

Preparing for the Inevitable

A Litigation Bootcamp

Mayer LLP

90-Minute Interactive Session

01

Know the Landscape

02

Master the Moments

03

Build the People

TOPIC 1

The Litigation Landscape

What's Coming and Why It Matters

~20 minutes | Presentation + Panel



Understanding the current litigation
environment and what it means
for your facility

Litigation 101: Common Claim Types

How healthcare cases work

- Medical malpractice / negligence
- Wrongful death claims
- Regulatory enforcement actions
- Employment / whistleblower claims
- Patient rights violations
- False Claims Act / qui tam suits

Litigation 101: The Timeline

- 1 Incident / complaint filed
- 2 Investigation & discovery
- 3 Depositions & witness prep
- 4 Motions & pre-trial
- 5 Trial or settlement

Key Point

Healthcare litigation rarely ends at trial. Most cases settle, but the damage to reputation, morale, and operations happens during the process itself.

Rising Claim Volume

The current litigation environment — Part 1

- Post-pandemic surge in malpractice filings
- Staffing shortages creating new liability exposure
- Ratio of facilities to medical directors creating coverage gaps and oversight challenges

Regulatory Scrutiny

The current litigation environment — Part 2

- CMS enforcement intensifying
- State survey frequency increasing with harsher penalties
- New apparent coordination between plaintiff attorneys and regulatory authorities

Regulatory Scrutiny (cont.)

The current litigation environment — Part 2

- Changes in board behaviors affecting governance and compliance oversight
- Healthcare authority enforcement shifting—more aggressive and less predictable

Nuclear Verdicts

The current litigation environment — Part 3

- Jury awards continue to escalate
- Plaintiff firms using reptile theory and social media
- Breakdown in public trust toward healthcare institutions
- PR crises amplifying jury sentiment and driving higher awards

Evolving Risk Areas

The current litigation environment — Part 4

- Telehealth liability, AI documentation, workplace violence claims, staffing-related negligence
- Staff not knowing what they need at surveys—including what constitutes a complaint

What This Means for Your Facility

The Leadership Imperative

- Every employee is a potential witness
- Every document is potentially discoverable
- Culture and morale directly impact outcomes
- Preparation before litigation begins is critical

What This Means for Your Facility

The Leadership Imperative (continued)

- Your survey results become plaintiff exhibits
- Establishing connection with patient families prevents lawsuits
- Switch from a reactive to a creative mindset—anticipate, don't just respond

Litigation is not a question of IF but WHEN.

The facilities that fare best are those that prepare proactively—building systems, culture, and readiness before the first complaint arrives.

Policies and procedures do not have to be a boring requirement—they can be part of the spirit that improves patient care, boosts morale, and reduces liability.



Conversation

Topic 1

1

What is the litigation landscape looking like right now in healthcare?

2

What trends concern you the most?



Conversation

Topic 1

3

What should providers be thinking about that they are not?

4

What risks are you seeing in defense of cases now vs. 5 years ago?

TOPIC 2

Litigation in Action

Surveys, Boards & Depositions
as Litigation Drivers

~45 minutes | Presentation + Panel



Surveys, board proceedings, and
depositions as interconnected
litigation drivers

How Healthcare Litigation Develops

Understanding the lifecycle (Part 1)

- Most lawsuits begin with a regulatory finding, a board complaint, or a family's loss of trust
- Plaintiff attorneys actively monitor survey results, board actions, and regulatory enforcement
- A single survey deficiency can become the centerpiece exhibit in a multimillion-dollar lawsuit

How Healthcare Litigation Develops

Understanding the lifecycle (Part 2)

- Board complaints create parallel proceedings that feed directly into civil discovery
- The damage to your facility begins immediately upon filing
- Every document created during surveys, board proceedings, and investigations is potentially discoverable

How Plaintiff Attorneys Build Cases

From regulatory findings to courtroom exhibits (Part 1)

- Survey deficiencies become Exhibit A—proving negligence or systemic failure
- Board complaints used to attack individual credibility and facility oversight

How Plaintiff Attorneys Build Cases

From regulatory findings to courtroom exhibits (Part 2)

- Plaintiff firms coordinate with regulatory authorities—sharing info and timing filings strategically
- Internal investigation documents, if not privileged, become the plaintiff's roadmap
- Staffing records, training logs, and policy gaps become ammunition in depositions

Surveys as Litigation Fuel

Preparation is litigation prevention

- Survey findings become plaintiff exhibits—every deficiency is potential evidence
- Know your facility. Conduct documentation audits. Train staff on surveyor interactions.
- Build systems that anticipate survey and litigation trends—not just react to them

During the Survey: DO

Everything said becomes evidence. Treat every interaction as on the record.



