

THE ANATOMY OF A LAWSUIT

Saturday, March 2, 2024
Austin, Texas

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THE ANATOMY OF A LAWSUIT

THE BEGINNING

How do they start?



THE MIDDLE

What happens next and what do I have to do?



THE END

How do they stop?



WHAT CAN I DO ABOUT IT?



THE BEGINNING

How do they start?



- **MEDICAL BASIS**



- **LEGAL BASIS**

MEDICAL BASIS

- **Where**

- In-patient
- Out-patient



- **When, the ABC's**

- Anger
- Bad outcome
- Communication

THE LEGAL BASIS

- **All have these elements**
 - Duty
 - Breach
 - Proximate cause
 - Damage

DUTY

- **What is the duty?**

...reasonable care on the part of a physician is that level of care, skill, and treatment which, in light of all the surrounding circumstance, is recognized as acceptable and appropriate by similar and reasonably careful physicians... (Florida)

...A physician must possess and use the knowledge and skills and care ordinarily used by a reasonable and careful physician. The failure to do something that a reasonable physician would do is professional negligence... (Illinois)

- **Where does it come from?**

- Physician/patient relationship
- When does physician/patient relationship exist?

BREACH

- **Standard of care established by experts, yours and theirs, relying on many resources**
- **Battle of experts**



BREACH

- **Standard of care established by experts, yours and theirs, relying on many resources**
- **Battle of experts**
- **Doctors vs Lawyers**

PROXIMATE CAUSE

- **What is proximate cause?**

...negligence is a legal cause of the damage if it directly and in natural and continuous sequence produces or contributes substantially to producing the damage...(Florida)

...an act or omission is regarded as a cause of injury ...if it had such an affect in producing the injury that reasonable people would regard it as a cause of the injury...(California)

- **Experts and treaters**
- **Hotly contested issue**

DAMAGES

- **Economic/Tangible**
- **Non-economic/Intangible**

ECONOMIC/TANGIBLE DAMAGES

- **Past wages, medical and out of pocket expenses**



- **Future wages, medical and out-of-pocket expenses**



NON-ECONOMIC/INTANGIBLE

- **P&S – The 800 lb gorilla in the room**



NON-ECONOMIC/INTANGIBLE

- **P&S – The 800 lb gorilla in the room**
- **Not calculable**
- **The eye poppin**



Jury orders DMC to pay former p
\$135 million after p

Updated Jul 3, 2018; Posted Jul 3, 2018

By Gus Burns, fburns@mlive.com

A Wayne County jury has awarded

Tuesday, November 5, 2019

CHICAGO

\$101 MILLION JURY VERDICT REACHED FOR BABY BORN WITH BRAIN DAMAGE IN OAK PARK

EMMANUEL CAMARILLO and CARLY BEHM REPORT, PAGE 17

Home / News / Best States / Iowa News / Jury Awards More Than \$97M...

Jury Awards More Than \$97M to Family of Boy Injured at Birth

The family of a boy whose brain was severely injured during birth at an Iowa City

By Associated Press | March 24, 2022, at 3:34 p.m.

Save Comment f t y ...

DES MOINES, Iowa (AP) — The family of a boy whose brain was severely injured during birth at an Iowa City hospital has been awarded \$97.4 million — believed to be the largest medical malpractice verdict in Iowa's history.

A Johnson County handed down the award on Monday following a 14-day trial, the Des Moines Register reported. It came in a lawsuit filed by Kathleen and Andrew Kromphardt against Mercy Hospital Iowa City and an obstetrician.



Minnesota "Shock Verdict": \$111 Million Medical Malpractice Jury Verdict

June 13, 2022

On May 17, 2022, in *Thapa v. St. Cloud Orthopedic Associates*, a federal jury awarded a landmark \$111 million in damages to a patient due to St. Cloud Orthopedic Associates' (SCO) alleged failure to diagnose and appropriately treat compartment syndrome. This is Minnesota's largest medical malpractice verdict to date and it is feared by many to make Minnesota a member of the undesired "shock" verdict club - the prior high Minnesota medical malpractice verdicts ranged from \$20 to \$28 million.

In *Thapa*, the 17-year-old Plaintiff presented to St. Cloud Hospital with a leg injury after being side tackled during an indoor soccer game. The Plaintiff was treated by an SCO-employed orthopedic surgeon. Following surgery, the Plaintiff developed acute compartment syndrome. The Plaintiff alleged that SCO, through its employed providers, was negligent in its care by allegedly failing to diagnose and treat the Plaintiff's acute compartment syndrome. The jury ultimately found for the Plaintiff, awarding ~\$500,000 for past medical expenses, ~\$800,000 for future medical expenses, \$10 million for past pain and suffering, and \$100 million for future pain and suffering. Notably, there was no claim for lost wages or lost earning capacity.

NON-ECONOMIC/INTANGIBLE

- **P&S – The 800 lb gorilla in the room**
- **Not calculable**
- **The eye popping headline**
- **Legislative responses**



HOW DOES IT START

- **Suit is filed**
- **Sheriff shows up at your door**



THE MIDDLE

What happens next?

- **A lot!**
- **Record reviews**
- **Motions and hearings**
- **Multiple depositions**
- **100's of thousands of dollars spent on costs**



WHAT'S MY JOB?

- **Conferences**
- **Interrogatories**
- **Requests for Production**
- **Depositions**
- **Mediation**
- **Trial Preparation**
- **Trial**
- **Appeal**

CONFERENCES

- Attorney/client
- Time commitment



INTERROGATORIES

- Written questions
- Time commitment



REQUESTS FOR DOCUMENTS

- Medical and business records
- Time commitment



DEPOSITIONS

Three Areas of Inquiry

- Education, training & experience
- The facts
- The standard of care
- Time commitment

Best Practices

- 3 L's
- 5 best answers
- Speculation
- Factual testimony/attorney as advocate

MEDIATION

- Attendance
- Time commitment



TRIAL PREPARATION

- Deposition vs. trial testimony
- Attendance
- Time commitment

TRIAL

- Game day
- Attendance
- Time commitment



APPEAL

- Wait
- Time commitment



HOW DOES IT END

How do they stop?

- Win
- Lose



WIN



Have a drink



No monies paid



Report your victory
When asked

LOSE

- Have a drink
- Money is paid
 - Verdict/judgment
 - Settlement
- Reports are made
 - State agencies
 - NPDB
- Possible investigations
- Questions from
 - Malpractice carrier
 - Hospital medical staff office
 - Managed care
- Publicity and the impact on your practice



**THE GOOD NEWS
AND
THE BAD NEWS**

**THE BAD NEWS: YOU'LL
PROBABLY GET SUED**

**THE GOOD NEWS: NOT A SINGLE
REPORTED DEATH
PROXIMATELY CAUSED BY
BEING SUED**

WHAT CAN I DO ABOUT IT?

Risk reduction strategies

Winning strategies

WHAT CAN I DO TO REDUCE MY RISK OF GETTING SUED?

Manage expectations

Treat patients with dignity

Explain what you're doing

These have a high ROI

WHAT CAN I DO TO HELP ME WIN IF I DO GET SUED?

Look and act like a doctor

Don't be defensive

Speak plain English

These have a high ROI

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