

## **Evaluating a Medical Malpractice Case**

As a consumer justice attorney, I have the privilege of representing and helping people through difficult times every day. Oftentimes, my clients are horrifically and permanently injured due to no fault of their own. Other times, I represent families of those who have died as a result of someone else's carelessness.

You may not know this, but approximately 98,000 Americans die each year as a result of medical negligence, more than deaths caused by guns and automobile collisions. This alarming statistic does not even include those who have not died, but have nevertheless suffered serious permanent injuries due to a lack of appropriate medical care.

This article will address some fundamental, but extraordinarily important, steps necessary to properly and thoroughly evaluate a potential medical malpractice claim. By no means does this article include all investigative efforts required to analyze a case, as every claim is different and requires special attention by an expert medical malpractice attorney.

### **Meeting the Client**

Very often clients come to me after a bad experience with another law firm. A common complaint they share with me is that they were never able to even meet with an attorney in the other firm. Some who have met with other attorneys noted how inexperienced the other lawyers seemed. As someone who evaluates medical malpractice cases on a daily basis, I can tell you that meeting with the client (and family members) is critically important as an initial step in evaluating the potential claim. Moreover, the victim of the negligence deserves the attention of an attorney with expertise in handling medical malpractice cases.

There are several reasons why a lawyer should meet with the client face-to-face. For one thing, the client has a great sense of what he or she believes went wrong. I always listen carefully to the life-stories of my clients, taking diligent notes all along the way. Time-lines and summaries are extremely useful and easily prepared with the help of the client. In addition, the client is in the best position to express the extent of his or her injuries, harms, and losses—traditionally referred to as “damages”. Without fully appreciating the extent of the client's damages, it is impossible to advise the client and advance the claim in the best manner possible.

Lastly, I have always taken a genuine interest in the lives of those I represent. A personal relationship is important for two reasons. First, I care about my clients and I want them to know that they can confide in me whenever they feel a need to do so. Also, there needs to be a great deal of trust between the client and the lawyer. If there is an absence of trust, the case cannot be successful. The best advice I could give to any inexperienced attorney is to pay attention to your client and communicate with him or her throughout the handling of the case.

### **Obtain All Medical Records**

Notice the title of this section of the article. It does not read: “Obtain all *relevant* medical records”. Lawyers too often make the mistake of requesting only the portion of the records they believe will likely be pertinent to the case and, as a consequence, fail to request and review records that reveal surprising findings that greatly impact the case one way or another. I obtain every single medical record that may even remotely relate to the alleged negligence and consequential damages.

Once all records are received, they should be organized in an efficient manner for analysis within the law firm and for the benefit of independent experts. We have a very sophisticated organization system at my law firm. It would take a long article for me to get into the structure of our organization here, so I will leave that discussion for another publication. Suffice it to say, however, failing to effectively organize the file will not only delay an evaluation, but disorganization may cause experts to miss critical evidence that should have been considered.

### **Analyzing the Records**

Given the experience and education of the lawyers at my firm, in both the law and medicine, we are able to conduct a legal and medical analysis of a case in-house. Inevitably, during the investigation stage, there are gaps in evidence that need to be filled. They can usually be filled through additional communications with the client, the client’s family, or from the client’s treating physicians. Gathering the additional necessary information promptly is necessary in order to avoid delay and to create a proper foundation upon which to make an ultimate decision as to the viability of the claim.

As I indicated earlier, I first investigate claims that come to me in-house, with the experts that work for me full-time. The timelines and summaries created at the first client

meeting are honed and developed throughout the investigation process. After filling in the blanks and gathering all necessary information, I analyze three components of the claim: negligence, causation, and damages.

It is often the case that when a preventable injury takes place, more than just one person or entity is at fault. For example, if a doctor performs an inappropriate procedure, her employer may also be liable for that conduct, as may others who had the opportunity to correct the mistake, but did nothing about it. Therefore, in analyzing the issue of negligence, an attorney must consider not only whether carelessness occurred, but also the identities and responsibilities of those who committed the medical errors.

