Two days into it, and my tropical beach vacation was ruined. After listening to a voicemail from the next-door neighbor back home, my initial response was confusion: Why would a police officer be looking for me? I frantically searched my memory for something illegal I may have done. Did I forget to pay for an item on the bottom of my grocery cart? Was it something that happened in Vegas, but did not stay in Vegas?

After discussing it with my wife, it seemed the most likely scenario was likely worse: I was being served papers in a malpractice lawsuit. A few days later, after speaking to the county sheriff’s office, this fear was confirmed.
Joining the Crowd

The numbers are sobering: a 2011 NEJM study estimated that by age 65, 75% of physicians in “low-risk” specialties and 99% in high-risk specialties will face a malpractice claim. Sorry, neurosurgeons, you win the ignominious prize for “most likely to be sued,” with a staggering 19% of you facing a malpractice claim in any given year. My specialty, radiology, is just below the average annual claim rate for all physicians: 7.4%.

As fate would have it, I joined the ranks of the sued right out of the gate: while moonlighting during my fellowship. However, I did not receive notice until almost two years after the incident, conveniently just before the statute of limitations was to expire. By that point in time, I had no memory of the patient or the imaging studies involved. A few weeks later—following a review of the case with my attorney—I had a clearer understanding of events as they occurred that day.

The Case

An elderly gentleman presented to the emergency department after a fall with the primary complaint of head injury. CTs of the head and cervical spine were obtained—which I interpreted as negative for acute traumatic injury—and the patient was
eventually discharged home later that same day.

Unfortunately, the patient had an unrecognized liver laceration with active hemorrhage, precipitating his return to the ED a few hours later in extremis; he died in the ICU a few days later. It was unclear whether or not the patient had signs or symptoms of abdominal trauma at his initial presentation in the ED. Regardless, the emergency physician and hospital were both named in the initial lawsuit.

How did I become entangled in this morass? Although abdominal hemorrhage was indicated as the cause of death at autopsy, a minimal amount of intracranial hemorrhage was also present. The plaintiff’s lawyer argued that, had I recognized the head bleed, the patient would have been admitted rather than discharged, resulting in earlier—and possibly life-saving—recognition and treatment of his abdominal hemorrhage.

I’ll let you chew on that logic for a bit.

After retrospective review of the head CT by me and the defense expert witness (an academic neuroradiologist), we could still not identify any intracranial hemorrhage. Most likely this represented a case of delayed intracranial hemorrhage, i.e., blood was not present yet or too subtle to visualize on initial imaging.

To summarize the remainder of the long (and mostly boring) story—which included numerous legal motions and correspondences between attorneys—the case against me was eventually dismissed.
Lessons Learned

What did I take away from this experience?

# 1 Before anything else, call your malpractice insurance provider.

Your guide and protector is the lawyer assigned to you by your malpractice insurance. Any and all communication with the plaintiff’s side should be done via him or her.

Did you receive a letter, email, or phone call regarding the case? Let your lawyer know ASAP. It may be a cliche to “lawyer up,” but it protects you from a potential costly slip-up and, as a bonus, allows you to live your life while the wheels of justice turn in the background.

[Technically, the attorney is the insurance company’s attorney, whose job is to protect the insurance company, not you, even if your interests are usually aligned. But that’s the beautiful thing, for at least the first million (which is almost always the last million too) you’re not on the hook at all, the insurance company is! As a general rule, malpractice suits aren’t actually about you at all, they’re about a potential transfer of money from an insurance company to a patient. So try not to let it ruin your life.-ed]
# 2 If you have a choice, opt for occurrence over claims-made.

A full discussion of these two rather opaque terms is beyond the scope of this post (and my knowledge level). You can think of occurrence policies as “permanent,” meaning you are covered for any incident during your coverage period, even if the lawsuit is filed after the coverage period. Claims-made policies only cover you if the lawsuit is filed during the coverage period; if you want to be covered after that, it will mean purchasing extra “tail” coverage. As you might imagine, occurrence policies are more expensive than claims-made, and have become increasingly difficult to obtain.

The majority of physician practices and academic institutions provide malpractice insurance, so the choice is generally out of your hands. I have never had a choice in policy, but was lucky to have occurrence in this case.

# 3 Keep copies of malpractice insurance policies from prior jobs.

In the event of a lawsuit, you don’t need the extra stress of scrambling to find your old insurer. You should hold on to these for a time equal to at least the length of the medical
malpractice statute of limitations in your state.

# 4 Don’t expect solid logic or reasoning.

When I read the plaintiff’s expert witness testimony, I was flabbergasted. First, he was not a radiologist, which troubled me given he was criticizing a CT interpretation. He alleged that I incorrectly read the head CT as negative, and argued in a circuitous explanation that my error resulted in the patient being discharged and later dying from abdominal hemorrhage. His own interpretation of the head CT—including mention of the supposed intracranial hemorrhage—was glaringly absent.

Suffice to say, I had issues with this logic. I don’t know how typical my experience was, but I was disappointed by the vague and selective nature of the testimony.

# 5 To be served is not necessarily to be sued.

Writs, Complaints, and Praecipies, oh my. During the course of a lawsuit, you will expand your legal vocabulary. In my case, a Writ of Summons was initially filed with the county; this essentially tells the defendant: “I’m fixin’ to sue you.” The next step would have been to file a legal Complaint and, eventually, either go to trial or settle the lawsuit.

Fortunately, a Complaint was never filed against me. After months in limbo, a “Praecipe to Enter Default Judgment/Non Pros” was filed on my behalf. A Praecipe is an order to produce a legal document, i.e., the Complaint. Non Pros means a judgement in favor of the defendant when the plaintiff has not continued his action. In essence, my lawyer was telling the plaintiff’s lawyer to “sh*t or get off the pot,” as Grandma used to say.

The case was dismissed a few days later.

# 6 Don’t hold your breath.

My case spanned 9 months from Writ of Summons to dismissal,
with nothing happening (from my perspective) during much of that time. My involvement over that period consisted of an initial two-hour meeting with my lawyer, an occasional short phone call, and about a dozen email exchanges. The bulk of the work was done by my lawyer and his firm behind the scenes, without my direct knowledge.

# 7 You + Your Lawyer 4EVA.
Your lawyer will always be there for you, in a legal sense. He or she is your go-to resource should questions related to your case arise in the future.

Remember that question on state licensing applications asking if you have ever been the subject of a civil malpractice lawsuit? I felt a simple “no” was not quite correct in my case, but was unsure of what to say. A quick call to my lawyer cleared things up in a few minutes.

Into the Sunset

Although not without occasional stress and anxiety, I emerged relatively unscathed from my brush with the medical malpractice world. I sincerely hope that none of you have the occasion to meet your malpractice insurance lawyer. I also
hope for world peace. A more realistic hope might be that, if one day a police officer knocks on your door with letter in hand, you will have a better idea of what lies ahead.

[Editor’s Note: There are pluses and minuses to becoming acquainted with the malpractice world early in your career. I received a notice of claim from both my first month of residency and my second. Although neither claim had any merit, I learned an awful lot about malpractice defense, asset protection, defensive charting, and defensive medicine very early in my career. I’m sure there are some scars though. I probably trust patients less than I did when I started internship. I probably chart more. I might even order more tests than I otherwise would. Maybe I even focus on finances more than I otherwise would have. Maybe in some way those suits led to the creation of WCI….]

What do you think? Have you had a brush with the malpractice system? What was it like? Any tips for those in the process now? Comment below!