



How to Increase Recovery in Your Medical Malpractice Cases: Keep the Hospital in the Case

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Medical malpractice cases obviously require clinical review and lawyers realize that they must employ Medical Expert Witnesses to review their case. Often overlooked is the use of a Hospital Administration Expert Witness who can add significantly to the case by looking at the corporate responsibilities of the Hospital. Adding this type of expert to your team provides the opportunity to increase your recovery by including the mandated insured capacity of the Hospital in the case. In addition, the Hospital always has an interest in the results of the case and can provide leverage on the involved physicians as the case moves forward. Adverse publicity and potential financial losses are both extremely important to hospital leadership. The Attorney can best determine the Hospital's responsibility through employing an experienced Hospital Administrator to evaluate the case. The Hospital Administrative Expert Witness relies on the Physician Experts to determine if clinical errors were made, and utilizes this information to determine what hospital policies, licensure and accreditation standards were violated as well.

A seasoned Hospital Administrator Expert Witness will review the appropriate Joint Commission on Accreditation of Health Care Organizations (JCAHO) manual to evaluate the degree of compliance of the hospital with the standards. For example, in a recent case where a wrong site surgery took place, I was able to determine that the hospital did not follow the required JCAHO Standards for identifying the patient and the surgery site, nor did they perform the required time-out procedure prior to starting the operation. Hospital employees could have, and should have made certain that the Surgeons follow the correct procedures and the entire incident would have been avoided. Clearly, in this case, corporate negligence took place and the hospital was certainly a party to the case. Ultimately, this case had a much higher recovery than it would have if only the surgeon was pursued. I looked at policies regarding handling of critical test results and it became apparent that the hospital neither had a policy in place as they should have nor did they follow the required

procedures when a radiology examination showed a life threatening situation for an emergency department patient. Again, the hospital had committed a violation of accreditation standards and had liability in the matter.

I am frequently asked to review the credentialing procedures of hospitals to evaluate if they complied with the appropriate standards. This is another often overlooked area of investigation as the hospital has strict standards they must follow in credentialing and re-credentialing physicians and other independent practitioners, and in determining their privileges. It is very common to find that steps were skipped, as the procedures often become very rote as hospital staff performs this important task.

I look at every little detail such as the composition of the credentials committee to see if the appropriate clinical specialist is involved in evaluating the applicant physician, did they collect all the required original documentation, and did they truly follow their own credentialing policies.

A particular area of interest is that of new procedures. Did the hospital actually approve the new procedure or new piece of instrumentation used in the procedure? Was hospital staff trained in the new procedure? Did the materials management department purchase the instrument per their policy or did the surgeon bring it in? Were the surgeon's privileges expanded to include this new procedure? It is amazing to see how many times the hospital does not do this correctly and then finds the physician is involved in a malpractice case.

Utilizing a Hospital Administrative Expert Witness can strengthen the case. The Hospital, through its board and management, has significant impact on the quality of care delivered by its medical and nursing staff and the ability to reduce medical errors by holding staff accountable to their policies and standards. Reviewing this should take place in most medical malpractice cases and can benefit and improve patient care for all, as well as providing an additional and large source of funds for the patient who was injured.

For many attorneys, the JCAHO standards are unfamiliar and a hospital administrative expert can assist them in navigating these voluminous and sometimes confusing standards. I would also note that an administrator can often assist in the strategy of the case through explaining the inner workings of the hospital, the internal politics of medical staff relationships, and the rules regarding the use of independent contractors. It is usually best to bring the administrative expert into the case as early as possible to help determine what is asked for in discovery and also in the types of questions to ask hospital representatives in the deposition process.

Add a Hospital Administrative Expert Witness to your team and strengthen your case and increase your recovery for your clients!

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