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School of Medicine



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

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I. Pre-Trial

II. Trial and Appeals

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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.

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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!