

# WARNING TO PHYSICIANS: The Legal System is Not Your Friend

By Jeff Weiner, Esquire

For more than thirty-five years I have represented Florida physicians and other medical professionals in state and Federal courts before the Board of Medicine, in hospital disciplinary proceedings, and in criminal cases. In addition, according to the AMA, 42% of physicians have been sued for medical malpractice. I'd like to share some of what I have learned to help you avoid the pitfalls that can ruin careers and destroy lives.

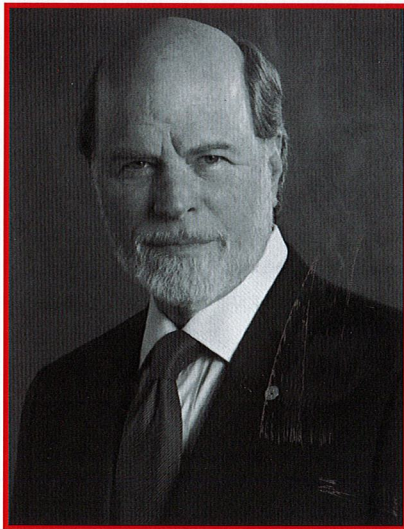
Being accused of professional misconduct or worse, a criminal offense, is devastating. Your peace, your family, your reputation, your practice – and perhaps your medical license or even your freedoms – are at stake.

I strongly suggest following the advice in this very brief article if you are being investigated, are accused, or arrested. Mistakes you make at the outset may diminish your ability to be successfully defended.

It is often difficult for physicians accused of misconduct to step back and allow their lawyer to represent them. Physicians are educated, intelligent and, quite understandably, want to “set things straight.” Often times, their first instinct is to defend themselves to their partners, associates, friends, the investigators and the media. Such action, while understandable, is rarely helpful. Often, statements made and letters written in defense to government agents or agencies – no matter how truthful – ultimately harm the physician's defense.

## My Advice:

→ Do not say anything to anyone without first consulting a competent and experienced criminal defense attorney who understands the unique issues involved in



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defending physicians against claims of misconduct and/or illegal conduct.

- Do not make the mistake of thinking you will “look guilty” if you retain the services of a respected criminal defense attorney. At the very first indication that you may be under investigation or about to be accused – when that nice agent shows up at your office wanting to chat, when you receive the first request or subpoena for your records, when someone connected with you or your practice is called before a grand jury, and certainly if law enforcement authorities show up at your office or home with a search warrant – consult your lawyer immediately. Don't sign any papers giving consent to search and don't say anything about the matter.
- A good criminal defense attorney will instruct you to say nothing to the police or investigating authorities. Investigators and law enforcement officials are trained to obtain “voluntary” (and incriminating) statements before the person they are investigating retains counsel. Do not think that your innocence and truthfulness will quickly end the matter. Even when being cautious and truthful, you are likely to give evidence that may be used against you at a trial or hearing. Resist the temptation of trying to persuade the agents or investigators. Let your attorney contact the investigating authorities on your behalf to gather all the available information about the accusations, and what, if anything, to share with investigators, agents, or prosecutors.
- You must be candid with your attorney and tell the whole truth, omitting nothing – even embarrassing details – so your attorney can intelligently plan his or her strategy and your defenses.

At this point you may be thinking this advice has nothing to do with you because “my patients like me,” or “I'm a good doctor. No patient would accuse me of improper conduct” or “I didn't knowingly violate the law.” This is what most physician clients of mine have told me over the past thirty-six years.



Unfortunately, the real world teaches that you could be falsely accused. The reality also is that your conduct may have been the product of poor business, medical or ethical judgment - or negligent, reckless, or even criminal behavior. Being a physician affords you little protection, but there are important steps you can take now to protect yourself against unfounded accusations.

## **Some Practice Tips** **To Help You Avoid Problems**

- Maintain detailed patient records, including patient histories. Find a method to keep your records accurate and up to date and use it consistently. For example, use a tablet or laptop computer to type your notes and impressions, or dictate them when you are with your patients. It is important to record your impressions when you are with the patient. Take the extra time to get detailed information from your patients.
- Provide medical records promptly when a patient request them and document their transmittal.
- Be certain your staff is polite and responsive to your patients. Train your staff to advise you of problems, and insist they alert you to emergencies, complaints or repeated phone calls from patients.
- Most likely, only a small fraction of patients cause you and your staff the most problems. This could stem from a simple personality clash with your patient, or a rude or disrespectful patient, or their family members. Whatever the reason, if you have a problem patient, document the details of the problem. Stop seeing the patient if the problem continues. You should advise the patient, in writing, that you decline to further treat him or her and urge him or her to seek medical care elsewhere. Send a letter formally terminating the physician-patient relationship by registered mail, return receipt requested.
- Have a good answering service and establish and maintain procedures for following up on telephone calls to your office. Tell your answering service, in writing, what you want them

to say and do. Pay attention to how your answering service does its job.

- Avoid automated phone answering systems in your office.
- Get an on-site risk management survey of your practice.
- Keep your “practitioner profile” updated on the Florida Board of Medicine website.
- Retain a knowledgeable attorney to handle corporate matters for your practice, to prepare written patient consent forms and agreements for treatment, to review your internal operating procedures regarding medical records, follow-up practice, etc., and to advise you regarding HIPAA matters, security and privacy issues, audits, and billing inquiries, as well as the Florida Administrative Code Rules.
- Ensure that your staff is familiar with and complies fully and accurately with all Medicare billing requirements.
- When a Board of Medicine inquiry or investigation begins, immediately retain competent counsel familiar with Florida administrative law and have him or her notify, in writing, your professional liability insurance carrier. Do not rely solely on the carrier’s attorneys; your own attorney will work with them, but will represent your interests exclusively.

Most lawyers will not charge you for an initial consultation in their office. The consequences of “going it alone” or with inadequate or inexperienced representation are too onerous to take such a risk.

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