- Be professional and transparent
- Answer only the question asked
- Provide documents promptly
- Take notes on surveyor focus areas

During the Survey: DON'T



- Argue with the surveyor
- Over-share or volunteer information
- Speculate or guess
- Let staff speak without preparation

Common Survey Pitfalls

Through a litigation lens (Part 1)

- Incomplete Documentation: Missing signatures, outdated care plans, gaps in charting
- Unprepared Staff: Employees who cannot explain policies become devastating witnesses

Common Survey Pitfalls

Through a litigation lens (Part 2)

- Over-Sharing: Every extra word is potential ammunition in depositions
- Inconsistency: When written policy doesn't match practice, plaintiffs prove systemic negligence

Professional Board Issues

The rising threat (Part 1)

- Board complaints against nurses, administrators, and medical directors are increasing significantly
- Board investigations run parallel to civil litigation—plaintiff attorneys know how to use them
- Board findings become evidence in malpractice and negligence cases

Professional Board Issues

The rising threat (Part 2)

- Apparent coordination between plaintiff attorneys, regulatory authorities, and professional boards
- Board issues create additional liability exposure for facilities—not just individual licensees
- Changes in board behaviors affecting governance and compliance oversight across the industry

Board Investigations & Civil Litigation

How board proceedings amplify lawsuits (Part 1)

- Board complaints often trigger or amplify civil lawsuits—plaintiff attorneys use filings as a roadmap
- Board discovery materials may not be privileged—creating unique exposure
- A board finding against one professional can be used to try to establish a facility-wide pattern of negligence

Board Investigations & Civil Litigation

How board proceedings amplify lawsuits (Part 2)

- Facilities must coordinate defense—inconsistent positions in board vs. civil cases are devastating
- Increased board activity means more facilities face dual-track litigation exposure

Board Investigations & Civil Litigation

Engage counsel before responding (Part 3)

- Engaging counsel before responding to a board complaint is critical
- Do not respond to a board complaint or investigation without first consulting your attorney—your response becomes part of the record and can be used in civil litigation

What Is a Deposition?

Sworn testimony under oath

Recorded by court reporter

Opposing counsel asks questions

Can last hours or full days

Answers become permanent record



*It is NOT a conversation—
but you still need to be both
likeable and credible*

Fact Witness Depositions

Testifies only to what they personally observed or did

- Review relevant records and timeline before testimony
- Stick to what you actually recall—don't reconstruct or guess
- “I don't remember” is a valid answer

Fact Witness Depositions

Key practices and scenarios

- Listen carefully: wait for the full question. Don't anticipate or interrupt.
- Be concise: answer the question and stop. Silence is not your enemy.
- Watch non-verbals: eye rolling, sighing, crossed arms—juries notice everything.

Fact Witness: Mock Scenarios

“Tell me everything you remember about that day.”

Stick to what you actually recall. “I don’t remember” is a valid answer. Don’t reconstruct or guess.

“Did you read the policy before the incident?”

Answer honestly. If no, don’t elaborate on why. If yes, confirm only what you remember reading.

Party Deponent Depositions

The named plaintiff or defendant—higher stakes, more scrutiny

- Meet with counsel well in advance
- Prepare mentally—depositions are stressful
- Test temperament and demeanor—psyops experimentation for the theater of trial

Party Deponent Depositions

Key practices and scenarios

- Stay calm: opposing counsel may provoke. Take a breath. Stay composed.
- Tell the truth: credibility is everything. One caught lie destroys all testimony.
- Own your facts—do not let opposing counsel bully you into a different version. You were there.

Party Deponent: Mock Scenario

“Isn’t it true that staffing was inadequate?”

Don’t accept the premise. Reframe: “I can speak to the staffing levels that were in place that shift.”

Beware of Rhythm

Opposing counsel may establish a comfortable Q&A rhythm to lull you into unguarded answers. Maintain your pace.

30(b)(6) Depositions

Speaks on behalf of the organization—must be prepared on designated topics

- You are speaking for the facility, not just yourself—your testimony binds the organization
- Understand what you CAN'T be asked—and what you MUST be prepared to answer
- Review designated topics thoroughly beyond your personal knowledge

30(b)(6) Depositions

Key practices and the organizational stakes

- Don't guess: "I don't know" and "I don't recall" are acceptable answers.
- Beware of rhythm—maintain your pace. Don't let opposing counsel lull you into unguarded answers.
- Poor 30(b)(6) performance turns manageable cases into nuclear verdicts—prepare accordingly.

The Golden Rule

Applies to every deposition type

Listen to the full question.

Pause.

Answer only what was asked.

Stop.

The Litigation Pipeline

How it all connects (Part 1)

- Survey deficiencies become plaintiff exhibits establishing negligence patterns
- Board complaints trigger parallel proceedings that feed civil discovery
- Board findings impeach witness credibility at deposition and trial

The Litigation Pipeline

How it all connects (Part 2)

- Deposition testimony is shaped by what surveyors documented and boards found
- Poor deposition performance turns manageable cases into nuclear verdicts
- Proactive preparation across all three areas is the single most effective strategy

Pipeline Takeaway

The facilities that fare best treat these not as separate compliance events but as interconnected litigation risk factors.



