

An Outline of the Legal Process

**A copyrighted excerpt from
Adverse Events, Stress and Litigation: A Physician's Guide
by Sara Charles, MD, and Paul R. Frisch, JD**

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Table 7–1. The Litigation Process

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- *The summons*—A formal legal document, issued by the clerk of the court and usually served by the sheriff. A notification that a suit has been filed.
 - *The complaint*—Accompanies the summons and tells in legal terms the nature of the complaint. It may be preceded or followed by a notice in the local newspaper.
 - *The pleading stage*—Shortly after the complaint is filed, the attorney begins to communicate with the court by filing motions, a request addressed to the court to do something.
 - *The discovery stage*—A process designed to discover information relevant to the case. This includes depositions (oral questions and verbal responses taken under oath) and in some state courts, interrogatories (written questions). The discovery may also request inspection of documents and/or physical and mental examinations.
 - *Expert witnesses*—A case alleging medical malpractice proceeds only if each side presents expert opinions that care was or was not a deviation from the accepted standard of care except for *res ipsa loquitur* or informed consent cases.
 - *Summary judgment*—An application for judgment on a plaintiff's cause of action before trial where no material questions exist as to the pertinent facts in the case (which a jury would otherwise have to decide at trial). The motion for summary judgment asks the court to decide the validity of the case. If granted, the case is resolved without the need for a trial by jury.
 - *Settlement*—An agreement made between two parties to a lawsuit or a claim that resolves their legal dispute.
 - *The trial*—This may be preceded by pretrial maneuvers attempting to resolve the case by settlement or some other method. If these fail, the case goes to trial before a judge or a judge and jury.
 - *The verdict*—Decision reached by the deciding body.
 - *Directed verdict*—A directed verdict may be sought by a party at the close of his opponent's case at trial or at the end of all the evidence. If a directed verdict is granted, the court has decided as a matter of law that a party has failed to prove the essential requirements of his case and directs that a verdict be issued against that party without requiring the deliberation of a jury.
 - *Judgment notwithstanding the verdict*—Also known as JNOV (*judgment non obstante veredicto*), a court notwithstanding the verdict reached by a jury may issue a judgment. This may be issued upon generally after the case has been submitted to a jury for deliberation. A party requesting JNOV must establish that as a matter of law, his or her opponent's case must fail, by having moved for a directed verdict.
 - *Posttrial activities*—In a civil matter, if a participant fails to receive a favorable verdict, the law permits a number of procedures to appeal the outcome. A posttrial motion must be submitted within a prescribed period of time and is a request to the court to void the verdict usually on technical grounds. A formal appeal may also be initiated to overturn the verdict on legal grounds.
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