

95: The Reality of Being Sued for Medical Malpractice with Dr. Laura Fortner



Full Episode Transcript

With Your Host

Bonnie Koo, MD

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Welcome to *The Wealthy Mom MD Podcast*, a podcast for women physicians who want to learn how to live a wealthy life. In this podcast you will learn how to make money work for you, how you can have more of it, and learn the tools to empower you to live a life on purpose. Get ready to up-level your money and your life. I'm your host, Dr. Bonnie Koo.

Hey everyone, welcome to episode 95. So this is such an important episode. If you are a physician you are going to learn so much and hopefully feel better. Because most physicians, the vast majority of us will get sued and we are woefully unprepared for that.

Not so much the financial piece, because the good news is it's extremely, extremely rare for a physician to be successfully sued above the policy limits where you'll actually be subject to losing some of your own money. But the emotional toll is huge.

And so I have a special guest today. I have Dr. Laura Fortner who is a OB/GYN physician and it is her passion to help physicians have peace of mind around the whole being sued process. And so you are going to love this conversation.

And before we dive in I just want to thank everyone for buying my book, for writing reviews about it. It's so exciting, it's helping so many women. And in case you didn't know, the audiobook version is now out on Audible, which as you know is a subsidiary of Amazon. So you can buy it through Amazon or you can buy it through Audible. I know many of you have Audible subscriptions.

Many of you have told me you were just waiting for that version to come out so you could use your monthly Audible credit to buy it. And now you can do that. So please go get it and if you do listen to the Audible version, I would love it if you could leave a great review. It helps other people on Audible find the book.

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Also, it is not too late to join Defining Wealth For Women Live, which is my four week virtual book club. We are knee deep in week two of the book club, but it's not too late because every call is being recorded inside the Facebook group and so you'll have access to all of the chapter calls we are doing through February 18th.

So be sure to join us. And to do that, it's totally free, you just need the book so you can follow along with the book club. Just go to wealthymommd.com/live, L-I-V-E. Or just go to my website, wealthymommd.com and go to where the book is, and you'll see a link to join the book club.

All right, let's get started on this conversation with Dr. Laura Fortner.

Bonnie: All right, welcome to the show, Laura.

Laura: Hi, welcome. Thanks for having me, Bonnie.

Bonnie: Yeah, I'm super excited that you are on the podcast today. We have, I think, such an important topic to talk about. And so like I said earlier, Laura is an expert in medical malpractice. And this is what she coaches on, helps her clients with. And first I just want to say, I've been sued and you've been sued.

Laura: Yeah, I love that we have people starting to share that that is reality.

Bonnie: Yeah. So why don't we talk about some stats, because med school and residency wasn't that long ago for me and like no one talked about it. The only thing I knew was that I needed to make sure that I was covered.

I didn't even know the different types until after residency, because when I was getting credentials for my first attending job they want all your info, right? They want to know every job you've had and then you have to produce some malpractice certificate or proof that you are insured. And

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that's when I first learned that there is even different kinds of malpractice, but that's besides the fact.

So do you know the stats on the percentage of doctors that get sued over their career?

Laura: Yeah, I do.

Bonnie: I'm not sure what kind of stats you have.

Laura: There were several studies done about this and if you are in a high risk specialty, your chance of getting sued by the time that you're 65, if you practice until 65 is 99%.

Bonnie: 99% people.

Laura: Yes, yes. And people say well, what's high risk versus low risk? Well low risk the stats are 75% chance you're going to get sued. So most of us are going to get sued no matter what we're doing. But the high risk specialties are mainly the surgical specialties, I do believe that emergency medicine is in there. Some of the higher risk profile, you know, pathology that kind of thing is in the higher risk category.

The low risks really are the primary care family physician, internal medicine, pediatrics kind of population. But regardless, the majority of us will get sued. And if you don't, if you're a physician and you don't over the span of your lifetime, you're really, really lucky.

Bonnie: Yeah, I think it's so important that we even hear that it's extremely likely that you'll get sued. Because I remember when I got first served those papers, this was actually quite a few years ago at this point. I don't think I was devastated, I think I was just shocked.

I think I just initially was shocked that it happened. And this was just a few years out of residency, so I was really shocked. I was not expecting this at

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all. But I probably would have been shocked if this happened 10 years into practice, either, to be honest.

