

THE ANATOMY OF A LAWSUIT

Saturday, March 19, 2022
San Francisco, California

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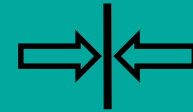
THE BEGINNING

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



- **MEDICAL BASIS**



- **LEGAL BASIS**

MEDICAL BASIS

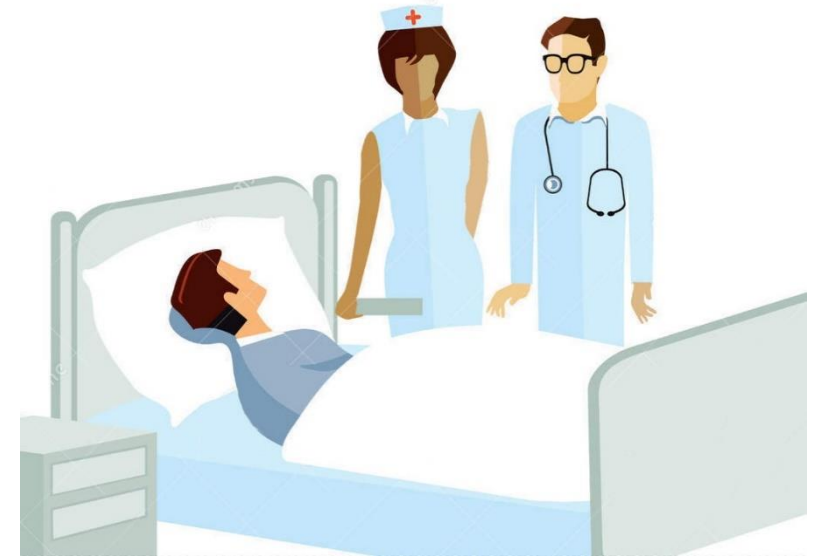
- **Where**

- 50% In-patient
- 50% Out-patient



- **When, the ABC's**

- Anger
- Bad outcome
- Communication



- **How**

- 35% misdiagnosis
- 25% surgical errors
- 20% treatment errors

THE LEGAL BASIS

- **Jurisdictional variations**
- **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...

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?**

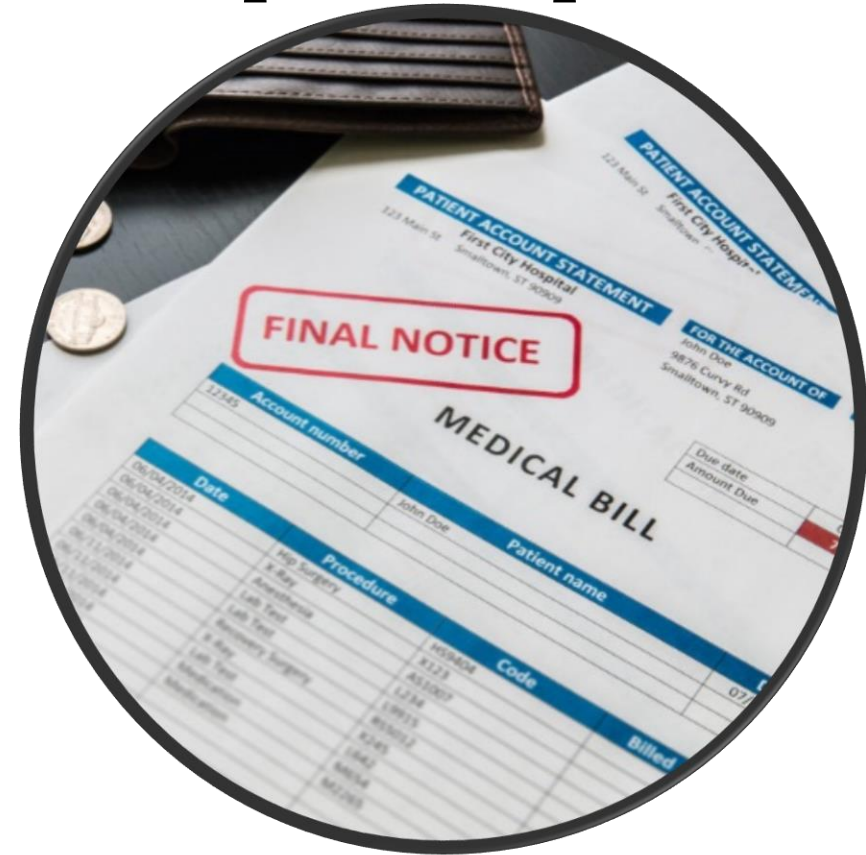
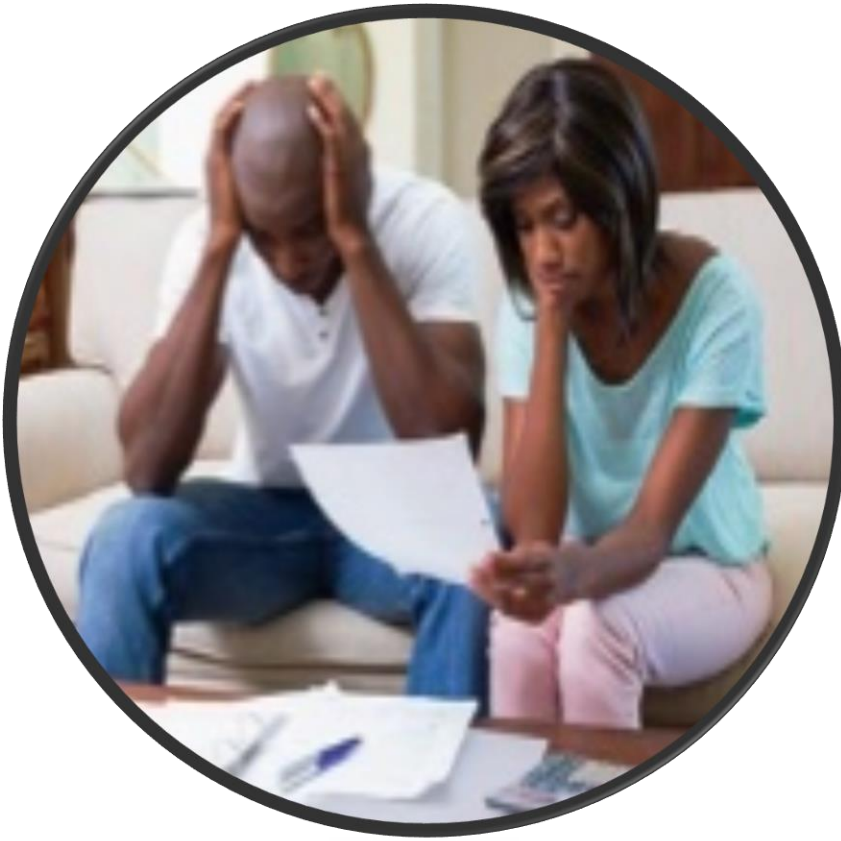
...negligence is a legal cause of the damage if it directly and in natural and continuous sequence produces or contributes substantially to producing the damage...

