

Doctor Takes Own Life to Incite Change in Legal System

How an unjust legal system and dishonest expert witnesses drove Dr. Philip Ticktin to take his life. His last request was that this story be told.

By Cameron C. Taylor, President of the National Medical Foundation for Asset Protection (NMFAP)

On a spring morning of 2004, Philip Adam Ticktin, M.D., age 44, quietly took his life in his suburban home ending an exasperating five-year lawsuit. The athletic, well-liked, emergency room physician left behind a note that reads (see image to right):

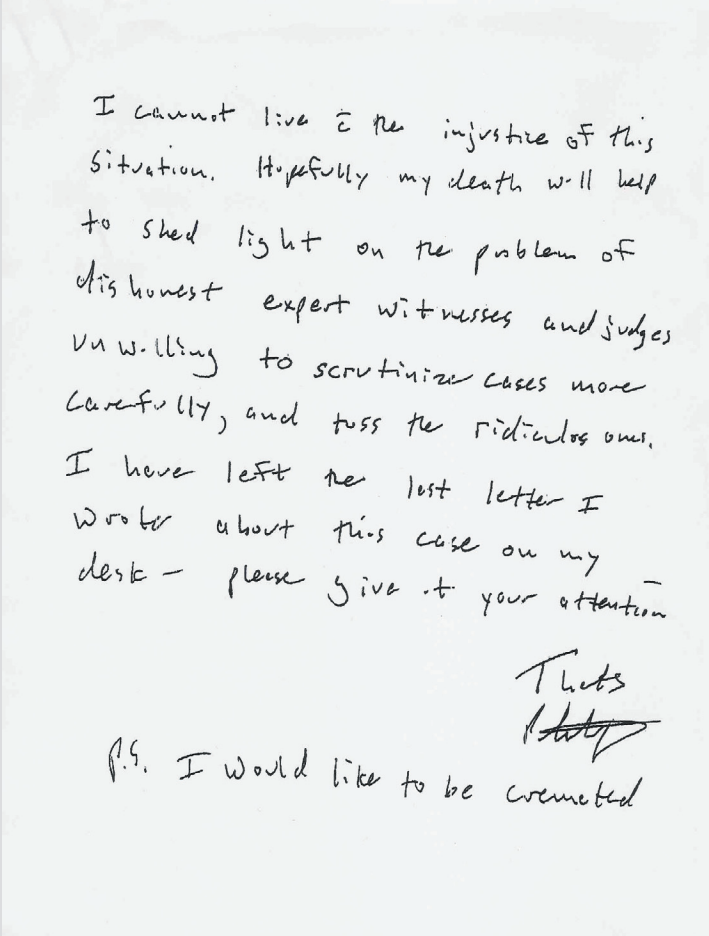
"I cannot live with the injustice of this situation. Hopefully my death will help to shed light on the problem of dishonest expert witnesses and judges unwilling to scrutinize cases more carefully, and toss the ridiculous ones. I have left the last letter I wrote about this case on my desk—please give it your attention".

Attached to the note, he left documents detailing the facts of a 1998 incident and the resulting malpractice lawsuit against him. These documents brought to light why Dr. Ticktin stated in his final words, "I cannot live with the injustice of this situation."

The Situation

In the fall of 1998, a young man who worked as a valet parking cars, was sent by his employer to the hospital to obtain a drug screen after being involved in a minor car accident at work. Because the test was being conducted after lab hours, the emergency staff attended his request. When the nurse attempted to conduct the urine test, the patient became agitated and incoherent. Dr. Ticktin, who had just come on shift, was asked to help control the patient. Dr. Ticktin described the patient as "very agitated." He immediately started an IV line, established monitoring, drew labs, and arranged for a CAT scan of his head. Late that night, the patient admitted to drinking water to mask a drug screen he feared would be positive. The next day, the patient slipped into a coma and died. The statement that he had been drinking water turned out to be a gross understatement as it was estimated that he had consumed over three gallons of water. The patient died from a condition known as water intoxication.

The patient's family eventually found a lawyer willing to turn the incident into a lawsuit. The plaintiff attorney subsequently hired a doctor willing to act as an "expert witness" in the case. The expert witness claimed that the patient's excessive water intake occurred at the hospital when the patient was asked to drink fluids to produce a urine sample. Dr. Ticktin describes this witness' statements in these words:



I cannot live with the injustice of this situation. Hopefully my death will help to shed light on the problem of dishonest expert witnesses and judges unwilling to scrutinize cases more carefully, and toss the ridiculous ones. I have left the last letter I wrote about this case on my desk - please give it your attention.