So first I think there was shock. And then there was almost like being devastated. And I'm trying to think, why was I devastated? At first I didn't remember the case, but then when I actually just kind of went back in my brain and just thought about it more just based on the description in the papers they serve you, I actually remembered the patient.

And obviously I can't go into specifics, but I just remember feeling almost heartbroken because I knew, I actually remember going a little bit of the extra mile to help this patient get what he or she needed, like in a specific instance. And so it just felt like almost betrayal by them a little bit.

Laura: Yeah, and I think most physicians actually go through the same sort of emotion of betrayal. Shock in the beginning, betrayal, some anger is caught up in there. So actually, those are normal feelings of most of us that get served. And that is part of the sort of plethora of emotions called litigation stress.

And this is actually a real thing, a real entity that we all go through. And the reason why we go through this in the medical profession more than any other profession, because here's the thing, other professions get sued. I mean, accountants, lawyers, they get sued. But they don't have the same sort of emotional distress that we do. And it's because physicians really mix up who they are with what they do.

And like you, Bonnie, most of us have actually gone the extra mile with these patients. I mean, I remember in my case, I mean my case was years and years and years ago, it's still ongoing almost a decade now. And I went the extra mile. I mean, I went out of my way to do many things. And I think it's just very heartbreaking for us because we care.

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I mean, that's the bottom line, we care about what we're doing and who we're taking care of. And bad outcomes happen, even despite giving really good medical care.

Bonnie: Yeah, and I think what you just said, bad outcomes happen even if you followed all the rules. And not everything has like a specific recipe that doctors follow because there is the art of medicine. Especially in dermatology, there's a lot of off label things and things that don't have an algorithm, like a stroke protocol, et cetera.

But I'm curious what you think, because I almost feel like malpractice, just sue everyone type of mentality, it puts doctors in a position where we feel like we have to CYA all the time, right? Order tests that aren't necessary because we're afraid of getting sued. And then too, I just feel like it just perpetuates this behavior among doctors that we have to be perfect. And then it also perpetuates this, I guess, myth to the public that we can't make mistakes or we can't be human.

So what are your thoughts about that?

Laura: Yeah, it's so true. I mean, our culture of perfectionism does continue to get perpetuated over time. And you know the whole motto, do no harm. I mean, most physicians go into medical field to help people and ultimately, not to harm anybody. And there's no one doing anything maliciously out there.

Now, of course, there's sometimes things happen that maybe shouldn't have happened. But for the most part the statistics show, and even the studies out there on medical malpractice, is most of the time 80% of the time there was no medical negligence in these cases. The problem is the public and the physicians themselves, within themselves, feel like we need to be perfect, right? We need to not make mistakes.

But the truth is, we are all human and none of us can foresee the future. None of us have visions of what's really going to happen with this person.

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We're going to give you the best care we can. And so that culture of perfectionism also mixed with the culture of silence about medical malpractice really does us so much harm in medicine.

And this is one of the reasons I believe that physicians go through these emotional reactions called litigation stress. And a lot of times we'll go down the continuum of that and go into something called medical malpractice stress syndrome, which is in the DSM.

Bonnie: Oh, I had no idea.

Laura: Yeah, so this is a real problematic entity. This is where physicians will get into more of a clinical depression, anxiety, hard to function, and even suicidal ideation. And so it's a big issue and it's basically a continued litigation stress and then on down the line to medical malpractice stress syndrome disorder.

And it has been a recognized entity for quite some time. There was a psychiatrist named Dr. Sara Charles who did all this research regarding this, and it's a huge problem. And I think now, especially with the times of what's going on in the medical field, getting a malpractice case on top of all the things that we deal with can be really harmful.

And the suicide rate is not good with physicians. I mean, it's one of those things that I believe we feel like we need to be at our best and we need to be this perfect human, and we never can live up to it, right?

Bonnie: Yeah. Do you know, because obviously, physician suicide I know the stats are bad. Have there been studies about doctors who've been sued specifically? Well, I guess the thing is, most doctors are sued.

Laura: Yeah, and that there is no study out there that has differentiated that. I do know, though, that if you look at and sort of extrapolate the data a little bit, there is one to two physicians committing suicide every single day, females more likely than males. And we have a higher rate, as physicians,

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than the general population to commit suicide, females more than males, actually.

