

D.C. BAR
INJURY TO PERSONS AND PROPERTY SECTION
PUBLIC STATEMENT

Guidelines For The Prosecution of
Medical Malpractice Claims Against Physicians

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Steering Committee

STANDARD DISCLAIMER

"The views expressed herein represent only those of the Injury to Persons and Property Section of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors."

This report was unanimously passed by
the Section's steering committee.

SUMMARY

The Injury to Persons and Property Section of the D.c. Bar acknowledges a current perception by certain members of the medical community and the community-at-large that medical malpractice litigation is instituted without proper prior investigation, evaluation, or consideration of the physician's reputation or the emotional impact of said litigation.

The Steering Committee of the Injury to Persons and Property Section of the D.C. Bar issues these guidelines in response to these considerations.

Steering Committee:

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SECTION

Injury to Persons & Property

Committees:

Legislation
Medical Malpractice
Products Liability
Workmen's Compensation

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PREAMBLE:

The Injury to Persons and Property Section of the D.C. Bar acknowledges a current perception by certain members of the medical community and the community-at-large that medical malpractice litigation is instituted without proper prior investigation, evaluation, or consideration of the physician's reputation or the emotional impact of said litigation.

The Steering Committee of the Injury to Persons and Property Section of the D.C. Bar issues the following public statement in the hope and belief that the members of this section will adhere to the practices and procedures as outlined below.

I. Confirmatory Report of Negligence Prior to
Instituting Litigation Against Physician

Litigation should not be filed against a physician unless and until the attorney representing an injured claimant has concluded, after conducting a thorough good faith investigation with appropriate consultation(s), that the physician in question committed an act of medical negligence, constituting a departure from accepted standards, which indeed caused injury to the

client.

In the event of an impending statute of limitations, the attorney must advance the interest of the client and this provision should not apply, assuming the attorney takes all reasonable steps of inquiry under the conditions then existing.

This provision should not apply if the physician in question in any way prevents or hampers free access to the medical records involved.

II. Notice to Physician(s) of Claim

No attorney should institute litigation against a physician for medical negligence unless and until the attorney has given the physician written notice of the claim by mail and has allowed a reasonable amount of time for the physician to respond to the notice. Where practical, the attorney should attempt to initiate, through such written notice, a meeting with the physician and his/her attorney or insurance carrier representative, to allow the physician the opportunity to give justification or advise of other exigencies surrounding the care and treatment of the claimant and any defenses he may have. Said written notice should advise the physician of the name, date and nature of the improper care alleged.

III. Improper Motivation for Claim

No attorney should file litigation against a physician for medical negligence wherein the claimant is motivated by

disagreement with the bill for services rendered by the physician or is otherwise disgruntled by the nature of the care and treatment unless there is a bona fide medical negligence claim.

IV. Dismissal of Claim

No attorney should continue to maintain prosecution of a claim against a physician for medical negligence if it appears that, since the initial filing, the physician in question is without responsibility for the injuries complained of. A physician should not be continued as a party defendant to litigation merely for tactical or strategic reasons.

V. Medical Malpractice Litigation Experience

The Injury to Persons and Property Section of the D.C. Bar suggests that medical negligence litigation is highly technical and requires an understanding of the nature of clinical medicine and its modality. An attorney inexperienced in this field should take steps consistent with ethical considerations, to confer with counsel experienced in the field.

VI. Deposition of Physicians

No attorney should institute litigation against a physician merely for the purposes of deposing the physician in an adversarial position.

VII. Awareness of Ramifications of Litigation

Claimant's attorney should be mindful of the ramifications of multi-million-dollar lawsuits and charges of negligence upon a professional and his/her family. When contemplating such litigation, the lawyer should exercise such restraint and forethought as he would expect from another lawyer prior to litigating an action against him/her for legal malpractice.

Respectfully submitted
INJURY TO PERSONS AND PROPERTY SECTION

BY: 

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Also participating in this Public Statement:¹

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¹/ This Statement was unanimously adopted by the Section's Steering Committee.