

Medical Malpractice : The Reality and the Best Cure

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The Reality

Top 10 Allegations by Average Cost

■	<u>1999 Ranking</u>	<u>Avg. Cost</u>
1.	Improper treatment – Birth related	\$260K
2.	Failure to diagnose – Hemorrhage	\$221K
3.	Failure to diagnose – Abdominal problems/other	\$167K
4.	Failure to diagnose – Myocardial infarction	\$166K
5.	Surgery – Postoperative death	\$160K
6.	Failure to diagnose – Pregnancy problems	\$149K
7.	Failure to diagnose – Pregnancy problems	\$147K
8.	Surgery – Unnecessary	\$141K
9.	Failure to diagnose – Circulatory problem	\$128K
10.	Failure to diagnose – Infection	\$125K

The Reality

Top 10 Allegations by Frequency

■	<u>1999 Ranking</u>	<u>Claims</u>
1.	Surgery – Postoperative complications	901
2.	Failure to diagnose – Cancer	379
3.	Improper treatment – Insufficient therapy	364
4.	Improper treatment – Birth related	309
5.	Surgery – Inadvertent act	265
6.	Improper treatment – During examination	240
7.	Failure to diagnose – Infection	232
8.	Improper treatment- Drug side effect	221
9.	Failure to diagnose – Fracture/dislocation	189
10.	Improper treatment – Infection	178

St. Paul Insurance (1999)

The Reality

■ All Allegations by Location

<u>Hospital</u>	<u>Claims</u>
■ Emergency department	846
■ Labor/delivery/nursery	363
■ Other	298
■ Outpatient surgery	200
■ Patient care area	643
■ <u>Surgery</u>	<u>1517</u>
SUBTOTAL	3867
<u>Office</u>	
■ Physician office/clinic	2446
■ Other	217
■ <u>Surgi-center</u>	<u>20</u>
SUBTOTAL	<u>2683</u>
<u>TOTAL</u>	6550

Medical Negligence = Malpractice

- 4 Elements
 1. Duty
 2. Breach
 3. Causation
 4. Damages = \$

Duty

- Governed by the Patient – Physician Relationship

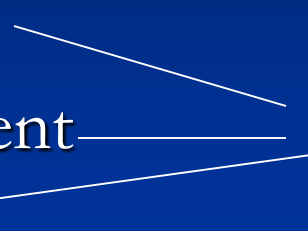
1. You Know
2. You Don't Know

- WARNING: NO CASUAL ADVICE

Duty – To Do What?

- To Provide a Standard of Care Commensurate with like Practitioners under Similar Circumstances.

Breach – By not Providing the Standard of Care

- Consent to Treat
 - Scope of Treatment
 - Referral
 - Due Care
- 
-

- The Problem you Encountered – in Detail
 - What you Did, How you Did it, and the Results
 - Knowledge and Skill
- 

Causation

- Probe for Explanations –
 - The Disease
 - Smoking
 - Diabetes
 - Drugs
- Actual – ‘Sine Que Non’
- Proximate – Foreseeable Consequences

Damages = \$

- What was the Plaintiff like before the Incident –
 - Occupation
 - Diseases
 - Impairments
 - Habits

Battery

- An Un-consented to Touching
 - No Consent
 - Inadequate Consent

Sexual Misconduct

- Note any Inappropriate Remarks
- Never Lock a Door Behind You

Why Don't We Document?

- Arrogance

- I'm the Doctor.
- This is my office, I do as I like.
- I know what I did.
- I'm too busy – C.P.A., Stock Broker, Tailor, Mechanic
- I was too busy
- I don't have the time
- I'll Write it later
- I'll do it at the end of the day
- It went fine
- I'll Remember
- There are patients waiting
- Who do they think they are?

Recommendation

- Make a good note immediately and every time.
- Never alter a record.
- Never add on.

Limitations On Damages

- Collateral Source Rule
 - “Damages may not be mitigated on account of payments received by a plaintiff from sources other than the defendant.”
- California Civil Code Section 3333.1.
 - (b) No source of collateral benefits introducedshall recover against the defendant.

Limitations On Damages

- California Civil Code Section 3333.2
 - (a) “In any action for injury against a health care provider based on professional negligence... the injured plaintiff shall be entitled to recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other non-pecuniary damage...
 - (b) not to exceed (\$250,000).”

Limitations On Damages

- Cal. Civ. Proc. Code § 667.7
 - For medical malpractice cases that result in judgments of future damages in excess of \$50,000, either party may request the court to order periodic payments.

I. P.

- The Rockefeller Salute