The clients that I've worked with can develop these severe stress reactions to the point of talking about quitting medicine, needing help and those kind of things. And I think just layering a medical malpractice lawsuit on all the other things that physicians are dealing with, it's one of those things that can tip people over the edge.

And there's many stories out there, spouses have come forward that their spouse had committed suicide when they got slapped with this medical malpractice lawsuit. So there's no real study out there, but we hear a lot of stories regarding it.

Bonnie: Yeah. Let's talk about what you just mentioned, which I think is so important to mention, is the culture of silence in general, but then especially among being sued. Because I remember one of the first things my lawyer told me was like – Or I don't even think she had to tell me because I think I saw just in chatter, it's like you get sued but then you can't talk about it.

Laura: Yeah, isn't it funny?

Bonnie: Yeah. Well, why don't we be more clear about what you can and can't talk about?

Laura: Yeah, that's a great question, Bonnie, because it is totally mixed up in our world. Because as soon as someone gets served, and here's the thing, like this happened to me. I got served actually twice for the same case. The second time was right after the holiday, right after Christmas, and my three kids were at the door with me.

That was really a stressful time. And the thing is when you get served like that, the first thing you're going to do is you're going to call your lawyer, you're going to call your insurance company to figure out what you're

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supposed to do. And they turn around and tell you you're not allowed to talk about the case.

And what really should be said – And most physicians, we take it literal. And we also think, oh, we can just get over it, right? We are the extreme beings of saying we're fine when we're not fine. So we're like, oh, we could just get over this, right? But the emotional roller coaster that this creates, this lawsuit, we're not prepared for it because we weren't trained for this, we weren't educated on it.

And so you can talk about it, okay? What they really mean when they say don't talk about it is you cannot talk about details, like the fine details of the case, and the clinical scenario, and the things that happened in the case. You can talk about it in terms of your feelings, how it's affecting you, your work life with this.

You can talk about those things and you can seek support. And that is what they should be saying right off the bat when someone comes to them and says, “Hey, I just got served. What do I do next?”

Because the culture of silence in medicine, here's what's happening. I mean, we're walking in hospitals and the physician next to us is getting sued and we're getting sued, but we are totally isolated. We think we're the only one going through it. And we can get all sorts of problems with that, right? Like think we're not good enough.

And many of us walk around saying, “Gosh, are we a bad doctor?” Even when there was no medical negligence and we look at the chart and we say we did the things, we followed the standard of care, we still have those thoughts that come into us and those stories that start trying to find evidence of why we're not very good doctors.

And because of this sort of personal attack we feel betrayed, like it's a personal attack on us. And so the culture of silence has to stop. And this is

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why I love when you started the podcast and just said it, "I've been sued." Because I think most of us should come out in some way.

Bonnie: It's like, hi, I'm Bonnie, I've been sued. Hi, Bonnie.

Laura: It is, it's very freeing just to even do that and be in the witness and presence of talking about it to another physician that has been in the same boat, been sued just like you. There's a lot of therapeutic healing involved. And that's why I believe getting help right away, either getting traditional counseling or finding me or a coach of some sort to help you through the process is really healing and a really good idea.

It took me seven to eight years to find the tools to really help with the thoughts and the stories I was telling myself so that I could have peace of mind. It took me a long time. And that's really what I'm trying to do, is help prevent physicians try to navigate their way through this without the support and help, and be able to help them have peace of mind right now.

Bonnie: Yeah. Why don't we give some specific fake examples of what you can say and what you can't say? Just so that we're clear.

Laura: Yeah.

Bonnie: So what's an example of something you can't say?

Laura: Yeah, so you can't tell someone the patient's name or the actual details of what you know you did or someone else did in the care of the entity that you're getting sued with.

So, for example, say there was a medication involved and this patient is suing because of this medication. Really, you really don't want to share sort of any of the details of exactly what happened. What you can share is say, gosh, how you're feeling. Like this makes me feel bad, I am ashamed.

Which the classic symptoms of litigation stress are anger, most people feel anger or betrayal right away. And that then is sort of an angst, where then it

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starts to seep into their office staff and their home life, and everybody can tell that something's going on. Then it goes over into sort of a fear.

