Anatomy of a Medical Malpractice Suit

Once CH&H determines that medical malpractice has likely occurred we begin the process of filing the suit. Here is what the process looks like:

First, we have to get the “letter.” In Illinois, the letter is the certification from an expert doctor who, after reviewing the medical records and case material, certifies that the law suit has merit.

With letter in hand, we next draft, file and serve the complaint (law suit) against the doctor or hospital who was negligent (defendant).

Once the defendant gets a copy of the complaint (has been served) he has time to “answer” it, which means they can either admit or deny the complaints made against them. As you might guess, most defendants deny the material allegations being made against them which moves us to the discovery stage.

Discovery Stage

Discovery is the term used to describe the investigation process that occurs once a case is filed and answered. Compliance with discovery is mandatory for all parties. The idea behind discovery is that if both sides knew each other’s case before trial, the trial would be more fair and the parties would have a better idea as to whether their case could be settled.

Generally speaking, discovery is the process by which each side asks the other side for information. For example, we might ask for additional medical records, or hospital policies and procedures, or background on the defendant doctor. The other side might ask for the same types of information. For example, defendants will commonly ask for your past medical records (to try and show that you’ve always had the injury and thus they didn’t cause it). Other things the defense might ask for would include details about what happened, or personal documents such as calendars and diaries. As a plaintiff in a medical malpractice case you will have to answer most of the questions posed by a defendant. All discovery is given under oath and must be complete and truthful.

Many cases are won and lost on the quality of the discovery done by your lawyer. This is especially true in medical cases where many of the people being asked questions will be doctors, nurses and other intelligent and highly trained professionals who may try to confuse the lawyer with technical medical answers. Thus, lawyers doing medical work not only need skill and experience to know what to ask, but also need to know the significance of the answers they get.
**Modes of Discovery**

There are different ways for lawyers to get the information they need in discovery. One way is to use written questions called interrogatories. Another is to convene a deposition. A deposition describes the giving of live testimony under oath. In a deposition you or another witness is asked questions by the lawyers. Though very important, depositions usually take place in an informal setting such as a conference room. There will be a court reporter there who will record everything that anyone says and then print it out later in what is called the record or the transcript. The rule to remember in depositions is that with few exceptions once something is said, it is said forever and cannot be changed.

**Plaintiff’s Deposition**

Your (the plaintiff’s) deposition is probably the most important part of a medical case. At CH&H no one gives a deposition unprepared. We will meet with all of our witnesses before their deposition to describe what can be expected and to help them do well. A deposition of the plaintiff has three primary purposes.

First, it is the opposing lawyer’s opportunity to meet you and to evaluate you. Do you communicate well? Are you dressed neatly? Do you argue defensively? Are you easily angered? Are you arrogant? Ultimately, they are trying to determine whether a jury will like you and believe you. They then report their findings to their client and the client’s insurance company. Issues like settlement and the value of the case depend much on how these questions are answered.

Second, the opposing lawyer will want to know your story. You will need to be able to recount, as consistently and accurately as possible, the events important to the lawsuit.

Third, a deposition is an opportunity for the opposing lawyer to get you to make damaging admissions. This is always a concern because every case has potential weaknesses.

**Three Stages of Discovery in Medical Malpractice Cases**

In most states, the discovery process in a medical case has three stages. In the first stage most of the questions are directed to the parties only – the plaintiffs and the defendants. During the second stage the parties will ask questions of all non-party witnesses, such as your family (who may know what happened or know how the injury has impacted your life), your treating doctors (who know details about your injuries) or any other non-party witness (nurses, clerks or anyone who has information about your case).
The last stage is the expert stage. It is at this stage where the parties hire additional experts to testify in support of their case (these experts are called different names by the lawyers who do medical work, the least offensive being “hired,” “retained,” or “controlled” experts).

Once both sides have questioned the other’s experts, the last stage of discovery is done and the case is ready for trial.

**Another Thing to Worry About – The Statute of Limitations**

Except in extraordinary circumstances, all states have a deadline for when a medical suit can be filed. In Illinois, medical malpractice suits must be filed within two years of the negligent treatment. The earlier we or any attorney can begin work on your case the better the likely outcome. So what you need to remember is that even though there may be two years with which to work, delay is the enemy. Contact a lawyer as soon as you think a mistake may have been made.

If you believe that a mistake was made in your medical treatment and you wish to discuss this matter with a lawyer who is also a doctor, call toll free 888-825-2712