

# 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
- 


# 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
- 

# 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
- 



# 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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