



Sales Representative in the OR: Navigating a Liability Minefield a 15-year Retrospective

Presenter: Eric Zalud | Benesch

Fifteen years ago, Attorney Eric Zalud joined Medmarc as the inaugural Risk Management webinar presenter, speaking on a topic of great importance to the Medmarc audience – the products liability risk created when sales reps enter an operating room (OR) setting. Proving that, as much as technology changes, many aspects of products liability risk in life sciences stay the same, Eric returns in this special edition webinar with an update for us for a 15-year Retrospective. The discussion covered the role of sales representatives, their interactions with doctors and hospital staff, and the potential for legal issues arising from their presence in ORs. Eric highlighted the importance of understanding the legal principles involved in such situations, as they can become complex and challenging. The presentation also touched on the role of sales representatives in providing technical support and training to surgeons. Eric wrapped up the webinar with a useful top 10 tips for minimizing liability in the OR.

[Full On-demand Recording](#)

On-demand Chapters:

- [00:00](#) - Introduction About the Speaker; Eric Zalud | Benesch
- [05:16](#) - Primary Role of a Sales Representative
- [06:57](#) - Sales Representatives in the OR: What They Know May Be Dangerous
- [13:17](#) - Consent Form Examples
- [15:59](#) - Preemption
- [19:46](#) - Liability of Sales Representative for Acts Occurring in the OR
- [25:48](#) - Learned Intermediary Doctrine
- [32:04](#) - Lightning Round!
- [35:18](#) - Duty to Train
- [36:47](#) - The Hospital's Perspective
- [38:34](#) - The Sales Rep's Perspective
- [41:24](#) - Top 10 Tips for Minimizing Liability for Reps in the OR
- [44:53](#) - One Last Buzz Word that Could Win Your Case
- [46:22](#) - Questions and Closing





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Eric Zalud is a partner in the Cleveland office of Benesch co-chair of the firm's Transportation & Logistics Practice Group, and Vice Chair of the Litigation Group. Eric has litigated or arbitrated matters in 33 states, before state and federal trial and appellate courts in various jurisdictions, and before the Surface Transportation Board, the Department of Veterans Affairs, the United States Olympic Committee, the Better Business Bureau, the Federal Maritime Commission and the Court of International Trade.

Over the last 18 years, he has tried 35 cases, and his trial record is 31-4.

In his litigation career, Eric has saved his clients over \$14.9 billion in potential litigation exposure and risk, through his litigation wins for them.

Eric has an extensive medical device and pharmaceutical defense practice, and in 2002, he was named Medmarc's Medical Device Attorney of the Year. Overall, he has litigated over 100 product liability claims involving variety of biotech and life science products.

Eric also has a nationally renowned specialty in defending and analyzing the liability for component part and component supplier manufacturers under U.S. product liability statutes and common law, as well as extensive experience dealing with California's Proposition 65 labeling requirements and litigation relating to those requirements, dealing with FDA matters relating to personal health care and personal care products, and dealing with consumer and regulatory issues relating to several microbial germicide products.