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 DAMAGES

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



Jury orders DMC to pay former patient \$135 million after paralysis

Updated Jul 3, 2018, Posted Jul 3, 2018

By [Gus Burns](#), fburns@mlive.com

A Wayne County jury has awarded \$135 million to the plaintiff in a medical malpractice lawsuit filed against the Detroit Medical Center Children's Hospital of Michigan, according to Southfield-based Fieger Law.

The lawsuit, originally filed in 2011, was provided to Faith DeGrand of Westland Children's Hospital for scoliosis when she was 10 years old.

Jury awards \$105 million to teen cancer patient in suit against 'pH Miracle' author

By [TERI FIGUEROA](#) NOV 02, 2018 | 3:35 PM | SAN DIEGO

A San Diego jury sided against the author of the bestselling book "The pH Miracle: Balance Your Diet, Reclaim Your Health," ordering him to pay \$105 million to a cancer patient who said she was misled by a doctor and counseled her to forgo traditional medical treatment.

The large award — more than double what the woman had sought — came months after a criminal case ended with the author, Robert O. Young, going to jail for a few months for practicing medicine without a license.

Young, who on Friday called the judgment "a fraud," has written several books, including the bestselling "The pH Miracle: Balance Your Diet, Reclaim Your Health." First published in 2002, his flagship book has been translated into several languages.

"It's totally outrageous," Young said of the verdict when reached by phone Friday afternoon. "It's one-tenth of a billion."

MLive.com, July 3, 2018

The San Diego Union-Tribune, Nov. 2, 2018

Tuesday, November 5, 2019 | The Hardest-Working Paper in America | ☁ 52°/37° Forecast, Page 25

CHICAGO SUN-TIMES

\$1 CITY/BURBS \$2 ELSEWHERE | LATE SPORTS FINAL

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

EMMANUEL CAMARILLO and
CARLY BEHM REPORT, PAGE 17



BEFORE HE WAS A BEAR, KHALIL MACK WAS A BULL

IN SPORTS

Retired CFD chief's son who was brutally murdered worked alongside dad on 'Chicago Fire'
BY MATTHEW HENDERSON

Chicago Sun Times, Nov. 5, 2019

NON-ECONOMIC/INTANGIBLE DAMAGES

- **P&S – The 800 lb gorilla in the room**
- **The eye popping headline**
- **Legislative responses**



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DETROIT NEWS

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\$101 MILLION JURY VERDICT REACHED FOR BABY BORN WITH BRAIN

West Suburban Medical Center
↑ Main Entrance
↑ Professional Office Building
↑ EMERGENCY
Parking

BEFORE HE WAS A BEAR, KHALIL MACK WAS A PULL

HOW IS INITIATED

- **Suit is filed in the courthouse where you live**
- **Sheriff shows up at your door**



THE MIDDLE

- **A lot!**
- **Record reviews**
- **Hearings**
- **Depositions**
- **100's of thousands of dollars in costs**



WHAT DO I NEED TO DO?

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

Best Practices

- **Prepare, the 3 P's**
- **Look good, like a doctor**
- **Listen, the 3 L's**
- **The 5 best answers to any questions**



HOW DOES IT END

- Win



Have a drink



No monies paid



LOSE



- Have a drink
- Money is paid
- Reports are made to agencies
- 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 CAUSE BY
BEING SUED**

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

- Practice medicine within the standard of care
- Communicate
- These have a high rate of ROI
- Manage expectations

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