

The “Basics” of a Medical Malpractice Lawsuit for Nurses

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
- 


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
- 


Typical Questions from Nurses

- ④ What is going to happen to me?
 - ④ Am I going to lose my license?
 - ④ Am I going to be reprimanded by the facility?
- 

Typical Questions from Nurses

- ④ Am I going to lose my house?
 - ④ Am going to lose my job with the hospital or facility for which I work?
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Typical Questions from Nurses

- ④ Am I going to go to jail?
 - ④ Do I need to carry my own malpractice insurance?
 - ④ Do I need my own attorney?
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Answers To Typical Questions from Nurses

Q: What is going to happen to me?


A: Probably no changes.

Q: Am I going to lose my license?

A: It is extremely unlikely that any such action will arise from this law suit.

Answers To Questions

- Q: Am I going to lose my job?
 - A: No. Any action that would have been taken against you would have already occurred long ago.

 - Q: Am I going to lose my license?
 - A: It is extremely unlikely that any such action will arise from this law suit.
- 

Answers To Questions

Q: Am I going to be reprimanded by the facility?

A: No. Any action that would have been taken against you would have already occurred long ago.

Q: Am I going to lose my house?

A: No.



Typical Questions from Nurses

Q: Am I going to go to jail?

A: No.

Q: Do I need to carry my own malpractice insurance?

A: We always recommend that a nurse carry her/his own professional liability insurance. It is very cheap and will pay for your defense for a number of different types of actions.

Typical Questions from Nurses

Q: Do I need my own attorney?

A: We always recommend that if a nurse has insurance that will pay for a legal defense, that she obtain and keep her own attorney to protect her individual interests. If she does not have insurance and cannot afford to pay an attorney, she should at least obtain a consultation from an experienced health care attorney.



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