

Survivor – Malpractice Edition

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1

Disclaimer

- Anything discussed today is not intended to constitute legal advice and accordingly, you should consult with your own attorneys regarding any legal questions you have. You should not take, or refrain from taking action based on its content.



2



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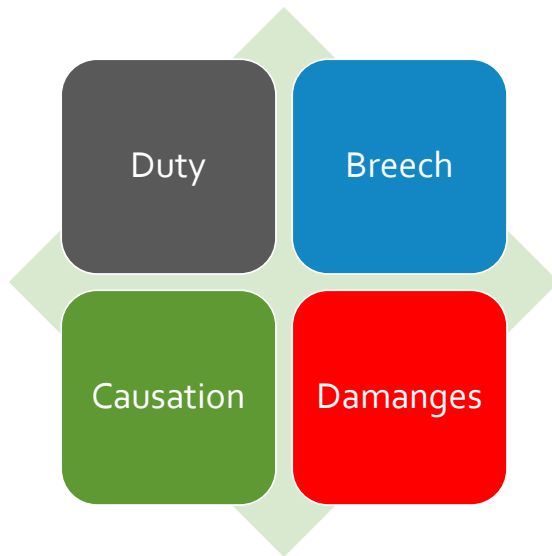


5

What is a tort?

- "A tort is a civil wrong, other than a breach of contract, for which the law provides a remedy"
- Product Liability
- Misrepresentation
- Defamation
- Invasion of privacy
- Negligence
 - Malpractice

6



Four
elements
of
negligence

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How many survive?

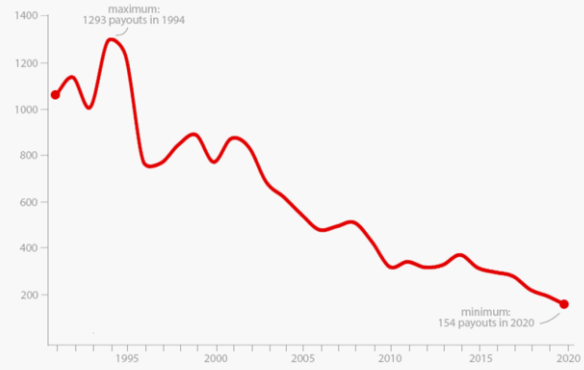
- 16% of lawsuits went to a jury verdict
- 2% of all lawsuits, the jury found for the plaintiff
- 57% of suits resulted in no money being paid out
- 93% resolved before trial (98% in MI)
- In all cases, only 2% had amounts that insurance did not totally cover
 - 1% not covered at all
 - 1% did not cover the whole amount*

8

Caps on Damages

- Non-economic \$476,600 in 2021
- Permanent injuries - \$851,000
- Number of paid claims has dropped from 1,293 in 1994 to 154 in 2020.
- Average payout has remained relatively flat (\$200,000)

The number of medical malpractice payouts is dropping
Yearly number of Michigan medical malpractice payouts



1POINT21

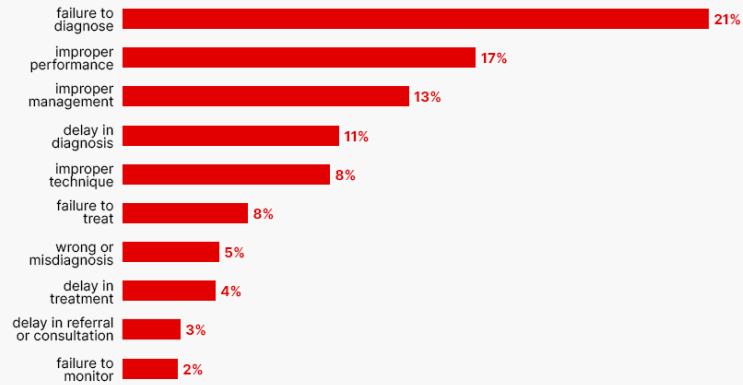
source: National Practitioner Data Bank

9

70%

10

Most common **allegations** in Michigan medical malpractice cases Percent of cases paid out between 1991-2020



1POINT21

source: National Practitioner Data Bank

11

More than half of all ER docs will be sued at some point.

- 49.2% of all physicians.
- 51.7% of EM physicians.
 - 72.2% of those over 55.

<https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/government/advocacy/policy-research-perspective-medical-liability-claim-frequency.pdf>

12

Ok, I've been sued. Now what?

- Notify your attorney and risk management
- Do not talk with anyone else about the case...why not?
- DO NOT ALTER THE MEDICAL RECORD

13

How long will this last

- 40
 - Days on the show survivor.
 - Months for a med-mal case.
- Notice of intent (NOI) must be filed 182 days before a claim.

14

The complaint and the answer

Don't look at either.

15

The Deposition

- Preparation
- "It depends"
- Answer only the question asked
- Objections
- Be truthful and fearless

16

The "Expert"



- Must be specialized in the same field.
- In Michigan, no location requirement. Must be in the same field, same board certification (if BC), and must have spent the majority of his or her professional time in the year prior to the occurrence in clinical practice or teaching - M.C.L.A. 600.2169

17

The "Expert"

- Needs to testify as to what the standard of care is.
- "I won't have done that" - isn't good enough.

18



Case Evaluation

19



Settlement

20

Common Questions

- Can I lose my license?
- Can they take everything I own?
- Will I ever be able to get a job if I am found liable?
- Can I go to jail?

21



22



23



24