



Healthcare D&O Liability

D&O Loss Scenarios

- A New England hospital sent a pregnant patient to another hospital's emergency room without having her first examined by a physician. Department of Health officials determined that this was a violation of the Emergency Medical Treatment and Labor Act (EMTALA), as unstable patients are required to be seen by a physician prior to being transferred to other facilities. Defense costs, fines and penalties exceeded \$250,000.
- A small hospital saw revenues drop due to new competing facilities. It's primary creditor withdrew over \$1 million from the hospital's operating account leaving the hospital with no way to cover expenses and forcing them to declare Chapter 11 bankruptcy.
- Over a dozen physicians representing two Northwestern hospitals were named in two federal lawsuits and dozens of suits brought by patients alleging that they provided surgical privileges to a physician with a history of conducting unnecessary procedures and acting unprofessionally. The suits allege that the hospitals who granted the doctor privileges were negligent in doing so. The only suit that has settled at this point led to a plaintiff judgment approaching \$1M. Multiple patient suits are currently pending.
- A for-profit hospital was named in a suit seeking the repayment of a series of loans totaling nearly \$2M. A member of the hospital's board of directors is among the plaintiffs as well as multiple investors. Plaintiffs are seeking repayment of outstanding notes along with all legal costs, expenses and fees. This is just the latest in a series of financial difficulties this hospital has seen as they filed for bankruptcy in 2008.
- A rural Midwestern hospital was required to remodel certain departments in order to comply with regulatory changes. Between the expenses of these upgrades and revenues lost during renovations, hospital trustees were forced to seek Chapter 9 bankruptcy protection.
- A large not-for-profit health system acquired a competing for-profit hospital for nearly \$200M. The Federal Trade Commission alleged that the transaction violated antitrust laws. They argued that the acquisition would give the new entity far too large of a market share in their operating counties which would, in turn, cause health costs to rise and harm patients and local employers.
- A large hospital system acquired several neighboring facilities. Competing facilities argued unfair business practices. They alleged that this would allow the acquiring system the ability to steer patients away from competition given their greatly expanded market presence and would force their competition to eliminate jobs and services. At the same time, Federal and consumer protection agencies argued that these transactions violated antitrust laws. Both the Federal Trade Commission and state Attorney General argued that they would be able to charge whatever they wanted and that this would drive up insurance premiums and patient costs. Following millions of dollars in defense and attorney fees, a Federal Judge ruled that the acquisitions must be undone.
- A patient being treated at a Midwestern hospital expressed suicidal thoughts to nurses but was discharged without a psychological evaluation being conducted. Following a federal investigation into the matter, the hospital agreed to pay a fine of nearly \$50,000 for engaging in "patient dumping", a violation of EMTALA.

