

Inside the Litigation Process: Behind the Scenes of a Medical Malpractice Lawsuit

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(Part 5 of a multi-part series detailing the events that occur during the investigation and litigation of a medical malpractice lawsuit)

Trial: The Big Day Arrives

In the previous articles in this series, we have examined the events that lead up to the ultimate resolution of a medical negligence lawsuit.

If a case is not settled or dismissed, of course, then it will likely end up being tried in court. By their nature, medical malpractice cases are complex and usually involve significant damages, if not tragic complications.

These are things the jury must be sensitized to as early as possible, beginning with jury selection. As such, your defense attorney should have significant malpractice trial experience, and your expert witness (as discussed in a previous article) should be strong and personable.

Ultimately, however, there are other nuances to a trial that shouldn't be forgotten.

The doctor who is "on trial" should realize that the jury is constantly watching. Your demeanor is almost as important as your testimony. You should never slouch, look disinterested, react wildly (no matter how offended you are by some outlandish testimony) or constantly whisper to your lawyer (who needs to listen to the testimony, not your protests of "that's a lie", since he already knows that). Finally, you should avoid any type of facial expressions.

The jury assesses you as much while you are sitting at counsel table throughout the trial as they do while you are on the stand.

From experience we know that jurors are interested in "show and tell". They like things they can see (blow-ups, photos and actual surgical instruments) more than just listening to testimony.

They are interested in a witness or expert who can "teach" them medicine slowly and interestingly, but not dragged out ad nauseum. They don't like a doctor who talks over their heads any more than they like one who treats them like they've never heard of aspirin.

Jurors don't like deposition testimony, but sometimes on the defense side we have no choice but to offer an expert by videotape. The hardest thing facing a defense lawyer, besides a potentially difficult set of facts, is scheduling witnesses for trial appearance.

We don't know if the plaintiff's case will take two days or a week. Can we get our expert into town and on the stand on Thursday morning, his only available time that week? Since offering expert testimony is critical to your defense, we must often weigh these factors in choosing and scheduling an expert.

By the time the case goes to trial, you, your insurance carrier and your attorney know what difficulties you face factually. The intangibles, like some of those described above, must be addressed in order to overcome all of the hurdles to obtaining a defense verdict.

Source: The Keane Insurance Group; December 1999