KAUFMAN DOLOWICH LLP

# Partner Christopher Brown, Esq. quoted in: How to Identify and Defend Against Malicious Lawsuits, in Health Care Risk Management, 11-1-2023

Malicious lawsuits can occur when the plaintiff has no legitimate basis to sue. Seeking recourse can be difficult for defendants.

- Beware of plaintiffs representing themselves or using an inexperienced lawyer.
- Some cases can be dismissed easily.
- Suing for legal expenses is possible, but recovery can be difficult. *See Full article at Link*

***Although a patient may have suffered an injury, he or she may be unable to prove by the requisite testimony or evidence that compensation should be granted, says*** Christopher E. Brown, JD, partner with Kaufman Dolowich in Orlando. That does not make the lawsuit malicious, but it is not uncommon for a plaintiff to file suit against all parties involved in the individual's care, regardless of whether the provider's treatment had anything to do with the outcome. Those parties can believe they were unfairly dragged into the case and wish for recourse.

"Unfortunately, there isn't a lot that can be done to thwart a malicious malpractice action. One avenue of defense is a malicious prosecution action brought by the defendant provider against the plaintiff," Brown says. "This provides an avenue of redress for the maligned defendant who has been compelled to defend against a spurious claim. However, such an action can only be brought after dismissal of the original action in favor of the defendant."

Additionally, such an action is difficult to prove because the provider must show the original claimant against whom the malicious prosecution action was filed instituted the claim without a reasonable belief in the viability, Brown says. This is especially difficult in states with medical malpractice presuit requirements, and the plaintiff has complied.

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