If you’re a doctor, the odds of you making it through your career without ever being sued are vanishingly small, especially in some of the more liability-prone specialties. Ilene Brenner is an emergency physician whose father was a malpractice defense attorney. When her turn to be sued came up, she learned a great deal about the process, both from her defense attorney, and her father. The appropriately named How to Survive A Medical Malpractice Lawsuit grew out of a series of articles she wrote afterward for EP Monthly, one of the throwaway journals in our specialty. She expanded on this series of articles and then published them in book form. The book is short (149 pages included appendices), well-written, well-edited, and most importantly, high-yield.

The book is divided into two sections. The first is a step by step guide to going through a medical malpractice experience, from the time you are served to the deposition, to the trial, and even to the appeals (in case you lose.) The second section gives a lot of tips about how to avoid getting sued in the first place because, let’s face it, you’ve already lost (a lot of time, sleep, money, and self-esteem) the day you are served.

I’ve never been through a suit in my career (knock on wood) but I had the unfortunate experience of receiving a notice of claim in my first month of residency. Then I received another one from my second month of residency. Both of them went away quickly (I was taken off as a resident, and there was no real malpractice anyway.) However, due to these experiences, from the very beginning of my practice of medicine, I have been
particularly attuned to the practice of defensive medicine, liability-conscious documentation techniques, and even asset protection law. But I still learned a ton from the book. Whether you are currently in a lawsuit or not, you should buy and read this book. She sent me two copies of the book. I was going to give them both away to readers. But I’ve decided to keep one for myself and only give away one of the copies. It’s that good. When I get served (and I’m sure I will eventually) the first thing I will do is go back and reread this entire book.

Let’s look at a few excerpts:

The average physician heads into the legal arena totally unprepared for what is to follow. For the uninformed, the experience can not only be frightening but also career ending. It is my belief that my book will help prepare physicians for battle….Doctors cannot sit back and assume that their attorney will save them. They have to save themselves.

Do not lose your compassion. It is easy to let the painful process of a lawsuit take over your emotions and make you bitter. Try to remember why you went into medicine in the first place: to help people. Compassionate doctors, in my opinion, are the best doctors. Bitter doctors, who do not care about their patients, make bad doctors. (They also get poor patient satisfaction numbers and more angry patients that can lead to future lawsuits.) Do not forget you are the same compassionate competent physician today as you were yesterday.

Although infrequent, patients can make complaints to the medical licensing board in your state. The prospect of a lawsuit may be a terrifying experience; however, a complaint that could directly affect your license is worse.

In summary, you want a good, experienced trial attorney,
preferably a partner, who represents doctors most of the time. And if there is even a whiff of a conflict of interest, you must insist on your own attorney.

[In the deposition] try to use specific medical terminology and jargon whenever possible. This is an excellent strategy to force the attorney to use their medical knowledge....If the plaintiff’s attorney does not completely understand your answer, it is harder for them to formulate questions to counteract it....Sure, the attorney could make you explain what you just said. But most attorneys have egos, and constantly having you explain your answers to them will make them look stupid....Do not teach the plaintiff’s attorney the fact. Let their own experts do that. Think of it this way: the deposition is a document that is going to be used against you. The less there is, the less harm there can be.

I know of a number of physicians who keep a diary. It can be personal or medical diaries. For some, it is a log of their life experiences. For others, it is a list of the patients and their medical problems for informational, book research, or follow-up purposes....If you have any kind of a diary, throw it away now.

The plaintiff’s attorney will ask you if you have ever had your hospital privileges suspended or revoked. Even though you will have some opportunity to explain that the suspension was “just for a medical records issue,” juries may not see this as insignificant.

I hope those excerpts give you a flavor for the book. I think it’s a great book that every physician should read. Buy your copy now on Amazon!

What do you think? Have you been sued? What tips do you have for your colleagues? What books have you read about malpractice suits? Want to enter the drawing to win a free
book? Comment below!