

Malpractice: What Can You Be Sued For?

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There are two areas for which you can be sued in your practice: omission and commission. Omission is something you fail to do. Some examples of malpractice by omission include missing a diagnosis or failing to diagnose a patient. In California and other states in which the doctor of Oriental medicine or acupuncturist is defined in the state's practice act as a primary care professional, a diagnosis is an obligation. This is not just a TCM diagnosis, but one used by other primary care professions from the ICD-9 code book. The same standards held by other primary care doctors are the same ones used for acupuncturists, with states having this type or similar wording in the law.

Another area for malpractice by omission is failing to refer the patient to another provider when appropriate. If the acupuncturist was the first to discover that a patient has cancer and does not refer the patient to the appropriate doctor, this is an area of omission. The acupuncturist failed to do something that could affect the health of the patient.

The second area for malpractice is commission: in other words, doing something wrong. You have to have done something to the patient and injured them. For example, the needle used ended up breaking inside the patient, or a lung was punctured due to the depth of the needle insertion. Another example could be if you push too hard on a patient's ribs while performing *tui na* and cause a rib fracture.

If you are unfortunate enough to receive a subpoena, you have 20 days to respond to a suit. The first thing to do is call your malpractice insurance carrier, get your files together, and call your attorney. Do not call the patient! At this point, the situation is out of your hands and needs to be managed by your malpractice attorneys.

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