**Best Malpractice Defense Is a Competent Lawyer**

**BY SHERRY BOSCHERT**

San Francisco Bar

KOHALA COAST, HAWAII — You’re a practicing lawyer. How do you know that the lawyer defending you in a malpractice suit is doing a good job?

When a physician gets sued, the malpractice case is a legal defense. According to Annette Friend, M.D., a psychiatrist, physicians should expect five basic things from a competent lawyer: a plan of action; clear communication; ongoing communications; management of your expectations; and clear explanations of billing policies.

A review of past disciplinary cases against lawyers suggests that more than half stemmed from clients’ complaints that the lawyer was neglected, failed to communicate with them, or failed to represent them diligently or competently. Another complaint—that failure to communicate billing policies led to fee disputes—is an increasing cause of disciplinary docket. Dr. Friend, who also is a lawyer, said at a conference on clinical dermatology sponsored by the Center for Bio-Medical Communication that “We want to satisfy you, but you have to insist on being satisfied.”

Dennis J. Sinclitico, J.D., a defense lawyer, said in a separate presentation at a conference in Cabo San Lucas, Mexico, on obstetrics, gynecology, perinatal medicine, neonatology, and the law, “To get your lawyer to do the best job for you, Dr. Friend and Mr. Sinclitico advised, think about the following factors:

- Communication. Expect plain speaking, clear writing, and good listening skills from your lawyer. A lawyer who is a complex legal issue can be explained in a way that one’s grandmother might understand, that clear speaking, she said. If you don’t understand something your lawyer wrote, chances are the judge and others won’t understand it, either. The lawyer should be able to the listener and think about the case without being distracted by calls, e-mails, or a cell phone.

If your lawyer isn’t communicating well and regularly you or just don’t get along, demand a new lawyer from the firm’s associates or from the insurer’s panel of lawyers. Mr. Sinclitico said, Communication is a two-way street, he added. If you see an article in the medical literature that’s pertinent to your case, send it to the lawyer. Insist on participating in selecting the medical experts whom your attorney will rely on.

- Manage expectations. As the lawyer continually analyzes and updates you on the pros and cons of the legal proceedings, options should be articulated in a commonsense way without exaggerating the probable success of the case and without painting an overly bleak outcome.

- Explain billing. Demand an up-front, detailed accounting of billing policies. Law firms may bill for face time with the client, phone calls, conversations between firm members, time spent reviewing documents, legal research for formation of forms or documents, revisions, documents, research, reviews, travel time and expenses, and many other services.

If the lawyer in charge of the case changes while the case is in progress, the client should not have to pay for the firm to bring a new lawyer up to speed on the case, Dr. Friend said.

Get a copy of the malpractice insurance company’s guidelines on expectations of lawyers to know what the insurer expects for your case, Mr. Sinclitico of Long Beach, Calif.

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