

De-Selecting Jurors in a Medical Malpractice Suit for Plaintiff
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Several years ago, an attorney who hired me for a plaintiff's medical malpractice case said, "In this county, if a client can walk into the office, he / she does not have a case." Though this was meant to be tongue in cheek, medical malpractice claims from the plaintiff's perspective are increasingly difficult. When the economy is depressed, jurors seem unwilling to entertain damages in these types of cases unless the injury is particularly egregious and the jurors can put themselves in the plaintiff's shoes. Even then, there are a number of important factors that need to be taken into consideration and analyzed.

Of particular concern in these cases are what I call the "Shit Happens" jurors. These people have no inclination to award damages in most types of plaintiff's cases, and would never consider compensating for pain and suffering or punitive damages. This mindset is often a result of having survived a severe amount of trauma, hardship or substantial victimization with no recourse, recompensation or reconciliation. The classic scenario of "This happened to me and I didn't get a dime" can be the plaintiff's attorney's nightmare in a medical malpractice case. The content of the perceived unfairness does not need to have anything to do with a medical claim...It can be both far-reaching and pervasive. This type of juror is often missed in the standard series of questions that most medical malpractice defense attorneys ask.

For the purposes of this article, I will include the standard medical malpractice but will also provide some ideas for culling out the "Shit Happens" jurors, as well as the jurors who feel victimized and unhappy with other people using the legal system for recourse.

Standard Medical Malpractice Case Questions:

Have you or any family members ever worked in the medical field in any capacity?

Do you have any close friends or family members who are physicians? If so, what type?

Do you believe medical doctors are overpaid?

Have you ever been unhappy with some aspect of the care you received from a physician?

Do you believe a doctor has ever made a mistake while treating you or a family member or close friend?

Do you believe doctors get sued too often in our society?

Should doctors be held accountable in some way for every mistake they make in treating patients?

Do you believe that doctors, like everyone else, are human and are allowed to make some mistakes?

Have you ever visited or met a physician who you felt was arrogant?

Do you have any training, experience or advanced knowledge about the health care industry?

Do you believe doctors are more concerned with making money than treating their patients?

If you believed the doctor in this case made a single mistake, but he / she was an excellent physician who spent his / her entire career caring for people, might you have difficulty finding the doctor responsible for this one mistake?

Do you believe that juries should be responsible for judging the quality of care a physician gives to a patient?

What impact, if any, do you believe lawsuits against physicians has on our health care system?

Non-traditional Medical Malpractice Questions that need to be asked:

Have you heard or read any of the recent publicity regarding the high cost of medical malpractice insurance? [Please note: In the recent past, this question would have been objectionable. Because of recent media attention to this issue, there are some judges who would allow a very limited voir dire in this area.]

Have you ever known someone going through medical school or residency?

Do you or do any of your family members have what you would quantify as “significant” student loan debt?

Have you ever considered going to medical school?

Do you believe people take advantage of doctors and file frivolous lawsuits because they know doctors have more financial resources than lots of other professions?

Have you ever studied any of the ballot measures relating to health care reform (either at a national or local level)?

