Prepared For Your Deposition?

- 1) No
- 2) Yes
- 3) Not Applicable

How to Answer a Question

- Answer only the question asked
- We talk too much when we get nervous
- Don't give them extra information

Lawyer “Gotcha” lines..

- “Doctor...we can agree that Tintinalli/ ACEP etc. defines the standard of care for emergency medicine, right? We can agree on that.”

Your Answer

- No!!!
- *"There is no authoritative text or reference that defines the standard of care for an individual patient."*

Lawyer “Gotcha” lines..

- “Your job as an emergency physician is to rule out life threatening diagnoses, correct?”

Your Answer...

- Wrong answer "Yes"
- Better Answer: *"I can't possibly rule out every diagnosis in the emergency department."*
- *"My job is to evaluate them for possible life threats and risk stratify them."*

Lawyer Gotcha Lines...

- “So..doctor..it sounds like you really weren’t the problem here. If only Dr. X had done his job correctly, this never would have happened...”

Don't Point Fingers

- Lawyers love this...
- Don't fall into this trap
- *"I can't comment on a hypothetical situation or state how that may have changed the case or outcome".*

Lawyer “Gotcha” lines..

- “Doctor...do you always re-examine your patients and repeat the abdominal exam before you discharge them?”

Your Answer...

- Stay away from “ I always..” or “I never..”
- *“I perform serial abdominal exams when it is clinically indicated.”*

Lawyer “Gotcha” lines..

- “You didn’t perform an abdominal exam on this patient, did you? There’s no abdominal exam even documented.”

Your answer...

- Can use habit in some jurisdictions
- *"It would be my usual and customary habit to perform serial abdominal exams in patients with persistent pain. Just because a repeat exam was not documented does not mean it was not done."*

Lawyer “Gotcha” lines..

- “Generally speaking, we can agree that patients with high blood pressure, headache, and vomiting require a head CT, correct?”

Your Answer...

- Avoid agreement with generalizations
 - Stick to specific patient and your treatment
 - Question may not apply to your case!
-
- *"Not necessarily. It depends on the case and the patient."*

Gotcha: Multi-Part Question

- “Wouldn’t you agree that Mr. X had back pain, spinal tenderness and fever that should have caused you to perform an MRI to rule out spinal epidural abscess?”

“Gotcha” answers

- Wrong answer: Yes

- *Better answer: You are asking a series of questions all at once. If you ask one question at a time, I would be happy to answer*

Two Goals of Deposition

1. Not to give away points
2. Make an impression that you are a careful, reasonable, thinking physician during your care of the patient

To Settle vs Not to Settle

- Check your policy to see if you have a voice in this decision
- Know the limits of your policy
- Discuss your case and chances of success with your lawyer

Who is notified about my settlement/loss?

- National Practitioner Data Bank
- State Medical Board
- If I settle or lose my case, will I lose my license to practice?

Administrative Negligence



Case Report# 1
Deya v. Hiawatha Community Hospital



Letter of
Recommendation





ACEP Wellness & Assistance Program

ACEP members have access to three, **FREE** confidential counseling or wellness coaching sessions, in partnership with Mines & Associates.

You may choose to use your three sessions in any combination of counseling and wellness coaching up to the session limit.

Call **1-800-873-7138** to register and begin using your sessions for:

- **Counseling sessions** can cover everyday issues including stress, anxiety, depression, family issues, drug and alcohol abuse, relationships, death and grief, more. When you call in for a referral, the clinical staff will assess your situation, discuss plans for resolving your issues, advise you of available resources, and refer you to a local counselor.
 - Schedule a face-to-face appointment near your office, home, school
 - Access sessions through phone, text or online messaging (available 24 hours a day, 7 days a week)
- **Wellness coaching sessions** are 30-minute phone calls to help you reach your personal wellness goals. NBME board-certified wellness coaches can help you set specific wellness goals and plan for progress checks along the way to help you reach your objectives. Areas of focus can include weight loss, nutrition, healthy habits, stress, caffeine reduction, injury recovery, relationships, sleep, smoking cessation, and more.
- ACEP's Member Wellness & Assistance Program is **strictly confidential** and is provided as part of your ACEP membership, so there is **no charge** to you to utilize these services.
- For emergencies and crisis situations, they are **available 24 hours a day**, including holidays.

Resources for Litigation Stress

- ACEP website
- “So You’ve Been Sued” Document
- Physicianlitigationstress.org
- www.mdmentor.com

Take Home Points

- Do the right thing
- Document and communicate well
- Know your resources
- Juries determine compensation – not competence
- Getting sued is inevitable – does not mean you are a bad doctor

Strategies for Success

- Getting Sued is the Cost of doing Business
- Anticipate Impact it has on your Department and Doctor
- Review and Update Policies and Procedures
- Identify Systems Errors
- Provide Support, Resources, and Wellness

Teaching Pearls from ED Directors