Fear of loss of income, fear of what this will mean, fear that it'll get reported to the national practitioner data bank. And fear of the malpractice rates and what will happen with them. All that fear will flood in and then shame will start coming in to where you feel bad about yourself, right? You're not feeling good about yourself.

And all of those things can be shared. All of how you're feeling, what you're going through, how it's affecting your clinical practice, how it's affecting your home life, all of that can be shared. And for sure, you know, these cases are reported as public knowledge. And so those documents that are public knowledge, anything in that obviously can be shared.

And it is something that can be helpful, again, to just share and witness your feelings and what this is doing to you, as a physician, in front of someone who has been through the same thing can be just healing in itself. And many times physicians just need that. And they're able to keep going and really help themselves bounce back from what just happened.

Bonnie: Yeah. I think what you just said, and just the fact that we're having this conversation, and whoever is listening is just going to help people so much because one of the things that, like what you said, therapeutic healing or therapy or something like that, I think that way about money.

Just for example, we had our first virtual book club mainly talking about how we think about money. And there's so many women who have money shame. And just to be in a room, I think it was like 100 people on the call, and pretty much everyone raising their hand that they feel bad about money, that they feel shame because they're all "high income earners" but they don't know what's going on.

And so just seeing that you're not alone can be so healing, as you said. I think it's just so powerful to know that you're not alone. And yeah, even

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though the stats that most people get sued, we don't talk about it so you don't know if that's actually true or not, right? You hear of things but then it's not like you're in the doctor's office and people are talking about how they're being sued. People don't talk about that.

And I just love how you just gave specific examples of what we can and can't say. And also I think it's important for us to be able to talk to someone about how we are thinking and feeling when we're not feeling great, like in general, whether you're not being sued or not. Right?

Laura: Totally, totally. And like I said, doctors, we are the type of people that we say we're fine when we're not really fine. I mean, we are the people that many times, which I know now this really doesn't happen as much I don't think, but even when we didn't feel well or we were sick we would still go in and make sure that our patients were taken care of.

Bonnie: Oh yeah, doctors rarely call out sick.

Laura: Yeah, I mean, there's no choice, right? And I actually even heard of a surgeon wearing, which is kind of a funny thing, wearing a diaper in surgery because they couldn't take a break and they were having a little issue. But they had to be there and perform this surgery for this patient that was in dire straits.

And so it's just we're not used to saying I need help. And none of us believe that we need – I mean, we're like these super people. And I think female physicians too, we think we're super women, right, and don't need help all the time. But these are the things that can make us crumble over time if we don't go out and get that support or talk about how we're feeling through these times and really get help for our own mental health.

Bonnie: Yeah, totally. I mean, I wish I had this as a resource, like this specific podcast episode when I was getting sued because it just would have been so helpful to know that what I was feeling is normal. Of course I

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kind of knew it was probably normal for what happened for me to feel this way, right?

But just knowing that I wasn't the only – Of course, logically I knew I wasn't the only person being sued. But like I said, it's not like we were sitting around having lunch talking about how we've all been sued and stuff like that. So I think it's just important to normalize that conversation.

And then one thing I just want since this is a money podcast, one of the things I just want the doctors listening to know is, first of all, most of us probably aren't even familiar with our malpractice policy. And so if you're in that boat, you should know what your policy limits are. Usually it's like 1 million per occurrence and there's a second number for the total or aggregate, something like that.

And then you want to make sure you have occurrence based malpractice, which means that you're covered even when you leave that practice. You can get sued at any time. Usually, it's after the fact, right? And if you do have what they call claims based, which means your only covered while you're working there, you want to make sure that you purchase tail or that employer purchases it for you.

In fact, one of the things I always tell my clients when they're negotiating contracts is negotiate that to be part of the contract that they pay for it. So it's probably specialty specific, Laura, but for dermatology it's pretty common for employers to pay for claims plus tail, or just provide occurrence. I'm thinking for OB/GYN it's probably not the case because it's so expensive, right?

Laura: Yeah, you definitely have to ask and especially with locums, a lot of people are going to locums or the 24 hour call situation. And you want to make sure that you are getting a tail. You always, always want to ask. This is super important because not all locums companies actually provide that.

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And so they pay higher rates, but then they don't provide the tail coverage and you don't want to leave without that tail coverage.

