

The “Basics” of a Medical Malpractice Lawsuit for Physicians

Presented by:



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The Anatomy of a Lawsuit

Presuit Investigation Period

Litigation Stage

Paper Discovery

Depositions

Expert Discovery


Mediation

④ Trial


④ Appeal




Presuit Investigation

- ④ Notice of Intent to Initiate Litigation
 - ④ Presuit Discovery (written)
 - ④ Unsworn Statements
 - ④ Expert Review of merits of claim
 - ④ Rejection of Presuit
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Litigation

- ④ Plaintiff files Complaint for Damages
 - ④ Defendant Responds (Motion to Dismiss/Answer)
 - ④ Discovery (Written) begins
 - ④ May be asked to answer questions concerning care and summary of facts
 - ④ Potential meeting with Defense Attorney for fact gathering/strategy
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What Must The Plaintiff Prove

- Standard of Care - shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.
 - Causation
 - Damages
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Paper Discovery

- Interrogatories – Written questions submitted to an opposing party
 - Request To Produce – Obtaining Documents from opposing party
 - Medical Records, Personnel Records, Treatment Records, Tax Returns, Pictures
 - Request For Admissions
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Depositions

- ④ Conferences with Defense Attorneys
 - ④ Review Medical Chart
 - ④ Discussion as to your recollection
 - ④ Gather information to prepare for your deposition
 - ④ Assist in expert review
 - ④ Deposition (Under Oath)
 - ④ Questioning by other parties as to knowledge of incident, policies of facility, background, prior incidents
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Uses of Depositions

- Expand on medical charting to either help Plaintiff or Defense experts with opinions
 - Used by Plaintiff's counsel to pin you down in your testimony to use as cross-examination material
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Deposition Tips and Best Practices

④ Four types of plaintiff's attorneys to be aware of for your deposition:

④ The Ignorant Lawyer - I don't know nothin' bout medicine, can you educate me...

④ The Pompous Lawyer - I am going to try to intimidate you by throwing out complex medical terms...

④ The Intimidator - I am going to be mean

④ and nasty to intimidate you



Deposition Tips and Best Practices

④ Four types of plaintiff's attorneys to be aware of for your deposition (Continued):

④ The “friendly” lawyer – Jokes around, makes light of stuff (note: all designed to get you to drop your guard and say things without thinking.

④ **.THIS IS AN OPEN BOOK TEST - USE THE MEDICAL RECORDS!!!!**




Expert Discovery

- Plaintiff Experts
 - Defense Experts
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Mediation




Trial

- ④ Before Trial - Conferencing and scheduling testimony
 - ④ Review **EVERYTHING** given to you by Attorney
 - ④ Conference with Attorney for testimony preparation
 - ④ Relax and Remember - You are not on trial, you are just a witness
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Trial

- ④ Jury selection
 - ④ Opening Statements
 - ④ Presentation of Witnesses
 - ④ Closing Statements
 - ④ Jury Deliberation - Verdict
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Post-Trial: It Isn't Over Yet????

- ④ Post - Trial Motions (Set-offs; New Trials)
 - ④ Appeals
 - ④ Brought by either side
 - ④ Purpose to have higher court rule on point of law
 - ④ Potential Post Trial Settlement
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