

# Understanding contribution claims in medical practice

## A guide for physicians

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Healthcare is a high-stakes world, and medical malpractice claims are a cost of practice. Adding to existing liabilities is a growing but not well-understood risk for medical practitioners: contribution claims.

Unlike usual malpractice claims, which are the result of disagreements between patients and health professionals, contribution claims come into play after a settlement or verdict against a hospital or other facility that uses contracted physicians, such as an ambulatory surgical center. They occur when a hospital seeks financial contributions to help pay their settlement or courtroom loss—with that money often coming from physicians. Physicians, especially those in contracted roles, need an understanding of contribution claims to protect their practice and finances.

### What is a contribution claim?

Think of a contribution claim as a claim triangle. It's a legal action in which a party pays a legal settlement, then seeks to have its costs entirely or partially covered by the party that played a role in the underlying incident. In healthcare, these claims arise when a hospital facing a malpractice lawsuit pays a

settlement or is ordered to compensate the patient and then seeks to have other parties—such as physicians—share in the financial pain.

In typical malpractice cases, the patient/plaintiff must prove three things in order to prevail: that a duty of care existed, that this duty was not met, and that the breach caused injury to the plaintiff. This direct approach focuses on whether a physician or hospital acted negligently or carelessly, harming the plaintiff.

In contribution claims, that dynamic changes. In these cases, a plaintiff may sue only the hospital without the physician's knowledge. If the hospital chooses to settle or loses a case in court, it may then decide to seek a financial contribution from the physician or physicians involved, claiming that because the physicians provided part of the care that led to the settlement, they should share the economic burden.

### How contribution claims unfold in medical malpractice

Picture a case in which a heart patient suffers post-surgery complications. The patient sues the hospital,

alleging negligence, but does not specifically sue the physician who performed the actual surgery. After settling the claim against it, the hospital then goes to the contracted physician and demands that he or she pay a share of the settlement payout. This may occur even though the physician has not had a chance to defend themselves in court with capable legal counsel.

This scenario does indeed occur, and in most cases comes as a surprise to physicians who assume that they won't face financial liability unless they're sued directly. In contribution actions, however, a hospital will argue that it should not carry the financial burden alone, especially if it was sued based on the principle of "vicarious liability." Under this principle, the hospital is held accountable for the actions of contracted agents—such as physicians—who deliver care within it.

### Legal standards and the shift in focus

Legal standards for contribution cases differ from those in conventional malpractice suits. In malpractice claims, plaintiffs must establish that a health professional's breach of the standard of care caused a patient's injuries. In contribution claims, the focus shifts to whether the hospital's settlement was "reasonable" under the circumstances. Determining this involves a distinct set of factors, including:

- The hospital's defense, including how strong or weak it may have been
- The relative fault of each party involved in the patient's care
- The hospital's risk if the case goes to trial
- The financial ability of each party to pay
- The extent of harm to the patient

This "reasonableness standard" emphasizes the financial and practical implications of the settlement,

rather than the clinical details. This focus shift can frustrate physicians, as the hospital's decision to settle and then file a contribution claim may occur without any assessment of the physician's direct role or the quality of care provided.

### Why are physicians at risk?

Contribution claims pose special risks to physicians due to two factors. The first derives from the complexity of modern healthcare settings and the financial pressures hospitals face. In scenarios in which multiple physicians and health professionals are involved, such as in obstetrics or emergency medicine, hospitals may decide to settle quickly and then decide to see if they can spread the financial burden.

The second factor to be considered is that contribution claims occur without giving the physician a chance to defend his or her actions. Once a hospital settles, the physician's ability to protect their reputation or contest their involvement is limited. To make matters worse, these settlements—even if they're related to contribution claims—are recorded in the National Practitioner Data Bank, which means they can follow a physician's career indefinitely, potentially affecting their credentialing, hiring, and malpractice insurance rates.

### The practical implications of contribution claims

Contribution claims are most common in specialties involving risky medical conditions and multiple health professionals in the hospital setting, such as obstetrics, emergency medicine, anesthesiology, and radiology. Meanwhile, the financial pressures that hospitals face, plus the growing number of "nuclear verdicts"—jury awards that greatly exceed

typical settlements—have driven hospitals to seek shared monetary responsibility. These trends are exacerbated by “social inflation,” which drives up verdict amounts in keeping with factors such as distrust of institutions and sympathy toward patients. When hospital settlements reach \$10 million or even \$20 million, the pressure to find ways to share these crushing amounts increases.

### How to protect yourself and your practice

Contribution claims in healthcare can be particularly tricky to defend due to several factors, including the potential complexity of liability and statutory or regulatory nuances. Still, there are practical steps that physicians can take to protect themselves:

1. **Engage in contract negotiation.**

When physicians sign agreements with hospitals or healthcare systems, these contracts often define the level of liability they may assume. Physicians should look for provisions that limit liability to their insurance-policy limits and negotiate for language that gives them control over settlement decisions affecting their cases. Hospitals may resist these efforts, but they’re an effective way to forestall financial shocks.

2. **Conduct legal and insurance review.**

Working with legal and insurance experts to ensure proper insurance coverage is critical. Malpractice insurance policies differ in their approach to contribution claims, so physicians should work with an insurance expert to confirm adequate protection.

3. **Stay informed.**

Laws governing contribution claims vary by state, with some states, for instance, having specific guidelines on “joint and several liability.” This principle allows a plaintiff to seek

full recovery from one party even if multiple parties share responsibility, thereby heightening the risk of contribution claims. Physicians should be aware of any changes to these laws and work proactively with legal and insurance professionals to keep ahead of them.

### Conclusion

In today’s complex healthcare landscape, contribution claims add yet another layer of risk for physicians. Though it is important to note that not all hospitals employ this strategy, it is equally important for physicians to understand how these claims work and take steps to address potential liability in order to safeguard their practice and reputation. Physicians Insurance also believes in coordinated defenses that uphold the standard of care, protecting the assets of hospitals and physicians alike.

Although the legal landscape surrounding contribution claims may continue to evolve, being proactive regarding contract negotiation, insurance coverage, and legal awareness can help physicians better manage these challenges with confidence.



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