



Be thorough in your review of medical records. It's time well spent

Create an outline for your records search, and start with the medical history interview.



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Cases involving catastrophic injury, including medical malpractice, are often highly complex and labor intensive. It is essential to know and understand all medical issues in order to establish causation and damages, and maximize your client's recovery. Although part of your review will involve analyzing theories of liability, it is also critical to research and assess medically related issues that concern your client, including past medical history and future ramifications. These issues are of paramount importance, because damages are the meat and potatoes of your case.

Organizing your game plan with a comprehensive outline, which includes obtaining and identifying critical medical records, as well as retaining and working with a qualified expert or experts will allow you to strategize and identify critical issues in your case and ultimately obtain the highest possible outcome for your client.

Create a preliminary outline

When a complex case involving catastrophic injury, medical malpractice or both arrives on your doorstep, it is important to draft an initial organizational outline before you meet with your client. The outline should identify critical information that you will need to advance your theories, including what records and witnesses are necessary to support causation and damages. Include a brief statement of your case in the outline and identify liability issues.

Your outline should also include a medical history with subtopics that identify past medical care, current injuries and medical treatment, as well as proposed future medical care.

Your outline should include the following subtopics under medical history:

- Describe the circumstances of your injury.
- Describe all prior medical conditions.
- Do you have a history of any genetic or birth injury?
- Have you ever been injured before?
- Have you ever been hospitalized?
- Name every doctor you have seen and the reasons for seeing each doctor.
- Did you have any pain before you were currently injured?
- How have your current injuries changed your life?
- Have any medical providers made recommendations about future medical care?
- Who can offer information about your prior health or current injuries?

Never underestimate the importance of obtaining a thorough medical history from your client. Ideally, conduct initial meetings with your client in person so that you have sufficient time to ask follow-up questions and also assess your client's current condition and how his or her injuries may impact the future. Ideally, your client will have provided you with copies of current medical records prior to your meeting so that you can prepare an outline and focus your questions on relevant issues.

Keep in mind that you do not want to limit your initial interview to the circumstances of the underlying injury. Always obtain a detailed medical history, which should include the identity and contact information of all prior and current medical providers. This is a good opportunity to ask about prior counseling or psychiatric care. Use that information to create a checklist identifying health care providers who have treated your client for anything that may be related to causation and future damages. Keep in mind that more information is better than less. Your client may not volunteer information about prior conditions that impact his current injuries unless you ask about all prior



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medical conditions and treatment. These conditions may or may not impact your client's overall damages, but you should always be prepared to address attempts by your opposition to refute causation or minimize damages based on a pre-existing illness.

It goes without saying that you will need complete medical records and contact information for current medical providers. Therefore, it is important to ask your client whether he or she has had physical or occupational therapy, chiropractic, dental or psychiatric care or counseling, alternative medicine, skilled, rehabilitative or in-home nursing care.

Lastly, keep the information you obtain from your client in perspective. Although it is imperative that you listen carefully to your client's input so that you can be an effective advocate, it is also important to remain objective so that you can discern important facts from irrelevant, emotional or exaggerated information.

Review all medical records with a fine-tooth comb

When you receive current and prior records from all of your client's medical providers, look closely for issues that impact current and future medical care, as well as records that identify pre-existing medical conditions. Keep in mind, this may seem repetitive, but you will not necessarily obtain a complete medical picture or records from your client. To that end, learn how records are organized and stored at the facilities where your client obtained medical care. Many hospitals and clinics keep separate records and if you don't know how their records are organized, you risk missing critical information. For example, all Kaiser facilities keep separate records and a request to one Kaiser facility, such as Oakland, will not get you clinic records or hospital records from Walnut Creek, Redwood City or San Francisco, even if your client

had ongoing treatment at each of these centers.

When you request medical records, also include a request for billing records to correlate treatment charges and to substantiate the damages' portion of your demand. The billing records can also be helpful to track timing of narcotics, medications and procedures.

In conjunction with your review of medical records, create a timeline of prior and current medical treatment, which will help you stay organized and focused on causation and damages. Do your homework so that you have an understanding of the medical issues in your case and become familiar with the medical terminology. The Internet is a great resource for initial medical research, including anatomy, pathophysiology and industry standards.

Your opponent will know the ins and outs of the medical issues, and it will be in your best interest to remain five steps ahead. Some examples of valuable medical resources that are available on the Internet include abstracts from medical journals such as, the Journal of Neurosurgery, Annals of Thoracic Surgery or Obstetrics and Gynecology, etc. Most of these journals are willing to sell the complete article, and you will find a wealth of pertinent information including how certain medical conditions may impact longevity or quality of life. Most hospitals and universities have extensive medical libraries where you can become familiar with the ramifications of your client's medical history and current injuries, as well.

Catastrophic injuries are all about the medical damages. At a minimum, keep a small library with textbooks that contain basic anatomy and physiology to improve your basic understanding of disease, injury and pathology.

