



# Understanding Policy Limits Settlement Demands in Medical Malpractice Claims

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In the complex field of medical malpractice litigation, one common tactic used by plaintiff's attorneys is the quick demand for settlement for the insurance policy limits. This approach can be stressful and intimidating for physicians and their insurers, as it aims to force a rapid settlement without a thorough investigation. Understanding this tactic and its implications is crucial for both physicians and attorneys.

## Understanding the Tactic

Attorneys often initiate this strategy by sending a demand letter in connection with the filing of a lawsuit. The letter typically insists that the physician's insurer settle the claim for the available policy limit within a specified period, typically 30 days. These letters may contain threats to seek amounts exceeding the policy limits and target the physician's personal assets, warn of time-consuming and stressful litigation, and raise the possibility of public embarrassment.

For example, a demand letter may take this

approach: "Please inform Dr. X that this will be his/her only chance to gain protection from excess liability and pursuit of personal assets." Or, even more aggressively: "I will put my client in contact with the reality show *Botched*. We'll see how that plays out." The obvious goal here is to instill FUD (Fear, Uncertainty, and Doubt) to push the physician and insurer into a quick—and potentially unfavorable—settlement.

## What's Behind Early Settlement Demands

The main objective of early settlement demands is to use fear of the unknown to convince the defendant and their insurer to offer the policy limit as soon as possible. In addition, the early settlement demand is also designed to create risk to the insurer. In states such as Washington, if an insurer declines to make an early offer of the policy limit, the plaintiff's attorney may later argue that the insurer missed its chance and acted in bad faith. The goal is to create an argument that the insurer acted in bad faith by failing to settle early, and that therefore the insurer should be liable for amounts in excess of the policy

limits. The practice is so common that some plaintiff's lawyers have stated that it would be malpractice on their part if they did not attempt to set up the insurer for bad-faith exposure beyond the policy limits.

## What Happens If You Settle Early

There are several risks in meeting early settlement demands:

1. **Insufficient Time to Evaluate Merits.** A quick settlement does not allow adequate time to evaluate a case's merits. Malpractice cases are inherently complex and require thorough investigation. This can take 12 to 24 months to ensure that relevant information is discovered.
2. **Questionable Justification.** Settling quickly may not be justified by the case's facts. Without a thorough review, it can be challenging to determine whether a claim is meritorious.
3. **Reputation and Reporting.** For physicians, a malpractice settlement leads to a report to the National Practitioner Data Bank (NPDB) and the Department of Health (DOH). This can damage a physician's reputation and career.
4. **Encouragement of Repeat Claims.** Early settlements can make a physician and insurer look like an easy mark, encouraging repeat claims.
5. **Increased Insurance Costs.** Settlements can lead to increased costs for professional liability insurance, both for the individual provider and the broader industry.

## Financial Implications for Plaintiff's Attorneys

Most plaintiff's attorneys work on a contingency basis, typically receiving 30-50 percent of the

settlement amount. For a \$1 million policy limits settlement, the attorney's fee could range from \$300,000 to \$500,000, plus out-of-pocket costs. This leaves the patient/client with a fraction of the settlement amount. Quick settlements also mean less work for the plaintiff's attorney, giving them a powerful financial incentive to demand an early resolution.

## The Importance of Complete Investigations

Medical malpractice cases are inevitably complex. Because of that, a complete investigation is essential. Demand letters often come as a surprise to both the physician and his or her insurer. They need time to digest the allegations, review medical records, and talk to their own experts. A thorough investigation helps in understanding whether the claim is valid and determining the extent of any potential liability. Many medical malpractice policies require the insurer to obtain the physician's consent before settling. This provision helps ensure open communication and partnership between the insurer and the physician, protecting the physician's interests. Early settlement demands seek to undermine this partnership by creating a sense of urgency and fear.

## Coping with High-pressure Settlement Demands

It is crucial for physicians and their attorneys to understand early settlement demands, and to respond appropriately.

This means staying informed and understanding that early settlement demands are a common tactic.

Moreover, at times like this it is important to rely on your insurer, defense counsel, and retained experts, who are experienced in evaluating claims. They will work diligently to evaluate your case and determine the appropriate course of action. For example, if potential liability exists, a defense counsel and the insurer may recommend early mediation. This allows a thorough discussion of the facts and can lead to a fairer and more informed settlement.

In conclusion, while the pressure to settle quickly can be intense, it is often in the best interest of physicians to allow time to fully evaluate early settlement demands. An investigation and a measured response can lead to a more favorable outcome, protecting both the physician's professional reputation and their monetary interests. By understanding and navigating these tactics, physicians can ensure they are making the right decision when faced with medical malpractice claims.



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