

A hand holding a wooden gavel over a wooden surface with papers. The gavel is dark wood with a rounded head and a handle. The hand is positioned on the left side of the frame. The background is a blurred image of a person in a white coat, possibly a doctor, standing in a clinical setting. The overall scene suggests a legal or medical context.

Our Practice is Seeing a Patient that is Suing Their Former Podiatrist: What Do I Do?

What You Say, Can and Will Be Used
Against You in a Court of Law

Ross E. Taubman, DPM
PICA President and Chief Medical Officer
2018 Region III, Assistant's Program
May 4, 2018



Underwritten by a ProAssurance Company

Disclosures

- I am a full-time employee of PICA/ProAssurance
- I am a shareholder of ProAssurance (NYSE:PRA)

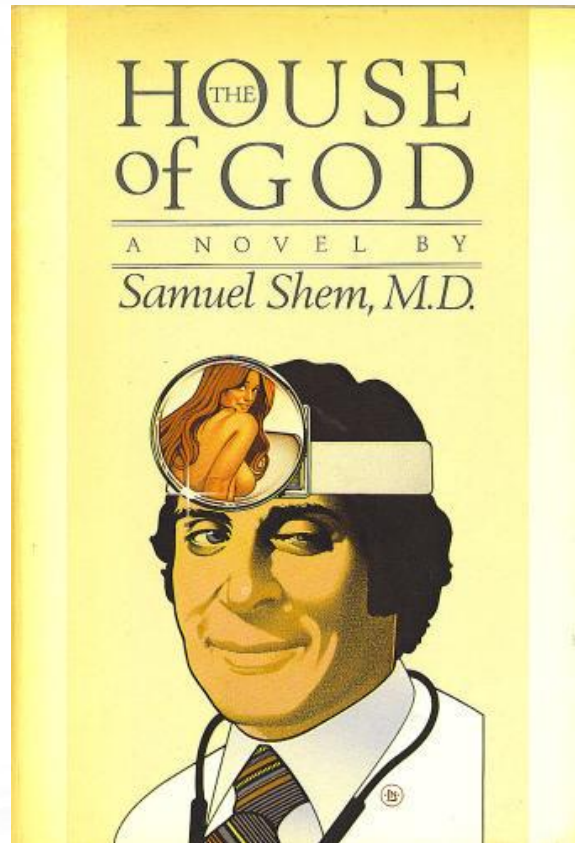
Course Objectives

- The attendee will understand the roles and responsibilities of a subsequent treater.
- The attendee will understand how to discuss care that is less than optimal.
- The attendee will understand what to do if you are subpoenaed as a subsequent treater.



FOUNDATIONS

Raise Your Hand if You NEVER Had a Complication or Bad Result



**Will 100% of Your Patients Think
You Did a Great Job for Them?**

Of Course Not

and Remember....

The single most important reason that
a patient decides to sue is:

a breakdown in communication,
not the bad result

What is the Definition of Malpractice?

Any act or omission by a physician that deviates from accepted norms of practice in the medical community

AND

causes an injury to the patient.

So, where does a bad result fit into this definition?

Case Presentation #1

- ▶ Active, middle-aged male, active runner
- ▶ Consulted with an orthopedic surgeon with one-month history of left foot pain
- ▶ Examination with radiographs
- ▶ DX: Extensor tendonitis, dorsal osteophytes talus with osteoarthritis
- ▶ TX: Corticosteroid injection, PT, NSAIDs

Case Presentation #1

- Called 3 days later to MD reporting red circle on top of left foot 1.5” below the injection site
- Instructed that this was normal and to apply cortisone cream to the area
- When improvement did not occur, went to see DPM

Case Presentation #1

- ▶ DPM diagnosed ruptured extensor hallucis longus tendon
- ▶ Told patient that the rupture was probably caused by orthopedist's injection and asked if the patient was going to sue the orthopedist
- ▶ DPM repaired the tendon with graft 3 weeks later
- ▶ Normal postoperative course with moderate swelling and mild limitation of motion at the operative site

Case Presentation #1

- ▶ Patient decided to sue the orthopedist
- ▶ Patient's attorney advised suing ALL treating doctors
- ▶ DPM named as co-defendant

Case Presentation #1

Outcome?

Defense Verdict

Subsequent Treater Lesson #1

Never speak badly about the care or complication of another physician.

Case Presentation #2

- ▶ Patient was unhappy with the care provided by the initial treating podiatrist
- ▶ Went to see subsequent treater
- ▶ An exact quote from the medical record;
“The butcher who did this to you should never hold a scalpel!”

Case Presentation #2

- ▶ Patient retained an attorney who then met with the subsequent treater
- ▶ Subsequent treater agreed to work “behind the scenes” but not testify against the initial DPM
- ▶ Subsequent treater provided a recommendation for another plaintiff’s expert

Case Presentation #2

- The recommended expert reviewed the medical records and opined that the subsequent treater was overly aggressive and negligent, rather than the initial DPM
- Suit filed against subsequent treater!

The Right Way and the Wrong Way

- ▶ *“I can’t believe what that doctor did to you.”*
- ▶ *“This complication has happened to me before.”*

The first words you say will set the tone in determining whether or not a patient sues their doctor.

Subsequent Treater Lesson #2

Speak and document
only to the facts.

Remember...

- ▶ As subsequent treater, you are **not** an expert witness.
 - ▶ Ask patient what care they received.
 - ▶ Remember, you only know the patient's side of the story.
 - ▶ Document objective findings without speculating on the rationale for treatment or the appropriateness of care.
- ▶ When a patient questions the care by another doctor,
 - ▶ Encourage the patient to speak with that doctor directly.
 - ▶ Call the treating physician yourself if you have questions about the care provided.

Subsequent Treater Lesson #3

**NEVER attend a
deposition or trial
WITHOUT legal
representation.**

Before You Buy Malpractice Insurance...

- ▶ Ask your carrier if it provides legal representation even if you are not named in the lawsuit.
- ▶ Remember, lawyers ain't cheap.

Take Away Messages

- Remember the Golden Rule.
- “Just the Facts, Ma'am” – Joe Friday
- “The only thing scarier than Godzilla, is Godzilla’s lawyer.” – Bill Williams



Discussion

Ross E. Taubman, DPM

President and Chief Medical Officer

(615) 984-2005 (Office)

(301) 404-1241 (Cell)

rtaubman@picagroup.com