

Legal

A patient's attorney called and wants to chat with me about a matter indirectly related to the care I provided. Should I do it?

Providers are frequently asked by plaintiffs' attorneys to render an 'off the record' opinion. Eager to avoid any appearance of hiding something, physicians often answer the apparently friendly questions verbally or in writing. Inevitably, some regret their decision, when a zealous attorney uses what they have learned to strengthen their client's position. At that point, the physician's care may be called into question and they may suddenly find themselves thrown onto the defensive.

In these situations, you should remember that no conversation is truly off the record. What may at first seem totally harmless can lead to completely unexpected allegations. To address the occasions when patients' attorneys seek an opinion, we recommend that: 1) practices implement a specific policy on the matter; 2) all opinion requests go through a single 'point-person' in the practice to ensure consistent compliance with the policy; 3) patient charts be immediately reviewed (by both the provider and point-person) to determine what, if any, liability exists; and 4) most importantly, MAG Mutual's Claim Dept. be called to advise how best to respond, based upon the particular circumstances.

The reality is once the words have been uttered (or committed to writing), they are out there and cannot be withdrawn. Moreover, patients' attorneys may be expected to use whatever facts they learn to advance their clients' cause. We therefore strongly recommend consulting with us before communicating with plaintiffs' attorneys – even where there is no apparent risk to you.

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