

Chapter IX

How to Avoid Malpractice: A Consumer's Guide to Being a Wise Patient

Until the laws are changed to reduce the incidence of malpractice and improve patient protections, consumers must learn to fend for themselves. Here are some important precautions, based on advice from experts, that will aid you in being a savvy and safe health care consumer.

How To Find A Good Doctor

How much time would you take shopping for the right product if its purpose was to save your life?

Choosing a good doctor should be approached as a life and death matter, because even if you're healthy now, the person you choose will likely be your first contact in the event of a serious medical problem.

Here are some ways you can find the right doctor, whether you're looking for a general practitioner or a specialist.

First, ask a physician you trust for a recommendation. Perhaps you are moving to a new city, or need a specialist. Someone you have already placed your trust in is the first place to start. Next, ask a person you trust who he sees. If you're searching for a specialist, find someone who has had the same medical problem and ask that person who their physician was, and how satisfied they were.

When you've got some candidates, don't hesitate to call their offices to interview the physician and his or her staff. You can learn a lot about a doctor's attitude by whether he or she will take the time to discuss the matter with you. Never be embarrassed by your insistence that you interview a doctor for the job. Just explain that you are making a critical choice in your life, and you want to make sure you find the best person.

The most important information you can obtain directly from a doctor is a sense of what used to be called “bedside manner” — though, unfortunately, doctors no longer make housecalls. You want a doctor who will be available in emergencies, on weekends, who doesn’t mind being called in the middle of the night, or whenever the unexpected might occur.

Some practitioners may decline to conduct what amounts to a job interview with you on the phone. They might insist on setting up an office visit (which you may have to pay for). Such doctors’ schedules may genuinely be too crowded to permit lengthy interviews; this is sometimes, but not always, a sign of a doctor with many satisfied patients. It shouldn’t necessarily lead you to reject the candidate. But, consider whether the physician will be too busy to properly care for you.

A hurried medical office can also lead to poor quality care. You’ll be able to confirm this during a visit. If the physician appears to be in a rush, expresses a sense that your questions are inconvenient or unnecessary, or cuts you off, choose someone else. Such physicians are not only unwilling to foster the communication that maximizes the doctor-patient relationship, they are incapable of providing the best medical care, since they may miss an important clue to your health.

You’ll also want to learn about the physician’s credentials. Doctors who graduated from medical schools outside the United States most likely were rejected by American schools — look more carefully into these individuals. If the physician is a graduate of an American medical school, make sure the school is accredited by state authorities. Ask where the physician did his or her residency — a training period after medical school. Residencies at prestigious hospitals or medical centers may indicate superior training. If you are looking for a specialist, make sure the candidate is “board certified” — a physician whose training in a specialty meets the standards set forth by other experts.

Find out what kind of hospital the physician is “affiliated” with (where the physician has privileges, such as the right to admit and attend patients). Affiliation with large hospitals or medical teaching centers connected with universities is very important since such institutions usually offer the most advanced services and equipment, and provide an environment in which the physicians are aware of and use the latest treatment techniques.

And remember to check out who will “cover” for the physician if he or she is unavailable when you need help. Single practitioners often arrange to have colleagues respond to such calls. If the physician is part of a multi-member practice in which the doctors rotate availability for night and weekend emergencies, another doctor may be “on call.” In either case, you need to know just as much about who might take your doctor’s place as about your own doctor.

All of this information should be available from the physician’s office; if not, ask your local library for reference books which will provide some of it.

Next, contact your state medical board (see Appendix B) to make sure your doctor has not been the subject of disciplinary action. Although, as has been noted, state medical boards are notoriously lax, you’ll want to check anyhow. Another resource to check is the annual report of disciplined physicians, published by Public Citizen Health Research Group, the nonprofit consumer organization founded by Ralph Nader. Many libraries have it, or you can order it direct from Public Citizen (you’ll find the address in Appendix A).

Some of the wrong reasons for choosing a physician: he or she lives close to your home (a few minutes extra in the car could be worth the difference); offers inexpensive care (frugality is a virtue, but obey the admonition against being “penny wise and pound foolish”); gets lots of publicity (good publicity can be purchased and means little; bad publicity . . . well, enough said); or has been referred by a physician “referral service” (these are usually operations in which physicians pay to be listed; generally, avoid them).

It’s wise to begin the process of selecting a physician when you’re healthy, because selecting a physician should be well thought out and planned.

How To Choose A Safe Hospital

If you are in need of hospitalization, you should treat the search for a hospital much as you do the search for a good doctor. You may have less flexibility because your physician may not have “admitting privileges” in every hospital. Thus, as noted, a physician’s affiliations are an important factor to consider. Also, beware that physicians may have financial interests in a medical facility — ask your physician directly.

Where you go depends on what kind of treatment you require. Small community hospitals are fine for minor matters. But any kind of major specialized surgery should be done at a major hospital, or medical teaching centers connected with a university, where they are most likely to have the best equipment and employ the safest and most advanced techniques. And don't be impressed by the physical size of the facility alone: some of the hospitals with the highest mortality rates are large hospitals. Some states publish hospital mortality rates for each type of surgery.

