

What To Do When A Patient Sues, In America

Phil Haeck, MD

Vice President Finance, ASPS

ASPS Liaison to The Doctor's Company

Private Practice, Seattle Washington

Normally, By The Time A Suit Is Filed, It Is Not A Surprise

- ✦ **The Patient Had A Complication Or Trouble Healing**
- ✦ **The Patient's Family/Cohort Was Upset With Result**
- ✦ **Multiple Corrective Re-operations, Increasing Cost**
- ✦ **Patient Has Obtained Post-Operative 2nd Opinions**
- ✦ **The Patient Makes Increasing Demands**
- ✦ **The Patient Makes Remarks Like “*I Wish I'd Never Done This*”**

Two “Triggers” in Common



✦ Scars

- ✦ Patient wasn't informed well enough prior to surgery
- ✦ Delayed healing caused hypertrophy/keloids/discoloration and/or pain
- ✦ Location outside of clothing lines or hair lines

✦ Money

When Should This Be Reported To The Liability Company?



- ✦ **Demands for Money or Refunds**
- ✦ **Threats Of Action**
- ✦ **Attorney Request For Copy Of The Chart**
- ✦ **Notice of Intent To Sue**
- ✦ **Subpoena/Summons/Complaint**
- ✦ **Request For Arbitration/Interview/Deposition**

IVIL S Required TO Report:

- ✦ **Death**
- ✦ **Disfigurement**
- ✦ **Loss of Major Life Function**
- ✦ **Loss of Limb**
- ✦ **Loss of Any Of Five Senses**
- ✦ **Diminished Life Expectancy**

Next Steps:



- ✦ **Copy Chart AS IS**
- ✦ **Secure The Original Copy**
- ✦ **Do Not Add To, Delete From Or Alter The Chart**
- ✦ **Start New And Separate Correspondence Chart**
- ✦ **Copies of Chart Released Only With Patient's Sig.**
- ✦ **Do Not Discuss Claim With Anyone Other Than The Insurance Representative or Legal Counsel**
- ✦ **Do Not Contact Witnesses**

In The U.S. Plaintiff Must Prove:

- ✦ **There was an act of Negligence:**
 - ✦ **Standard of Care Was Violated:**
 - ✦ **What a Reasonable Physician with Similar Training Would Do Under Similar Circumstances**
- ✦ **This Resulted In, Caused Or Contributed To The Injury**
- ✦ **The Injury Resulted In Harm To The Patient**
 - ✦ **Economic Loss**
 - ✦ **Non-Economic (Pain and Suffering)**
 - ✦ **Future Losses**
 - ✦ **Loss Of Consortium**

Where Will The Trial Take Place?

- ✦ **Civil Proceeding Not Criminal**
 - ✦ **State Court**
 - ✦ **County Of Residence of MD**
- ✦ **Federal Court**
 - ✦ **When Patient Lives In Different State**
 - ✦ **Surgeon Practices In Both States**
 - ✦ **Defense Attorney Must Practice in State Where The Suit is Filed**
- ✦ **In Reality:**
 - ✦ **Can Be Filed Wherever The Attorney Thinks It Is Convenient *OR* Jury Might Be More Favorable To The Plaintiff**

Four Phases Of Suit



✦ **Complaint**

- ✦ **Written Allegations**

- ✦ **MD Files An Answer**

✦ **Discovery**

- ✦ **Allows Access TO Other Side's Records/Experts**

✦ **Settlement Conference**

- ✦ **Almost Always A Private Mediator**

✦ **Trial By Judge Or Jury**

Finally, Some Facts



- ✦ **U.S. Plastic Surgeons Traditionally Have:**
 - ✦ **Higher Frequency Of Claims Than Other Specialties**
 - ✦ **Lower Severity Of Injury/Costs/Settlements/Awards**
- ✦ **U.S. Plastic Surgeons Win 80% Of Trials**
- ✦ **Cost of Pursuing Plaintiff's Lawsuits Rising Rapidly**
- ✦ **As a Result, Frequency Is Down,**
- ✦ **Unfortunately Severity Is Up**