

**Journal of American Physicians
and Surgeons**

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Cover Design

Rachel Eck

Typesetting

Marilyn Kessler

Website

www.jpands.org

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1601 N. Tucson Blvd, Suite 9
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*Journal of American Physicians
and Surgeons* (ISSN 1543-4826)
is published quarterly.

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From the Archives

Correspondence

Ten Things Trial Lawyers Hope You Don't Learn

Over the past 30 years, the number of lawyers in our country has risen sharply. And when Medicare cuts its payments, physicians suffer even bigger losses because of lawyers distorting, fabricating, and outright lying in their attempts to fleece doctors.

Trial lawyers have their seminars and trade groups teaching them how to game the system. To fight back effectively, physicians need to learn the lawyers' tricks. Here are ten things they hope that doctors won't find out (or do):

10. Physicians cannot rely on insurance company lawyers for a full defense. Insurance companies impose limits on the lawyers they provide, and neither the insurer nor the lawyer cares if you are slapped with a huge judgment. The insurance company will just raise its rates to cover its losses. But when you pay off a malpractice claim, you will be reported to the National Practitioner Data Bank. A single report can damage all future applications for a job or hospital privileges. Successful physicians take affirmative steps both before and after being sued. They do not just rely on the malpractice carrier.

9. It often helps to attend the deposition of the plaintiff's medical expert. In litigation, a party has the right to attend all depositions. The plaintiff's expert will not lie as much about someone who is sitting across the table. Also, physicians can strengthen their case by feeding questions to their attorney during depositions of their opposing expert.

8. Beware when seeing patients who were mistreated by other physicians. In malpractice lawsuits, all the doctors are sued, even ones who tried to help. Before seeing a problem patient who might bring a lawsuit, a physician should consider obtaining a fully informed release from the patient first.

7. Most malpractice lawsuits are for "failure to diagnose," so your advice

to obtain diagnostic tests should be documented. If a patient still refuses to have a test despite your warning, then consider having the patient sign an acknowledgment.

6. Special laws allow trial attorneys to pay for successful referrals. The public is unaware of this practice, which is prohibited as "fee-splitting" in the medical profession. The malpractice crisis would end overnight if a referendum or statute prohibited compensation for referrals among attorneys.

5. Screening techniques can greatly reduce the odds that a physician will be sued. Office waiver forms, even if not fully enforceable, are useful in screening out litigious patients from a practice.

4. Develop a list of good defense experts in your specialty. Malpractice cases are won or lost based on expert testimony. Having a good expert means you will win; struggling to find one at the last minute means you may lose.

3. Make sure you depose everyone who might be called as a witness against you. Even the billion-dollar pharmaceutical giant Merck recently made the fatal mistake of not depositing a potential plaintiff's witness in the Vioxx trial. That \$5,000 economy cost Merck \$253.4 million in the end, as the never-deposed witness sank Merck at trial.

2. Protect your assets beforehand so your exposure is limited. Even though malpractice insurance covers you (up to a limit), you will handle the stress of litigation far better knowing your assets are secure no matter what happens in court.

1. Read AAPS's monthly newsletter and quarterly journal. Malpractice attorneys are forever developing new stratagems to ensnare physicians, and so are medical boards and hospital peer review panels. Physicians need the latest information for self-defense.

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Pamphlet no. 1097, December 2005