

## **Risk Management: When Attorneys Call Physicians**

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You may have the type of practice where you deal with attorneys all the time as you conduct independent medical examinations or testify as an expert witness. Or a call from an attorney may be a rare occurrence, prompting some anxiety. Whatever your situation, there are some basic guidelines to keep in mind when attorneys call.

Different types of calls: There are many different reasons why an attorney would contact a physician. Calls about patients involved in automobile accident litigation, concerns about another physician's care and treatment, questions about a report issued on a worker's compensation patient, are all reasons attorneys may need to call physicians.

In almost all cases, you must have permission from your patient before you discuss anything with their attorney. Worker's compensation cases, in most states, do not require separate authorization from the patient. If you are in doubt, the safest route is to obtain permission first.

Typically, it is your choice whether you speak with an attorney about a patient's care. If you do, however, there are some risks to consider that vary depending upon the type of question asked.

### **Questions about care a prior treating physician rendered to your current patient:**

You have assumed care of a patient who had an adverse outcome with their prior treating physician. Perhaps that physician made treatment decisions you would not have chosen, or the other physician's diagnosis is inconsistent with yours. The patient may also relate a medical history or courses of prior treatment that create questions about the physician's care. When an attorney calls for your opinion on prior care, most often the attorney is seeking your opinion on negligence. Without coming right out and asking, the attorney may be hoping for you to make a statement that the other physician's care breached the standard of medical care for that particular condition.

Many physicians have been candid with patients' attorneys and criticized care rendered by another physician, only to find themselves named as an expert witness in a malpractice lawsuit against that colleague. Another possibility is that you will find yourself named in the malpractice suit, right alongside the physician whose care you criticized.

### **Risk Management Tip:**

Before criticizing care rendered by another physician, make sure you have actually reviewed the medical records, gathered all of the pertinent information and concluded that the care was a breach of accepted medical standards. Consider, too, whether you are prepared to testify in court against that physician in a malpractice claim.

### **Questions about your care of a current patient:**

If an attorney wants to discuss your care and treatment of a patient, you should first know why. If you have concerns that this patient may sue you for malpractice, contact your liability insurance company before you discuss anything with the patient's attorney. You may not have received any indication that the patient is unhappy and do not have any reason to think you are being

sued. In that case, it is prudent to ask why the inquiring attorney represents your patient — is this a claim against you, against another physician, against an employer or against another party in an accident? Once you know the reason the patient has an attorney, you may then decide whether or not you wish to discuss the patient's care.

**Risk Management Tip:**

Ask why an attorney wants to discuss your care and treatment of a patient before agreeing to talk. Contact your liability insurance company if you have any concerns that the patient may sue you, before agreeing to talk with the attorney.

**Questions about a patient involved in other litigation:**

Attorneys of patients involved in personal injury litigation for worker's compensation or motor vehicle accidents often contact the treating physician to discuss their client's care and prognosis. Discussing your care of these patients with their attorneys poses no particular risks as long as you have your patient's permission.