The Anatomy of a Professional Liability Trial

Malpractice
Legal action which results from the alleged departure from generally accepted reasonable medical practice which results in harm to the patient

Two Types of Law

1. Criminal cases have a standard of proof which is beyond a reasonable doubt
2. Medical malpractice cases/personal injury have preponderance of evidence...the plaintiff has the burden

Elements of Malpractice Litigation
- Duty
- Breach of Duty
- Causation
- Injury/Damages

DUTY
- Based on the physician/patient relationship
- Can be from a phone call or part of a managed care plan
- Usually assumed

STANDARD OF CARE
- Was the injury due to the failure to meet the prevailing standard of care?
- Compared to what a provider in a given community in the same specialty would do under similar circumstances
- This leads to dueling experts
CAUSATION
Was the provider’s action the proximate cause of the injury?

INJURY/DAMAGES
- Plaintiff attorneys start here
- Lawsuits from high wage earners or babies have the most downside

So what gets doctors sued?
- Poor communication
- Blame displacement
- Concern about standard of care – prevent further injuries
- Wants an explanation
- Accountability
- Mad at the doctor
- Winning the lottery

The Effects of Stress

Pitfalls When Giving a Deposition

Giving a Deposition
What is a Deposition?
What is the purpose of a Deposition?
Potential Pitfalls

- Not being prepared
- Not telling the truth
- Volunteering information
- Trying to show how smart you are
- Showing frustration and being argumentative
- Allowing authoritative references to dictate your answers
- Guessing
- Not listening to your lawyer

Questions?