Once I determine the extent of the negligence and identities of the wrongdoers, I then analyze the consequences of the negligence. I will use a traffic incident as an example of what I mean here. Assume that a person is driving northbound on Massachusetts Avenue heading towards Wisconsin Avenue, in northwest, Washington, D.C. Also assume that the driver on Massachusetts Avenue runs a red light, forcing a driver on Wisconsin Avenue to slam on his brakes to avoid a collision.

In analyzing this hypothetical, it is clear that the driver on Massachusetts Avenue was negligent – he broke the law and acted unreasonably, threatening the well-being of the driver on Wisconsin Avenue. But because there was no collision, no injuries were suffered by the Wisconsin Avenue-driver. So, although there was negligence, the negligence did not lead to damages. The Massachusetts Avenue-driver would hopefully be convicted for a traffic offense, but because of the attentiveness of the Wisconsin Avenue-driver, no civil claim for personal injuries would exist.

In the medical environment, errors take place all too often. Thankfully, they do not always cause serious injuries. Whether it is the administration of an inappropriate dose of medication or the failure to order certain tests, sometimes the results of such carelessness are not harmful. If no harm is caused, no claim exists. On the other hand, when errors lead to death or serious injuries, those claims are meritorious and the victims of such carelessness are entitled to fair and full compensation.

In addition to analyzing both whether negligence occurred and the consequences of any negligence, it is also vitally important to evaluate the extent of the overall harms and losses—the damages—sustained by the client. Medical errors that cause minor injuries may not be worth advancing through litigation. The costs associated with litigating a medical malpractice action are usually very high. If handled the right way, cases could cost tens and even hundreds of thousands of dollars. I advance those funds for my client

and bear all of the risk of those advances, so that if a case is unsuccessful, the client has lost nothing. Of course, I am in the business of winning cases and, consequently, I very carefully analyze the damages incurred by my client. I accept cases only when I am confident that I am able to obtain a settlement or jury verdict well in excess of the costs necessary to litigate the claim. In the end, my mission is to obtain a result that fairly and fully compensates my client for all he or she has suffered and will continue to endure for the rest of his or her life. I seek to fulfill that mission through thoughtful, strong, and compassionate advocacy.

### **Obtaining the Right Independent Experts**

I have been in this business a long time. As a result, and with the resources my firm has, I have a very good sense after our in-house evaluation as to whether a case is worth pursuing. When I do believe a case has merit, I retain independent experts outside of our law firm to further evaluate the case. I provide them with our sophisticated organization of the medical records and other information, and then seek from these nationally and world-renowned experts their unbiased, independent view of the case. In the end, these outside experts will be the ones testifying at trial. Therefore, I hire the best – most knowledgeable, honest and experienced – healthcare specialists possible. In addition, I am always sure that the experts I retain are excellent communicators. If a doctor is honest and smart, but cannot communicate well, his or her opinions may be confusing and not readily understood by a jury or judge. Once we have gone through each stage of the evaluation – negligence, causation, and damages – with these experts, I then meet again with my clients.

Just as during the in-house investigative process, I communicate the findings of the independent experts to my clients as well. Lawyers often forget that they are working for their clients, not the other way around. Frequent and substantive updates are necessary so that clients can most fully understand what is being done and why it is being accomplished. In the end, whether the case is declined or litigated, the client deserves to know the full results of the investigation.

As I stated at the outset, every case is different. Each deserves the special attention of an experienced medical malpractice attorney. The above steps are just the beginning of the hard work needed to properly and effectively advance a medical malpractice claim. It is critically important to communicate with your client throughout the investigation and litigation phases of the case, so that when decisions need to be made, the client is fully

informed of all important information and, therefore, in the best position to make smart decisions. Justice comes only to those willing to earn it.

If you or someone you know would like to know more about medical malpractice claims and your legal rights, please feel free to contact Mr. Zambri at [szambri@reganfirm.com](mailto:szambri@reganfirm.com), or call him at (202) 822-1899.