MEDICAL MALPRACTICE: ANATOMY OF A CASE FROM PHYSICIAN’S VIEWPOINT

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I. Pre-Trial
II. Trial and Appeals
I. Pre-Trial

Complaint and Pre-Suit Discovery
GENERAL OBSERVATIONS

• NUMBER OF CASES HAS DECREASED IN PENNSYLVANIA
• IN PENNSYLVANIA, PROBABLY EXPERT WITNESS REQUIREMENT CONSTRAINTS RESPONSIBLE IN LARGE PART AS THE REASON FOR DECREASE
• LAWYERS HAVE REALLY GOTTEN SMARTER
• YOU MAY KNOW FAR MORE ABOUT MEDICINE BUT NOT NECESSARILY DETAILS ABOUT REASON FOR LITIGATION
• THE SYSTEM USUALLY WORKS
• STILL GROSS NEED FOR IMPROVEMENT
ELEMENTS OF MALPRACTICE CASE. A TRIAL LAWYERS VIEW

• THE TRIAL IS A “SHOW” NOT A SCIENTIFIC EXERCISE

• OBVIOUS “BAD” OUTCOME

• READILY UNDERSTOOD AND EASILY EXPLAINED CASE PARTICULARS

• ASSESSMENT OF DEFENDANT AND EXPERT WITNESS ABILITY TO ARTICULATE THEIR CASE CLEARLY AND SIMPLY

PERSONAL COMMUNICATION WITH OUTSTANDING CLAIMANTS’ REPRESENTATIVE
HOW PHYSICIANS REACT TO BEING SUED

- DISBELIEF THAT A CLAIM HAS BEEN FILED
- ALTER OR CHANGE RECORD
- ANGER
- TALKS TOO MUCH
- ISOLATION
- FRUSTRATION
- FEAR

*COPING WITH LITIGATION STRESS pg. 7-8
MEDICAL “CAUSE” – REFERS TO THAT OCCURRENCE WHICH INITIATED A DISORDER

LEGAL “CAUSE” – AS ANY EVENT WHICH SERVED TO INITIATE A DISORDER OR TO AGGRAVATE AN UNDERLYING DISORDER BY WORSENING IT OR ACCELERATING ITS PROGRESSION
DEPOSITION: ADDITIONAL CAVEATS

- TAKE YOUR TIME
- REMAIN COOL, SPEAK CLEARLY
- BE HONEST
- LEARN TO BE AN EFFECTIVE WITNESS
- SAY “I DON’T KNOW” WHEN APPROPRIATE
- ASK FOR QUESTIONS TO BE REPEATED/CLARIFIED
USE THE FOLLOWING APPROACH IN DEVELOPMENT OF THE PHYSICIAN-ATTORNEY RELATIONSHIP:

1) BE PREPARED
2) ACCOMMODATE YOUR SCHEDULE TO THE PHYSICIANS
3) BE PUNCTUAL
4) ASSURE HIM OF YOUR FINANCIAL RESPONSIBILITY AND RECOGNITION OF YOUR OBLIGATION TO HIM
5) BE TOLERANT
6) BE TACTFUL
7) BE SINCERE
8) BE HELPFUL
9) EMPATHIZE WITH HIS PROBLEMS WITHOUT BEING FALSE OR CONDESCENDING
10) DON’T TAKE A MALPRACTICE CASE AGAINST HIM

*DEALING WITH EXPERTS, LEE SWARTZ, ESQ.
II. Trial and Appeals
IMMEDIATELY AFTER TESTIMONY

• NEVER LOSE YOUR COOL
• DRESS CONSERVATIVELY
• BEWARE OF BODY LANGUAGE
• BE ENGAGED WHILE OTHERS ARE TESTIFYING
• AVOID NERVOUS HABITS
• WHEN FINISHED, WALK WITH CONFIDENCE AT A NORMAL PACE
• WHEN OUT OF THE COURT HOUSE, HAVE AT LEAST ONE STRONG DRINK
• YOUR FIRST IS ALWAYS DIFFICULT. IF A SECOND, IT IS MUCH EASIER
THANK YOU!