T.H.
P.S. I would like to be cremated

Image of Note Containing the Final Words of Dr. Philip Ticktin.

"He states that the patient was asked to drink water to give a urine sample and then became water intoxicated. Nowhere in the medical record does it suggest that the patient was asked to drink water. More significantly, the patient had a water excess of approximately 3 gallons. He was only in the department for 30 minutes when he became agitated. It is not possible to drink 3 gallons of water in 30 minutes. Nor is it reasonable to believe that a patient could accidentally drink 3 gallons of water."

An Unjust Legal System

A doctor can do everything right and provide a perfect standard of care but still lose a lawsuit as a result of a negative outcome. As in the Dr. Ticktin case, a lawsuit was filed because of a negative outcome even though there were no

errors by Dr. Ticktin or the hospital staff. Sarah Lawhorn, president of a malpractice insurer stated, "Some jurors freely admit that they'll overlook whether the doctor violated the standard of care if they feel sorry for the plaintiff." As a result many judgments are not a result of justice and enforcement of the law but a result of sympathy for the plaintiff.

From Prosecutor to Protector

Dr. Ticktin's story was brought to the attention of the National Medical Foundation for Asset Protection by one of Dr. Ticktin's friends, Robert K. Dowd, JD, LL.M. Robert Dowd was a plaintiff attorney having achieved millions of dollars in judgments against doctors. Dr. Ticktin's suicide was one factor in Robert Dowd closing the litigation portion of his practice to focus on helping physicians protect themselves from lawsuits. In answer to the question, "So what made you decide to make the switch from prosecuting doctors to protecting doctors from prosecution?" Dowd replied, "My parents actually had a great deal to do with this decision. My mother was an extraordinary lady who was orphaned at the age of nine as the oldest of seven children. She and three of her sisters beat the odds and became RN's. Between the four of them, they had four daughters who also became RN's. My father was a firefighter specializing in First Aid. He taught me great respect for doctors and the medical profession. When my mother died last year, I kept thinking of her legacy as an award-winning head nurse with over 50 years of practice. During that time, I began to renew my reverence for the mission of health care providers. I was supposed to be the doctor in the family. Instead, I became the attorney.

"Since I missed the chance of becoming a doctor, I began searching for ways I could help physicians stay in practice so that they could help others. I think my parents would be proud of what I am doing now. Also, a photograph in TIME magazine last year showed a picture of a doctor holding a sign that said, 'Sick? Call a Lawyer.' That image has stayed with me. In places like Mississippi, specialty surgeons have been leaving the state in large numbers as a result of the increased cost of practicing high-risk specialties such as OB/GYN and neurosurgery. Also, there are now procedures doctors will not perform. For example, nearly one in five Georgia

doctors are abandoning high-risk medical procedures like emergency C-sections. And because of the litigation climate, there were only 85 obstetricians left in the city of Las Vegas to deliver more than 23,000 babies last year. All the problems I mentioned in the medical community are dwarfed by the prospect of our nation losing our standard of medical care."

Loss of Medical Care

The day will come when trial attorneys need the help of physicians and the care will not be available. There will be consequences for their actions. How will the trial attorneys feel when one of their colleagues has a child hit by a car while riding a bike and suffers head injuries and is unable to receive treatment? The child is rushed to the local hospital to find that the local neurosurgeon has left the area as a result of the liability crisis and now the nearest neurosurgeon is 4 hours away. The delay and lack of available care results in the child's death which could have been prevented had the doctor with the necessary skills been available. This is a day I hope will never come. However, if things continue as they are, this day will surely come.

Doctors Forced Out of Practice

When the story came to my attention I knew it had to be told. Dr. Ticktin loved serving and helping people as do most doctors. As we have worked with thousands of doctors throughout the United States, what has impressed me most is the physician's love and commitment to

their profession and their patients. It is a tragedy to see a legal system prevent doctors from helping and doing what they love to do.