If your physician has selected a facility that you are uncomfortable with, say so, and ask why he or she has chosen that facility. Make sure it's not simply a matter of convenience or self-interest for the physician. If you're still not satisfied, insist that you jointly figure out an alternative.

Obviously, if you are in an accident and need immediate treatment, you're hardly in a position to evaluate the choice of hospitals. That's why it makes sense to do at least a little research when you're healthy, so you can specify where you wish to go in the event of an emergency.

How To Insist On The Best Care At Your Doctor's Office Or At The Hospital

Today's consumer credo is: Above all, help yourself. That means take an active role in your diagnosis and treatment.

Begin by insisting that your physician take a full and complete medical history. If you are visiting a physician for the first time, have your medical records transferred from previous doctors or hospitals. Don't hesitate to mention anything that is bothering you now, or has in the past.

One of the most important things to do to protect your health — and your pocketbook — is ask plenty of questions and take notes. This cannot be emphasized enough. If a diagnosis is made, if drugs are prescribed, if surgery is ordered — make sure you understand everything the physician tells you, no matter if you have to ask the physician to explain it five times. Don't leave without understanding what you have to do and why; ask what it will cost (do not settle for the answer, "your insurance will cover it," because it may not cover any or all of it).

And write it all down! Bring a notepad and pencil with you whenever you visit any medical facility. Take notes while the physician is

talking, or else immediately afterwards. Taking notes can be difficult sometimes — you may be confused, upset — but that’s the most important reason to do it. Otherwise, you’re likely to miss important information. (You can always call back, but getting it the first time is best.)

If you’re in a hospital, taking notes can save you money and even your life. Patients’ rights advisors, like Charles Inlander, President of the People’s Medical Society, urge hospital patients to keep a log of every person they talk to, of every medication given. Recording such information will (1) help you catch inappropriate medication offered by nurses, or similar mistakes in the treatment you are supposed to receive; (2) protect you later should a question of malpractice develop; you will have your own record, which cannot be altered by hospital staff or physicians, as too often happens when a mistake is made; (3) help you catch and rectify errors in hospital charges for drugs or treatments you never received or for services by doctors or others that were never provided.

If you feel awkward about your note-taking, or if it is making the doctors and hospital staff uncomfortable or suspicious, explain to them that you find it easier to remember their instructions and advice if you write it down.

Finally, here is the best advice from malpractice lawyers: never stay in a hospital by yourself.

Whenever possible, have a spouse, loved one or trusted friend present at all times when you are in the hospital, even if that means sleeping in a chair.

It doesn’t make a difference how minor your condition is; hospitals are complex institutions. There are plenty of opportunities for mistakes, and even minor mistakes can be costly or deadly, from a hospital-induced infection to malpractice. If you’re in a hospital, by definition your health is not at its optimum. You may be medicated, or unable to get up easily from the bed. Indeed, if you are recovering from surgery, you may be woozy from the anesthesia. In any case, just being in a hospital elevates your risk of illness or malpractice.

Having an advocate present to monitor what is happening around you, to make sure you get the treatment you need, is essential. If something goes wrong, he or she can act quickly to secure assistance.

Many hospitals will accommodate a request for someone to “room in,” particularly when children are hospitalized, or in maternity wards. But hospital authorities and often doctors will resist the patient-team

approach, particularly if they figure out it's based on concern about the quality of care offered. It's best to explain a partner's presence as a matter of comfort. But if the hospital staff resists, protest all the way up the chain of authority.

Dealing With Medical Bills

Most people feel sick all over again when they get home from the hospital and receive the bill.

Hospital overcharges are routine and notorious — \$3 for an aspirin, \$17 for a plastic cup. Hospitals claim these prices are necessary to cover their costs, but consumer advocates say that the hospital's costs should be included in the price of room and board, tests and treatments — not unbundled into every single medicine tablet and tube. Recently, lawsuits have been filed to force hospitals to disclose their prices to consumers before treatment and to limit unconscionable charges.²²⁵

But the biggest problem with hospital bills is that they are indecipherable. They are either too vague or too complicated to allow the consumer to determine whether they are accurate. And, not surprisingly, they are usually loaded with errors.

Insurance companies used to have little reason to scrutinize medical bills — they would just pass through the charges (with a percentage markup for profit) to the consumer in the form of higher insurance premiums.

But most insured consumers still have to pay a deductible of up to 20 percent or more. In an era of \$5,000 a day hospital bills, consumers cannot afford inaccurate bills. And, of course, health insurers are under fire for raising premiums, and Washington is talking about dramatic changes in the health insurance system. So insurance companies are beginning to monitor bills more closely.

Keeping track of how your insurance company handles hospital and doctor bills is no easy task either. (As noted earlier, some companies offer software that allows you to monitor your medical bills and health insurance claims.)

Consumer groups are investigating billing errors and have proposed a series of reforms to protect the public from billing rip-offs.²²⁶ In the meantime, the best way to avoid billing errors is to take careful notes of

what you get and which doctors treat you while in the hospital. Then compare the notes to the bill. Don't pay bogus charges.