Conversation

Topic 2

1

How does survey preparation connect to litigation risk?

2

What role are professional boards playing in the current environment?



Conversation

Topic 2

3

What separates a strong deposition witness from a weak one?

4

Mock Q&A—let's demonstrate.

TOPIC 3

The Human-Centered Approach

Strategy, Connection & Offense

~25 minutes | Presentation + Panel



Compliance alone doesn't win cases,
prevent lawsuits, or rebuild
public trust.

The Human-Centered Philosophy

The most effective litigation prevention tool

- Compliance is the floor, not the ceiling—reflect the spirit of care, not just the letter of regulation
- The shift from reactive defense to creative, proactive engagement
- Connection prevents lawsuits; disconnection invites them

Documents That Win (or Lose) Cases

The human-centered approach in writing

- The human-centered approach must come through in policies, incident reports, and care plans
- Every document should be written as if it will be read aloud to a jury—because it might be

Documents That Win (or Lose) Cases

The human-centered approach in writing (cont.)

- Language that is cold or dismissive sounds terrible in a courtroom. Language reflecting genuine care resonates.

Training That Builds Muscle Memory

Confidence comes from repetition

- Train so they build muscle memory—so when a surveyor walks in, they are not afraid
- Train so they actually learn, not so boxes are checked. Compliance theater produces compliance-theater witnesses.

Training That Builds Muscle Memory

Confidence comes from repetition (cont.)

- Account for different learning styles—visual, hands-on, discussion-based, scenario-driven
- Make training fun, engaging, and consistent—regular practice builds a team that performs under pressure
- The goal: staff who respond like an athlete in competition—prepared, composed, operating from instinct

Building Trust with Patient Families

Families who trust you do not sue you

- Establishing connection and clear expectations from day one
- Honest, compassionate communication—adverse outcomes happen even with excellent care
- Preparing families for the inevitable: framing expectations so it's not a betrayal

Building Trust: From Relationships to Outcomes

The relationship between family trust and the decision to file (or not file) a lawsuit

Practical language and approaches for difficult conversations



Culture, Morale & the Appreciated Employee

Appreciated employees don't become adverse witnesses

- Creating a culture where staff feels genuinely valued—not performatively, but authentically
- The direct line between morale and litigation outcomes: documentation quality, witness credibility, compliance consistency

Culture, Morale & the Appreciated Employee

Appreciated employees don't become adverse witnesses (cont.)

- Disgruntled former employees as litigation risk—poor testimony, whistleblower complaints, inside knowledge weaponized
- Staff who feel ownership over patient outcomes become your best witnesses
- It is not enough to say you appreciate your people—you have to mean it, and they have to feel it

Workforce Stability as Litigation Strategy

An industry-wide challenge (Part 1)

- Recognize the recruitment and retention crisis facing New Mexico providers as a whole
- Participate with NMHCA/CAL in a unified strategy on recruiting, stabilizing, and retaining employment
- Pursue recruitment strategies as an industry—not just facility by facility

Workforce Stability as Litigation Strategy

An industry-wide challenge (Part 2)

- Advocate for broader quality-of-life laws that make New Mexico a better place to live and work
- Couple legislative efforts with PR campaigns that rebuild public trust
- Collective action strengthens litigation posture—stable staff are better witnesses and less likely to become adverse

Leadership Resilience & Investment

Leaders cannot model composure if they are not composed

- Tools and support so leaders remain composed under pressure of surveys, depositions, and crises
- Leaders who are invested in model the behavior expected of staff
- Emotional resilience as an operational asset: burnout creates the gaps litigation exploits

Leadership Investment: Practical Steps

- Bring in counsel to assist with surveys, conduct mock surveys, and teach proper investigation techniques
- Reframe the budget: leadership modeling and morale are investments that reduce claims and lower turnover costs

Strategic Offense: Collective Action

Through NMHCA/CAL

- Track cases across member facilities and build collective intelligence
- Utilize case data for legislative changes and bill drafting
- Coordinate strategic defense—shared resources, shared knowledge
- Launch PR initiatives to rebuild public trust in healthcare facilities

Strategic Offense: Individual Facility

- Each facility can participate in its own offensive—community engagement, family outreach, transparency
- Rebuild trust one relationship at a time while the association works at the macro level
- Stop waiting to be attacked—tell your story proactively

Strategic Offense: Legislative & Regulatory

- Bill drafting based on real case data and trends
- Engaging with legislators on healthcare liability reform
- Using collective voice to push back on enforcement overreach



Conversation

Topic 3

1

How does organizational culture impact litigation outcomes?

2

What does a proactive approach look like in practice?

3

Where are the opportunities to go on offense?

Key Takeaways

01

Know the Landscape

Understand the litigation environment, current trends, and what it means for your facility.

02

Master the Moments

Prepare for surveys and depositions with concrete skills, practice, and proven strategies.

03

Lead with Humanity

Connect with families, invest in culture, lead with resilience, and go on offense.

Questions? Contact Us

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