I recently received a letter from one of my physicians, Mark Hopkins, MD. A portion of his letter reads, "After enjoying twenty years of orthopedic surgery, I leave old friends... continued problems with health insurance companies and rising malpractice premiums have made it less desirable to continue in the private practice of medicine although the true medical part of caring for patients and getting to know patients has been truly rewarding and I will remember the latter part always. I believe there needs to be a radical change in the health care system in this country in order for it to survive into the future and to work for the best interests of the patients...Change can only start through understanding and understanding leads to new ideas and new ways of solving problems."



Philip Adam Ticktin, MD with his daughter. Picture provided to NMFAP by Donna Bowker, RN, Director Emergency Services at St. Paul University Hospital. The letter sent with the picture read in part, "On behalf of his family, and his second family here at St. Paul, I thank you for your interest in his personal cause. Words cannot express how much we still miss him. He was an extraordinary physician, and a wonderful man."

Dr. Ticktin spent five years defending himself in a baseless lawsuit. Serving patients was his life. When he began to see the legal system prevent him from doing what he loved and lived for, life was no longer worth living. Dr. Ticktin took his life hoping his death may help to incite change. Dr. Ticktin is now watching his colleagues from the other side praying they will not suffer as he did – praying the injustices of the current system will be corrected so that the medical profession he dearly loved will not die as he did.

Dr. Ticktin wrote in his suicide letter, “I can’t live with the injustices of this situation.” Without change in the current legal system, the medical industry will no longer be able to live with the injustices and will die an unnecessary and premature death. And if this happens, when people get sick the only person available to see them will be an attorney.

Patient Responsibility

It is time for people to take personal responsibility for their choices. I have had ten surgeries throughout my life and each time before I was given anesthesia I read a document detailing the risk of anesthesia which included the possibility of death. Before each surgery, I weighed my options to ensure the surgery was worth the risk. There were times I opted not to have surgery because I wasn’t comfortable with the potential risks associated with the procedure. However, had I died during one of my surgeries my family would have been able to sue and win millions even though it was a known risk of the procedure. This is wrong. If patients do not want the risk associated with receiving medical care they should not seek medical care. If you choose to utilize and benefit from the wonderful world of modern medicine, then also accept the responsibility and risk that go with it. If the patient decides they don’t want to utilize medical services and the risks associated with them that is fine. Let them see how they like life without the miracles of modern medicine.

Fighting the System

Dr. Ticktin made many attempts to change the unjust system. Because of the witness’s apparent lack of medical competency or objectivity, Dr. Ticktin filed a complaint with the state medical board. In retaliation, the witness filed for sanctions against Dr. Ticktin. To this day, the witness continues to pursue sanctions against the late Dr. Ticktin. The plaintiff attorneys also filed a complaint against Dr. Ticktin claiming his actions constituted witness tampering. Dr. Ticktin’s attempts at change resulted in additional complaints against him. This compounded his stress and frustration to the point of taking his life as a statement of the injustices and with the hope that his death would bring change and relief to his colleagues. As he wrote in his suicide note, “Hopefully my death will shed light on the problem ...”

NMFAP is continuing the fight to save health care and bring relief to physicians. Dr. Ticktin tried to fight and change the current system resulting in increased problems and frustration. NMFAP takes a much different approach. NMFAP enables physicians to use the legal system instead of being abused by it through the use of a very unique approach.

The Solution

NMFAP was founded by Jay W. Mitton, MBA, JD. Jay’s passion for protecting others from lawsuits was born out of an early childhood experience. Jay describes the experience as follows, “We were forced out of our home three times, each one worse than the previous one, because of lawsuits against my father. One came as a result of him innocently loaning his business truck to a neighbor. I was only 10 or 11 years old when I wrote in my little purple-covered diary, ‘When I grow up, no one will ever take one penny from Jay Mitton.’ This has led to my life’s mission. My goal and mission is that no client of mine will ever go through what I did as a child, nor will their children.”

“Change can only start through understanding and understanding leads to new ideas and new ways of solving problems.”

There is a proven solution. It is a court-tested method available today for use by all medical professionals to find relief from exorbitant insurance rates and excessive judgments.

Through proper structuring of a practice and careful protection of assets, lawsuits will be minimized, reduced, and even eliminated. In the words of Jay Mitton, “In my 30-plus years of experience as an attorney, specifically studying and researching how to protect assets and dismiss lawsuits, I have found only one tool that will protect your personal and professional assets 100% of the time. That tool is the carefully constructed *Family Limited Partnership*.”