I mean, in the state of Ohio where I live, you can actually be sued up until the age of 19 of the child. Basically, I mean, you need tail coverage in OB/GYN for sure because when that baby is born, they can sue you all the way up until they're 19 years of age if they want to. It's one of those things you don't want to leave without a tail, for sure.

And definitely, I know, Bonnie, you wanted to talk about asset protection. And I think one of the biggest things that you guys really should make sure of is make sure your assets are protected. And maybe Bonnie can give some advice on that. Because most of your insurance or your insurance policy will probably cover whatever goes on.

But my trial has been going on for over a decade, it has cost thousands and thousands and lots of money. And verdicts can be a lot of money and so you do want to make sure you're protected.

Bonnie: Yeah, so I could speak to that. I don't have like hard data to rattle off, but the good news is the vast majority, and you even said this too Laura, the vast majority of cases is found in the doctor's favor because real medical negligence is extremely rare, as it should be, because most doctors want to help their patients, right? But obviously there are some bad apples out there, like in every profession. So it does occur.

But that said, even if you are sued successfully, it's extremely rare to be successfully sued above the policy limits where your personal assets will be subject to, I call it pilfering, right? Extremely rare. Has it happened? Yes, but it's so exceedingly rare.

So I lead with that just to sort of calm my clients down because asset protection, it sounds very fancy, but all it means is just protecting your assets. And we all have assets, because I think sometimes young doctors are like, well, I don't have any assets. But your ability to make money as a

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doctor is an asset, because you can technically get your wages garnished. I don't know of any doctor that's actually happened to, but it's possible.

And so the first layer of asset protection is not getting some fancy estate planning, it's actually just having the proper insurance. So having malpractice insurance is a form of asset protection. And I'm not going to go into specific details because it's state specific, Laura, but every state has basically these are the things that are protected, and there's also federal things.

So for example, your retirement accounts are protected automatically, so you don't have to do anything there. So anything in a retirement account, like a 401K, 403B is federally protected under something called ERISA. States differ by whether an IRA is protected and the limits. And then you have to kind of tailor your asset protection plan depending on the state.

But for most early career physicians, most of their assets are going to be in their retirement accounts, probably not their home because most of us don't own a lot of equity in the home in the beginning because it takes 30 years to pay that off.

So I guess all that to say that you have to figure this out before you get sued, because you can't start protecting things after you get sued because, I mean, just you just can't. I forget what it's called, but there's a name for that. You just actually have it all nipped and tucked in before the first time you get sued.

So I just think it's something every physician or any high income earning person needs to think about. That's why you need really good house insurance or property insurance, or umbrella insurance. You've heard of umbrella, right? Because a car accident is way more likely than being sued above your policy limits and people are like, "Oh, I've got auto insurance." But most auto insurances actually don't cover a lot. And so that's where the umbrella insurance kicks in.

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So I remember my insurance agent telling me like – Well, I'm sure everyone listening to this has a car and has car insurance, but you have to have that umbrella insurance because you get into a car accident that has multiple cars involved, you will just burn through that insurance money in your auto insurance very quickly.

Laura: Yeah.

Bonnie: So that's kind of all I wanted to say about the asset protection part and malpractice. Generally not something you have to worry about, but you want to make sure it's taken care of because once you are sued, whether it's malpractice or something else, like someone getting into an accident on your property for example, you can't start hiding stuff after the fact.

Laura: Right, right. Well, and I wanted to go back to the stats that you were talking about. To give some people some relief, yes, the stats are all of us, most of us will get sued. And some of us two or three times in our career. And in surgical specialties that's kind of normal actually, to have more than one.

But 50% of them get dropped or get dismissed. So most of the cases don't go anywhere, okay? Many times your names can be dropped. The problem is, is that most cases take 4.7 years to have an outcome. So it's a very long process and the emotional distress in between and the roller coaster ride in between is what the issue is for us and being able to learn how to handle that.

But the small amount of cases that end up – So 50% get dismissed, most of the rest of them get settled. And then 20% will go to trial out of all of that. And out of the 20%, 80% of physicians will win when they are on trial.

Bonnie: I wish we could do like a number thing. Like starting with 1,000 cases, which actually you could probably figure out the math.

Laura: Yeah.

