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Settling a malpractice suit is seldom a straightforward decision

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August 12, 2014

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Sometimes it makes sense to settle a malpractice lawsuit, but making that decision is seldom straightforward, according to legal experts.

Top reasons to settle a case include indefensible actions, inadequate malpractice insurance, and an expert review that concludes a failure to meet the standard of care, Joshua R. Cohen, a medical liability defense attorney practicing in New York, said in an interview.



Joshua Cohen

A low insurance limit could lead to personal assets being tapped if a high trial verdict exceeds the physician's insurance threshold. By settling early, doctors and their attorneys generally can negotiate a discounted payment, provide for quicker compensation to an injured patient and reduce ongoing defense costs, he said.

Settling also alleviates the time and burden of participating in a malpractice trial, said George F. Indest III, president and managing partner in a law firm specializing in health law in Orlando.

Settlement brings a resolution, "including relief from the worry and stress that such litigation carries with it, the imposition on the defendant's time that depositions, hearings, and the trial might require, and the mental anxiety which the uncertainty causes," Mr. Indest said in an interview.

One distinct disadvantage of such financial agreements is that they must be reported to the National Practitioner Data Bank (NPDB), said Michael J. Sacopulos, founder and president of a consulting and liability risk management firm in Terre Haute, Ind. The reporting requirement means settlement details can arise during new

employment, professional reviews or application for privileges.

"It is in many physicians' minds, a stain that goes with them for the rest of their career," Mr. Sacopulos said in an interview.

Settlements also are reported to state licensure boards and state departments of insurance, which may lead to separate investigations against physicians based on the facts of the settlement, Mr. Indest said. Additionally, most medical staff bylaws require that physicians report settlements to the hospital and medical staff, which may result in peer-review actions.



George F. Indest III

For physicians who believe their case is strong and want to preserve their reputations, taking a case to trial may be the best option.

"For the most part, most malpractice cases fall into a gray area," Mr. Cohen said. "There could be some issues with the charting, but the medicine itself is defensible. The question is do you want to roll the dice as to what the jury is going to decide?"

To allow for that decision, ensure that contracts with insurance companies include a "consent to settle" clause. The clauses make certain that lawsuits are not settled without a doctor's permission. Communication with attorneys and insurers throughout the lawsuit process is essential, Mr. Sacopulos said. Attorneys and insurers should make clear relevant case updates, potential success rates and possible loss values.

In a contraction accident case, a large corporation is affected, but with a doctor, it's personal, Mr. Cohen said. Many equate malpractice with a violation of the Hippocratic Oath, "To do no harm." Doctors want their reputations defended when they believe they didn't do anything wrong or if there was a complication that was not a result of malpractice. They want to go to trial.

Despite the strong emotions that come with a lawsuit, the decision about whether to settle or take a suit to trial should not be rushed, Mr. Sacopulos advised. "As the case goes on, more facts come out," he said. "The decision you make today as to what's best for you may not be the best decision down the road. You need to continue to revisit (the situation) as the facts come out."

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