



DEALING WITH MEDICAL MALPRACTICE CASES – WHAT TO EXPECT

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INTRODUCTION

- A. Malpractice lawsuits are a part of the practice of medicine.
- B. Understanding the process will alleviate many concerns and misunderstandings.



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HOW IT STARTS

Letter from patient

- Notice Letter
- Visit from patient



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SUMMONS AND COMPLAINT

- The lawsuit is served by private process server and/or sheriff's deputy.
- Don't focus on the inflammatory language.
- The request for compensation is not based on any logical calculation.



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INITIAL RESPONSE

- Immediately contact your insurance carrier when you receive correspondence AND are served with the Complaint.
- In Tennessee state court, a responsive pleading to the Complaint must be filed within 30 days. In federal court a responsive pleading to the Complaint must be filed within 20 days.



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INITIAL RESPONSE CONT.

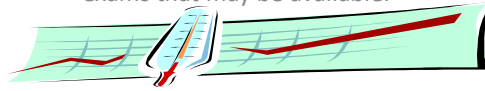
- Your insurance carrier will assign a defense attorney.



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SECURE ALL MEDICAL RECORDS

- It is important to go ahead and locate the original medical records and maintain the original, as well as, prepare copies. This includes any x-rays or other radiological exams that may be available.



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DISCOVERY PHASE OF LITIGATION

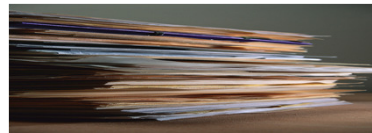
- Discovery refers to the process of pre-trial devices that each side in the lawsuit can use to learn information that will help them prepare a case for trial.



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TYPES OF DISCOVERY

- INTERROGATORIES
- REQUEST FOR PRODUCTION OF DOCUMENTS
- REQUESTS FOR ADMISSION



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DEPOSITIONS



- The deposition most focused on is that of the medical provider.
- Depositions of administrators and/or staff are becoming more relevant.
- There are few subjects that are “off limits” in depositions.
- Preparation is essential.



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MEDICAL EXPERTS

In every medical malpractice case, plaintiffs and defendants will retain experts.

- In Tennessee, a plaintiff must prove by medical evidence that a medical professional deviated from the accepted standard of professional practice and that deviation caused injury.



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TRIAL PREPARATION

- A trial will be scheduled for a specific period of time.
- Trials may last a few days or several weeks.
- The most important aspect is **PREPARATION.**



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APPEAL



- Either side may appeal to at least one appellate court. It is not a new trial but argument before judges.
- Tennessee Court of Appeals is the intermediate appellate court that hears civil matters.
- The Supreme Court will take a case only if it chooses to review it.



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POSSIBLE SETTLEMENT

- Settlement is not an admission of guilt.
- Malpractice carriers typically require the consent of the physician before entering into settlement negotiations.
- Most settlements are confidential.



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RECENT TRIAL RESULTS



2006

- 70% of trials resulted in defense verdicts.
- 18% of trials resulted in plaintiff's verdicts.
- 12% mistrial/non-suit or settled during trial.

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RECENT TRIAL RESULTS CONT.

2007

- 78% of trials resulted in defense verdicts.
- 2% of trials resulted in plaintiff's verdicts
- 20% of trials resulted in mistrial/non-suit or settled during trial.



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RECENT TRIAL RESULTS CONT.

2008

- 73% of trials resulted in defense verdicts.
- 18% of trials resulted in plaintiff's verdicts
- 9% of trials resulted in mistrial/non-suit or settled during trial.



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RECENT TRIAL RESULTS CONT.

2009

- 68% of trials resulted in defense verdicts.
- 20% of trials resulted in plaintiff's verdicts
- 12% of trials resulted in mistrial/non-suit or settled during trial.



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RECENT TRIAL RESULTS CONT.

2010

- 58% of trials resulted in defense verdicts.
- 22% of trials resulted in plaintiff's verdicts
- 20% of trials resulted in mistrial/non-suit or settled during trial.



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RECENT TRIAL RESULTS CONT.

2011

- 78% of trials resulted in defense verdicts.
- 4% of trials resulted in plaintiff's verdicts
- 18% of trials resulted in mistrial/non-suit or settled during trial.



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HELPFUL HINTS

- Regularly update policies and procedures (include date of revisions).
- Adhere to policy and procedures.
- Maintain consistent disposal policies.
- Be mindful of IT policies:
 - E-Mail Retention
 - Electronic Records



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QUESTIONS



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