Bring billing errors to the attention of hospital authorities. Ask your physician for help (many will review bills and go to bat for you). Enlist your insurance company's assistance in correcting the bill.

Be warned that a doctor or hospital might hire a collection attorney to obtain payment of a bill. Typically, these attorneys threaten legal action and harm to your credit rating unless you pay up. Don't let these tactics intimidate you — it is a violation of federal and most state laws to threaten you or to harm your credit rating to force you to pay charges that are not correct. (You can sue violators.) However, failure to pay a legitimate charge can be noted on your credit record. Pay the undisputed amount of the bill while trying to resolve the errors.

Often, a letter from a lawyer will encourage the hospital to resolve billing disputes. Unwanted publicity also helps.

Finally, note that many hospitals will permit you to establish a payment plan to pay off large balances.

Don't Be Intimidated

It is easy to understand why many consumers do not insist on their rights as patients.

We've all been trained to view doctors as almost divine and medical science as nearly miraculous. But if you've learned nothing else from these pages, you know now that doctors and medicine are imperfect, and that mistakes are far too common.

To best protect yourself in the current medical environment, you must act as your own consumer advocate. Do not permit yourself to be intimidated by someone else's uniform, occupation, credentials and stature. You're paying the bills, not only as a consumer, but also as a taxpayer who helps fund the medical system.

Do not ignore your instincts or the obvious. If something seems wrong, assume it is until you have found somebody who knows for sure.

If You Have A Complaint

Problems with hospital stays that don't directly involve the quality of medical care provided to you, such as sanitary conditions, noise or food

quality, should be taken to hospital administrators. Problems with hospital personnel can be discussed with your physician as well as hospital officials. State laws and state agencies often provide standards that hospitals must meet; bring serious problems to the attention of state officials (most states monitor hospitals through their health departments). Writing a letter to the elected officials who represent you often leads to a follow-up written inquiry.

Physical or emotional mistreatment, discrimination, incompetence, substance abuse, sexual harassment or other matters require different and stronger remedies. Since hospitals are often held legally responsible for the behavior of people working in the facility, hospital staff and officials have an incentive to act on your behalf in such cases; on the other hand, these same officials may try to escape responsibility by ignoring your demands, or altering records.

If hospital officials cannot solve the problem, your next stop is your state's medical board (in the case of a physician), department of health (for complaints concerning hospitals), or other licensing agency (a separate board may oversee nurses, for example). As has been noted, these agencies are usually closely allied with the medical profession, so the deck is stacked against you. But it's important to notify these authorities, in writing, to give them an opportunity to take action — or, at the very least, to keep a record, so that maybe they'll take action the next time others complain. Such complaints also create a track record by which the board's effectiveness can be measured, perhaps as part of a campaign to reform the agency. A state-by-state list of medical boards is provided in Appendix B.

Whenever you communicate with anyone about a problem, always take notes of what you said, and the response. Keep copies of every written communication you send or receive.

If You Are A Victim Of Malpractice

Malpractice is professional misconduct, unreasonable lack of skill or fidelity in professional duties, or criminally illegal conduct. If you believe you have been the victim of medical malpractice, and you want justice, you are going to have to see a lawyer. And that is only the beginning.

To obtain compensation for your injury, you are going to have to get a jury to agree that malpractice occurred — or have a case so strong

that the lawyers for the doctor or hospital will settle the case without a trial.

Lawsuits are no fun. They can take years, involve complicated maneuvering, lengthy court hearings, and grueling “depositions” in which lawyers for the doctor or hospital ask you endless questions in an attempt to destroy your charges and your credibility. Most who go through the process say they underestimated how hard it would be, especially to relive the medical trauma. And then, of course, there is the possibility that you have a legitimate case but will be unable to prove it in court, in which case you lose. Considering how torturous and difficult the legal system is today, it is truly despicable that the medical and insurance lobbies propose to make it even more onerous.

As Charles B. Inlander, President of the People’s Medical Society, has written, only half-jokingly, “Be careful to select the right attorney. There are at least as many lawyers who ought to be charged with malpractice as there are doctors who should be.”²²⁷ Choose a malpractice lawyer with the same care you would choose a doctor — in fact, to select a good lawyer re-read the section on “how to find a good doctor,” and just substitute the word “lawyer” for “doctor.”²²⁸

If you live in one of the states where the rights of malpractice victims have already been circumscribed by state legislators, you’re going to have a harder time obtaining legal help. Unless you have a strong case, you may not be able to find solid legal representation.

Lawyers who specialize in malpractice cases usually agree to represent you on a contingency fee basis — that is, if you lose, they get nothing; if you win, they get as much as 30 percent, or even 40 percent if the case goes all the way to trial, depending upon the type of contract for legal services you sign. Make sure you get the fee arrangement in writing — most states require that already — and try to specify that the expenses of the case are to be paid out of the gross amount of money you receive, not after the lawyer subtracts his or her fee. Lawsuit expenses can be high, and if you have to pay them out of what is left *after* the lawyer takes his or her cut, you might be left with too little.