Family Limited Partnerships (FLPs)

In 1916, Congress created the Family Limited Partnership to provide tax benefits and to protect family assets. Today, specialized attorneys have retooled the FLP to include lawsuit protection and estate planning principles. With almost 90 years of case law surrounding it, the FLP has emerged as a tremendously powerful choice for lawsuit prone professionals to hold real estate, equipment, bank accounts, and other assets.

FLPs are structured somewhat like a family business with one or more general partner(s) controlling all of the partnership. The limited partners receive incomes distributed as determined by the general partner(s) and have no control whatsoever.

For instance, if a lawsuit is filed against a physician and the plaintiff wins, the judge would issue a turnover order in which nonexempt property, including the physician’s

home, stocks, bonds, bank accounts, et al, could be turned over to the plaintiff. However, if all of the physician's property is held within a carefully drafted, asset protection FLP, the law in all 50 states absolutely prohibits any of that property from being seized, sold or turned over.

In fact, the terms of carefully drafted asset protection FLPs give plaintiffs only one remedy to collect on their judgment, namely, the "charging order." This means that a judgment creditor's (or plaintiff's) only right is to receive distributions from the Family Limited Partnership(s), which are made at the sole discretion of the general partner(s).

Because of the Internal Revenue Service Revenue Ruling 77-137, the plaintiff who obtains a charging order against an FLP is required to pay taxes on "phantom income," which is the income of the FLP, even though the judgment creditor does not receive any income. The result is that the judgment creditors do not obtain any assets or income, but are liable for the tax bill on the income they have not received. Therefore, disclosure of an FLP to a prosecuting attorney is a great deterrent to the filing of a lawsuit against a physician.

We have helped thousands of physicians and medical professionals structure their practices for lawsuit protection and, of course, many of them have been sued. However, never has one of our clients lost one cent as a result of a lawsuit. The FLP has been upheld time and time again in court cases across the country. In fact, a properly setup and drafted FLP has never been penetrated.

We have had some of the top plaintiff attorneys in the country tell us that if a family limited partnership is discovered during pretrial investigations, they will immediately drop or settle the lawsuit.

It is very important to know that there is a difference between a plain vanilla FLP drafted for tax reduction purposes and a FLP drafted for lawsuit protection. For instance, most FLPs contain weak language surrounding the manner in which general partners can distribute income. This could force the general partner to have to distribute income to a creditor. Asset protection FLPs guard against this possibility with unique clauses not found in most FLPs.

In other words, general partners may legally withhold their income distributions from plaintiffs or whomever else they please.

For example, one of our clients worth over \$10 million was sued. He had 100% of his property and all of his assets in a carefully structured family limited partnership. The plaintiff failed to discover this during the pretrial investigation, and the case proceeded to trial. The plaintiff won the case on every single issue in contention. Our client was completely beaten. However, when the judge issued the order for the award, he carefully explained that all of the property was legally and lawfully protected in the family limited partnership and could not be touched. This would have devastated the plaintiff except for the fact that they had subpoenaed our client's tax return from the previous year and knew that over \$200,000 of income had been distributed from the family limited partnership to our client. They received the charging order from the judge and waited.

Our client, as the general partner, elected to not distribute the income, and the plaintiff received nothing. Then, when tax time came, the plaintiff received notice from the IRS of the taxes he now owed on the income never received. This plaintiff had spent hundreds of hours and thousands of dollars to win the lawsuit, received nothing for it, and ended up paying the taxes due on the money never received.

Conclusion

Many physicians are seeking to fight the current system with tort reform, insurance reform, walk outs, etc. Whether you agree with tort reform or insurance reform is irrelevant – both solutions will still leave you with lawsuits, judgments, and others seizing your assets. That's a guarantee. Proper asset protection, on the other hand, has a proven track record of reducing, minimizing, and even preventing lawsuits from being filed. It stands up in court and can leave any medical professional with more time and energy to focus on improving patient care rather than on protesting, lobbying legislators, or walking away from their chosen profession. Once doctors gain and implement this knowledge they can use the legal system instead of being abused by it. ■



National Medical Foundation for Asset Protection (NMFAP)
2230 N. University Parkway, Bldg. #2-C Provo, UT 84604
Email: CameronT@NationalMedicalFoundation.org
Phone: 800-375-2453 Fax: 801-374-1287
www.NationalMedicalFoundation.org