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Bonnie: Basically, it's in our favor even if we get sued.

Laura: It is. And you know, there's a couple studies out there, one was through Harvard, that talked about how physicians that had way more knowledge and way more further education, actually were more likely to be sued than those who did not. Which is kind of a funny thing. I mean, I think that you could look at that and say well, maybe they see more patients, they're in more of a riskier business because they had more education to further themselves so that they see higher risk patients, those kinds of things.

But it's important to know that most of us, when you get served, just know that most of the time there was no medical negligence, because out of that 20% very few was their medical negligence that went to trial. And I love to say this, Bonnie, because I think some of you out there might be getting served now or got served a few months ago or a year ago and are still thinking about it and still having some maybe difficulties with it or whatever.

And I always like to share one thing that can help you, and sometimes this is enough, right? And one of the things that I've learned through coaching and what I've been doing with my clients and stuff is just to stop and pause whenever something triggers you to think about it and the emotions starts to come up. I just stop and then I ask myself if this were happening to a friend, what would I say to her right now?

Bonnie: So good.

Laura: Yeah, I think that that can be so helpful, especially when it happens.

Bonnie: Yeah, I definitely did not have that tip when I got served. I can laugh about it now because enough time has passed and I have some tools in my toolbox, I didn't have those tools back then. Yeah, I remember just feeling like so much shame. Like, I can't believe this happened to me.

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Anyway, so I feel like we need to have more conversations with residents and I don't want to say warn them, but just say, hey, this is going to happen. Don't be surprised. Because I think we're all shocked when it happens, even though the data shows that it's probably going to happen.

Laura: Right, well and we're not educated, we're not prepared at all. I do believe this should start at a lower level where we are being prepared for these kinds of things. The legal system is something most of us have never experienced it unless you had a divorce or something else, right? Most of us do not experience this and it's a totally different beast than our world of medicine.

It is something that I think we need to educate, we need to start talking about, and no one is doing it. Like I said, my case has been going on for almost a decade. And it has taken me seven to eight years to finally get peace of mind no matter the outcome of whatever happens in my case. And that was finding coaching through an avenue that I never thought would happen.

So I encourage anybody that is going through this right now or even in the past and can't move forward in a direction that they, you know, ask for support and figure out if your, you know, some hospitals may have something already. Or if they don't you can find a –

Bonnie: They have a yoga class for that. Sorry, I just had to say that.

Laura: I know, right, yeah.

Bonnie: If you've been sued go to yoga down the hall here.

Laura: I don't know. But it is so taboo and I'm ready to normalize the conversation. And if no one else wants to speak up, I'm ready to do it for us as a medical profession. And I'm ready to move forward so that we can actually have some medical malpractice reform. I feel like we need this in our country, in the US of A. We need change in this direction for us.

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Bonnie: Yeah, well obviously I wholeheartedly agree. Is there anything that we haven't gone over that you think people need to know?

Laura: I'm always happy to speak with anybody individually. If you want to find me, I'm happy to share anything that you'd like to know or give you some great resources. There's a great resource out there that I think a lot of people love that has helped them through this journey. And there's a podcast called The L Word by Gits Pensa. She's a physician, she did this amazing podcast and it can be really helpful to people.

Bonnie: Awesome. Well, first of all, thanks so much for being here. And I'm so glad that we found each other and we could talk about this because just like money is taboo, like malpractice, I almost feel like it's worse because nobody talks about it, right? Because we're all told not to talk about it. So I'm just so glad that we're having this conversation.

So where can people find you, Laura?

Laura: Yeah, so you can go to themedmalcoach.com, super easy to find me. And here's the thing, you guys, you need my seven common myths of medical malpractice. So get that and let's all come together. I really believe that we all need to come together and start having these conversations. Even if it's just one by one right now until we can get a momentum going to where we can be heard in this arena.

Bonnie: Yeah, so good. All right. Awesome. Well, thanks so much for joining us. And yeah, we'll put everything you just mentioned linked in the show notes. So if you're driving et cetera, you can just go back to the podcast page and just find everything you need there.

All right everyone, we'll talk to you next week.

Laura: Thanks so much, Bonnie.

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Hey, if you enjoyed this episode and don't want to miss out on new episodes please hit the subscribe button on your favorite podcast app. See you next week.