

**Thinking About Handling Malpractice Cases?**  
**Words of Wisdom from the Malpractice World**

Even before COVID-19 changed our world forever (and we are still figuring out what that means exactly), those of us who handle malpractice cases regularly know how difficult this type of work can be. Whether it be negative attribution from jurors, difficulty with experts, or just the case expenses associated with prosecuting a malpractice case, handling medical malpractice cases can be challenging, to say the least. Predictably, this frustration carries over to conversations with law students, young attorneys, and experienced medical malpractice attorneys alike. How many times have we caught ourselves saying, “can you believe that I had to file multiple Motions to Compel relating to written discovery just to get policies and procedures and the audit trail.” Or, perhaps, “can you believe that one of our experts, the night before his discovery deposition, and after producing a solid report and billing us thousands of dollars, decided that he no longer wanted to handle plaintiff side expert work, forcing a dismissal of the case without prejudice (this happened to me).” Or, after spending two hundred thousand dollars in a case for expenses, the jury renders a verdict against your client and when you talk to them afterwards, the jury just says, “well, the doctor didn’t mean to do it.”

Whatever it might be, it is easy to get down on yourself if you are a medical malpractice attorney. But, one unplanned negative consequence of the difficulties we have to deal with is that the conversations we have with others can lead to a specific stigma - that medical malpractice cases aren’t worth pursuing. Or, for young lawyers or law students, when it comes to medical malpractice work, the orange isn’t worth the squeeze. The simple truth is the complete opposite is true. Because these cases are so challenging, if you persist, there is nothing sweeter when you succeed. So, I asked several lawyers who handle medical malpractice cases for words of advice for those who are thinking about handling medical malpractice cases or getting in the medical malpractice field, which fell into two categories: 1) Whether handling medical malpractice cases is right for you; and 2) Practical advice for lawyers who are considering taking on medical malpractice cases.

**Is Medical Malpractice Right For You?**

Why would anyone want to work in the area of medical malpractice if it is so difficult? Some prominent medical malpractice attorneys weigh in:

Medical malpractice cases are a lot like golf: extremely difficult, totally unfair, and at times thoroughly maddening – but always worth it.

Todd Gurney, Esq., Eisen Law Firm

Medical malpractice plaintiffs cases are extremely difficult to win and most statutes and precedence will be against you. Unless you can withstand such a stilted playing field and, in fact, gain motivation from being the

underdog, then I would look at another area of the law. However, I take a lot of pride in winning cases like this despite all the odds being stacked in the defense's favor; it makes the success that much more enjoyable."

Steve Crandall, Esq., Crandall & Pera Law, LLC

Medical malpractice litigation is, in my opinion, the most difficult - and frustrating- of all tort litigation for the simple reason that all a defendant need do to defend such a claim is recruit an expert to opine "I do not believe the defendant fell below the accepted standard of medical care". The readiness on the part of some defense medical experts to engage in a level of intellectual dishonesty unseen in other litigation, coupled with the general public's willingness to "excuse" negligent medical providers, as well as the procedural and evidentiary hurdles and obstacles created specifically for the protection of negligent medical providers is unparalleled. It takes a special determination to pursue such claims, but the satisfaction of helping the victims of negligent medical care makes it worth the battle.

Gerry Leeseberg, Esq., Lesseberg & Valentine

In the end, Todd, Steve, and Gerry all agreed on one thing - that while medical malpractice work is difficult, there is no better satisfaction in succeeding in the face of incredible odds, as long as you have the thick skin to stick with it. So, if you thrive in the role of the underdog, medical malpractice may be a practice area to think about. But what do you need to know up front?

### **Practical Advice for Those Starting Out In the Medical Malpractice World**

It would be impossible to create a cookbook on how to handle a medical malpractice case in a single article (or in a book). So, instead, I again went to some well known attorneys in the field and got their opinions as to what is one piece of advice you would give to someone thinking about handling medical malpractice cases:

For a lawyer just starting to handle medical malpractice cases, I would give two pieces of advice: (1) Prepare. Prepare to work very hard, to research and analyze like crazy, to discover, develop and hone your medical case and your client's story, to fight relentlessly those who think nothing of lying and cheating, and to live and breathe your cases 24/7. To paraphrase JFK's "Moon Speech," we handle malpractice cases not because they are easy but because they are hard. (2) If the above seems embellished or intimidating, refer your case out. If not, go get 'em.

Brian Eisen, Esq., Eisen Law Firm

Make sure your expert is competent under the evidentiary rules, has handled and is specifically experienced in the medical care in issue, hasn't published any statement contrary to your claim, hasn't testified contrary to your claim, and has reviewed all relevant evidence in a timely manner.

Christian Patno, Esq., McCarthy Lebit Crystal Liffman

As an attorney who has not been handling malpractice cases all that long, the more malpractice cases I handle, the more I realize I need to shut up and listen - to everyone.

Jeff Heller, Esq., Nurenberg Paris

From my perspective, the most important thing to being a successful attorney is having a healthy work-life balance. In 1929, United States Supreme Court Justice Joseph Story made a famous statement that "The law is a jealous mistress and requires long and constant courtship." As a younger lawyer, I bought into this hook, line and sinker. I worked around-the-clock, and my personal life and relationships ended up taking a back seat to the law. As a more seasoned lawyer, I have come to learn how necessary balance is to the successful practice of law. When we make time for the people and hobbies we love, we become better lawyers, as well as better people. Balance also helps us relate better to others (including our clients and jurors) and to more powerfully tell our clients' stories in a compelling way.

Steve Keefe, Esq., Keefe Law Firm

The bottom line is, if you are interested in the medical malpractice field, you need to be willing to make the sacrifices necessary, not just in terms of time, but financially as well, all while trying to balance a life. If you work at a firm that does not have an experienced malpractice attorney, I would suggest co-counseling with anyone mentioned in this article. If you have the time and resources to begin work in the medical malpractice arena, feel free to reach out to anyone in this article - I am sure they would be willing to offer a helping hand. As for my advice, there is one single thing that creates the best medical malpractice attorneys - the best cases! Be careful in case selection and know how to say no. Good luck!