
Anatomy of a Medical Malpractice Case

Pretrial

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We all hear about healthcare providers being sued and frequently the outcomes of cases make the news – but what really happens in a lawsuit? Well, the first thing you should know is that a malpractice case doesn't always result in a lawsuit. That said, clearly some event precipitates it. It starts with an adverse event, allegation, or demand for compensation, which the provider reports to his or her insurance company as a claim against the professional liability policy.

There are generally three **different pretrial outcomes**

1. Voluntary Discontinuance
2. Dismissal on the merits via summary judgment motion (or partial SJM)
3. Settlement

Sometimes the person making the demand or malpractice claim (this person is called the plaintiff) and their attorney will voluntarily discontinue the claim. Typically, this is if after expert review, if the potential for a settlement or jury verdict in their favor is questionable – or, realistically speaking – the expected payout is not sufficient in the eyes of the plaintiff's attorney. If the plaintiff decides to continue, a judge can dismiss a claim, or the plaintiff and defendant can come to an agreement on a settlement.

When a judge dismisses a claim, it is generally because an attorney has filed a motion for summary judgment. This is a request for the court to rule that the other party has no case, because there are no facts at issue. In other words, they argue and convince the judge that the case should not go before a jury at all.

What can you do to make one of the first 2 options viable?

1. Preparation for deposition
2. Meeting with your attorney

To best position yourself when a claim has been filed, meet with your attorney as soon as possible to develop a strategy and prepare sufficiently for a deposition. You'll need to ask your insurance company for guidance on selecting an attorney. They often have a panel of approved medical malpractice defense attorneys that they will want you to select from. In fact, they may assign one to you based on what they know about your case.

As the defendant – you will likely be deposed by the plaintiff's attorney. The purpose of this deposition is to obtain a detailed and documented history of your recollection of events.

A deposition – if the case goes to trial – will provide the foundation for which the plaintiff's attorneys, and yours, will question you on the stand.

Objectives of the plaintiff in taking your deposition:

1. Fact finding
2. Establishing malpractice
3. Impeachment with deposition at trial
4. Assessing your ability, and jury appeal, as a witness

It's important to note that ... In order for a case to be considered malpractice, there has to be Proximate Cause. That means there needs to be reasonable connection between the act or omission of the defendant and the damage which the plaintiff suffered.

Sometimes, even if there was an error on the part of the defendant, it becomes clear that the error didn't actually cause the outcome. Something else did.

Another thing you should know about your deposition is that testimony provided in that deposition can be used during the trial. That would be the case if during examination in court, your testimony differed from what you stated in the deposition.

Finally, the deposition is also a means to assess your presence and presentation and determine how well you will appeal to the jury.