

CORY TYSZKA QUOTED IN PHOENIX MAGAZINE'S TOP DOCS ISSUE

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JSH Medical Liability and Health Care Defense attorney [Cory Tyszka](#) provides legal perspectives in "[Cross-Examination](#),"

an article authored by Keridwen Cornelius and published in PHOENIX Magazine's 2019 Top Docs Issue. The article explores the disciplinary process at the Arizona Medical Board, and examines how the Board's actions relate to medical malpractice suits. Excerpts provided below.

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To put together the Top Doctors issue every year, PHOENIX magazine consults the Arizona Medical Board (AMB) website to ensure none of the nominated doctors has a current disciplinary action against them. Anyone can search the site (azmd.gov), and for most physicians, you'll see a clean slate. But for a few, you'll read terms like "Letter of Reprimand," "Probation" and "Practice Restriction."

The legalese can spark even more questions: Is this doctor incompetent or did they fail to cross their t's on a form? Is the medical board a bunch of rubber-stampers and wrist-slappers, or do they thoroughly investigate each claim? Can a doctor who commits egregious errors simply move to another state and practice scot-free? And how do medical board actions relate to malpractice suits? We set out to pull back the curtain.

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But how do the board's actions relate to malpractice? In some instances, a doctor can be sued for malpractice and be investigated by the medical board simultaneously. Or a case could begin as a malpractice suit, then be brought to the medical board if a settlement is reached or if there's a judgment against the doctor. But typically, complaints are brought quickly to the medical board, while lawsuits are often presented on the brink of the statute of limitations (two years after the underlying incident), and the cases can take years, says [Cory Tyszka](#), a medical malpractice defense attorney at Jones, Skelton & Hochuli in Phoenix.

According to the Medscape Malpractice Report of 2017, the doctors who get sued most are surgeons and OB-GYNs or women's health physicians. "You can't predict what's going to happen in surgery," Tyszka says. "Sometimes doctors get sued when there are known risks to a procedure and, due to no fault of the doctor, a patient suffers one of those known risks, and they will sue because understandably they're upset."

Radiology, No. 7 on Medscape's list, is also "a challenging specialty," Tyszka says, "because they're looking for something in particular, and if there's an incidental finding they didn't see because they were focused on something else, they could have some difficulty. And then of course, it's in a picture... that we can now all plainly see."

Emergency medicine doctors are also in the top 10 most sued specialties. However, because they must make split-second decisions with limited information, there is a higher standard of proof for showing ER doctors or on-call ER physicians caused a complication.

To prevent frivolous lawsuits, Arizona has a statutory scheme requiring a medical expert in the same specialty as the defendant to show that the claim has merit. What the expert must determine – and what the jury must decide if it goes to trial – is whether the doctor met the standard of care. "The standard of care is not perfection," Tyszka says. "It's about what a reasonable and prudent physician would do under same or similar circumstances in the state of Arizona. And you are supposed to evaluate the standard of care standing in their shoes at the time they're providing the care. In a lawsuit, we have the benefit of hindsight, and hindsight is always 20-20. So the jury is supposed to be saying, 'What did the doctor know at the time?'"

Determining that requires an in-depth investigation, similar to the AMB's investigations, which include expert input, interviews, images and more. That's what Tyszka finds fascinating. "These cases are all about intricacies," she says. "I just love learning the medicine and exploring that with our clients and our

experts and getting to really dig deep into the minutiae.”

She also loves helping physicians, because for every heroin-addicted over-prescriber or nerve-severing surgeon, there are thousands of sincere, talented doctors who are dedicated to serving their patients. “I personally feel that doctors provide such a valuable service to our community, and they are some of the most revered members of society,” she says. “So for me, it’s rewarding to be able to help them, kind of like giving back.”

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