These textbooks contain a wealth of information that can be used repeatedly throughout the course of your career. The greater your understanding of basic anatomy, the more prepared you will be

to understand your client's injuries and how those injuries have impacted the quality of his or her life.

Obtain a qualified medical expert

Typically, your case will be won or lost based on the strength and credibility of your expert. Therefore, do your homework up front. After you have a good understanding of the underlying medical issues, think long and hard about obtaining the most qualified expert you can. Generally, your best expert will be a professional who has an active clinical practice. Look to centers of excellence to identify leaders in their field. Remember, even though it is difficult to find active clinicians who are willing to act as an expert, it is worth every minute of time that you spend researching a physician's qualifications. Additionally, it is preferable to avoid using an expert who repeatedly testifies in litigation, as credibility will be questioned by the opposition.

Nonetheless, using an expert who is not a seasoned veteran will require additional preparation on your part. Provide your expert with organized records so that he or she can focus on critical issues. Interact with your expert to fully explore future medical care and how your client's overall health and lifestyle have been impacted by the underlying injury. Your expert must also be fully prepared to address issues that opposing counsel is likely to raise during deposition or trial. Work with your expert so that he or she appears objective, confident and consistent. Most defense attorneys will hold off recommending a settlement with their claims' representative until they have had the opportunity to evaluate the strength or lack thereof of your expert. Therefore, it is critical that your expert is familiar with the medical records and issues of your case. When your expert is knowledgeable, consistent and approachable, there is a greater likelihood of settlement in lieu of a costly trial.



Use your expert to create a discovery plan

Once you are thoroughly prepared and have done your homework to understand the nuances of causation and damages, work with your expert to create a discovery plan. Use your expert to assist you on key discovery issues including what the industry standards are that apply to your case. Ask your expert to identify areas that the opposing expert will agree on that will narrow issues in the case and support your theories on causation and damages. Talk to your expert about potential admissions from the defense that will support an exacerbation of a pre-existing illness or injury caused by the underlying injury.

Keep in mind that your advance preparation will reduce the cost of an expert's review, by limiting the volume of records that might be sent. Further, you will be better prepared to ask important questions and understand your expert's opinions. Advanced preparation will also help you to direct your expert's attention to issues that he or she might not have previously considered. Ask your expert to recommend authoritative sources so that you can become better educated. Ask your expert to assist you in narrowing issues in the case and review your expert's recommendations to make sure that you have covered all necessary issues before you send out discovery or take depositions.

Use your expert to prepare a thorough analysis on damages

Your client, the discovery you draft, your evidence and the testimony of your expert must support causation, as well as current and future damages. Causation is essentially evidence to support the argument that injuries your client has suffered would not otherwise have occurred, but for the injury-producing event. However,

the key to a successful outcome rests on the amount of compensation that you are able to obtain to make your client whole again. Adequate compensation is based on thorough preparation specifically outlining future medical care and how your client's quality of life has been forever changed as a result of his injuries.

The experts you retain should delve carefully into all prospective future medical treatment, the cost of future treatment and how your client's lifestyle will never be the same again. Too often, current and future medicals are not adequately explored, particularly the anticipated costs of future medical care. Look closely at areas of treatment including nursing care, occupational and physical therapy, pain management, emotional counseling, vocational rehabilitation, as well as medical and surgical consultations and treatment. Consider as part of your plan that your client may require in-home care, assisted living or skilled nursing. A qualified life-care planner working in conjunction with your medical expert can address future medical care and identify costs of treatment, including the cost of medication and supplies.

Catastrophic injury will impact every aspect of your client's life, including unforeseen costs that will be missed without significant planning on your part. Your medical expert should describe all current injuries and set forth all recommendations for future medical care. A life-care planner working with your medical expert should outline the costs of treatment, medication and supplies. Sufficient research and planning will prepare you to address how your client's life has been changed forever and what steps are necessary to take care of future medical needs.

Conclusion

Thorough preparation is the key to obtaining the highest potential compen-

sation when your client has suffered medical injuries. Create an outline that can be streamlined or expanded identifying important medical issues including medical pre-existing conditions, as well as injuries related to the underlying lawsuit. Diligent review of past and current medical records should be one of the first steps in your analysis. Additional preparation should include a thorough understanding of any potential medical issues that may add to or detract from current and future injuries.

When you have a basic understanding of the relevant medical issues, use your knowledge to retain the most qualified expert available and work with your expert to create a discovery plan and outline a detailed treatment plan.

Lastly, identify in conjunction with the treatment plan a cost analysis of current and future medical care so that your client has an opportunity to receive adequate treatment in the future.

William Veen founded The Veen Firm as a sole practitioner in 1975 and developed it into a firm of attorneys and staff who represent the severely injured, including consumers and workers. He is a member of the American Board of Trial Advocates and was honored as the Trial Layer of the Year in 2003 and given an award for lifetime achievement by the San Francisco Trial Lawyers Association in 2008.

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