

Gerry Leeseberg

BlueBook Law Society

Columbus Medical Malpractice Attorney

Medical Malpractice Cases in Ohio ...

Goethe once wrote, "It is easier to recognize error than to find truth, for error lies on the surface and may be overcome, but truth lies in the depths... and the search for it is not given to anyone."

If these words apply to anyone in the legal profession, they would perhaps be most aptly ascribed to those who pursue medical malpractice cases. For if you thought Medical Malpractice was strictly about medical treatment, medical procedure, and medical mistakes, you would be wrong—it is about so much more than that. And if you want an attorney who has a profound comprehension of all the underlying agendas and dynamics involved, you'll talk to Gerry Leeseberg. Gerry has quite a lot to say about what is going on in the country with regard to Medical Malpractice, because he understands the deeper implications...which is why he is known for trying more medical malpractice cases than probably anyone in the state of Ohio.

What is a Medical "Standard of Care?"

Before we go any further, let's first define Medical Malpractice. Medical Malpractice occurs when a health care provider, whether a doctor, nurse, medical facility, counselor, psychologist, psychiatrist, or psychotherapist (to name a few), violates what is known as "standard of care" when providing treatment to a patient. In order for a plaintiff to recover "damages," four conditions must be met:

1. **Duty** – There must be the existence of a doctor/patient relationship;
2. **Breach of Duty** – This refers to the standard diagnostic and treatment practices that should be followed by a medical professional for a certain type of illness, patient, or circumstance. If this has been breached, it means that care deviated from an accepted norm of treatment and the patient was harmed as a result;
3. **Harm** – The physical, mental, and financial hardship suffered as a result of the injury must be documented and verified;
4. **Causation** – there needs to be a demonstrated link between the negligence and the injury.

The most common forms of Medical Malpractice are:

- Misdiagnosis of—, or failure to— diagnose a disease or medical condition
- Failure to provide appropriate treatment for a medical condition
- Unreasonable delay in treating a diagnosed medical condition



How does one even arrive at the point where Medical Malpractice is considered a possibility by a patient? Gerry says there is a normal process by which individuals eventually arrive at the point where they talk to a medical malpractice lawyer—either on behalf of themselves or a loved one.

For example, you may conduct research to ask questions about:

- What are the signs and symptoms of a heart attack, stroke, abdominal aortic aneurysm?
- Were the signs and symptoms of this illness overlooked or ignored?
- How is it diagnosed? – Why didn't the doctor know?
- What is the treatment for this condition?
- What should have been the response time to these signs and symptoms?

Furthermore, there is often suspicious behavior by medical professionals, such as being less than forthcoming, avoidance, or perhaps being advised by someone at the medical facility itself to, "have it looked into." Once you arrive at the point where you have decided to speak to a medical malpractice lawyer, there are a number of things to consider. First is the statute of limitations in Ohio which is one year. It starts to run from one of three dates:

- The date the malpractice "occurred;"
- The date you discovered the injury that occurred from the malpractice;
- The termination date of the relationship between the patient and the doctor.

With regard to selecting the right medical malpractice attorney, Gerry offers this advice:

"Don't ever hire someone just because you see them on T.V. Any lawyer can advertise on T.V. The most important thing to any client is the results...the success. And by definition that means, 'What is this attorney's track record when they go to court? Do they go to court?' That's another problem with advertising, T.V. lawyers...many never go to court. Many never even handle the cases. They are business people, they advertise for cases, they get cases, and then they refer them out for other lawyers to handle. Some of the advertising lawyers in my town have never even been in a courtroom in their entire career. So, you want to know, 'Does your lawyer ever go to court? Is he a trial lawyer? Does he litigate cases? And if so, does he win?' Because the prospects of whether or not you have to go to trial, and your likelihood of success, is a product of not only how strong your case is, but how good your lawyer is, and what their rate of success is when they are put in a position of going to trial. If the plaintiff's lawyer is not someone who the defense lawyers or the insurance agency need to take seriously, they are not going to settle the case—they are going to go to court and they are going to beat them more often than not; or they are going to offer them some ridiculously low or inappropriate amount of money; or the attorney may sell the client's case short because they know they are not going to be able to go to court. Furthermore, ask around. Call other people; ask for recommendations. Ultimately those recommendations are going to be based on what kind of success the lawyer has had in court. Have they had experience handling your specific kind of case? Additionally, when reviewing an attorney's record, it is important to make the distinction between verdicts and settlements. Settlements are out-of-court, negotiated agreements between two parties, before or during civil court proceedings. In contrast, a verdict is a decision or a judgment reached by a jury or a judge, as a result of court proceedings. It requires more expertise to obtain a verdict [trial by jury] than just obtaining a settlement. Some people make the mistake of only looking at the reports of awards posted on an attorney's site which often do not indicate how the amounts were obtained. There is a joke in our business: Q: How do you get a \$1 million settlement? A: Take a \$3 million case and mess it up."

Gerry summarily describes the three types of Medical Malpractice attorneys that exist:

1. “The trial lawyers are those attorneys who aren’t afraid to go to court, take on the opposition, and “win” verdicts. They are also most likely to have large settlements awarded them because of their reputation of not being afraid to take it to court. “
2. “Those who only settle.”
3. “Those who lose—these are primarily those who just dabble—do some of this, do some of that. If you are not capable and able and willing to do everything that is required, you won’t have success.”

Ohio Medical Malpractice Cases, Affidavits of Merit and Expert Witnesses:

What are the things that are required to successfully pursue a medical malpractice case you ask? Well, first the attorney or law firm must have the funds to pursue the case fully. More often than not, pursuing a medical malpractice case successfully can cost anywhere from \$100,000 to \$200,000. If an attorney isn’t familiar with the type of case brought to him/her, he has to run it by an expert to know if the case is viable. This involves a fee which usually has to be paid up front by the attorney or client. However, once it is determined that the case is viable, the State of Ohio requires an Affidavit of Merit, which means that a legal expert has to review the medical records, or be familiar enough with that type of case, in order to testify that the case has merit and should proceed to trial—before it can even go forward. Furthermore, there are certain evidentiary rules for expert witnesses that further complicate the process: “The competency of an expert to testify is based on the extent of his/her clinical/teaching activities as of the time of trial, which is totally irrelevant to the period of time when the malpractice occurred. This can in fact lead to the bizarre result that a world authority who has retired just before trial, is no longer deemed competent as an expert, yet someone who was a mere resident at the time of the malpractice years ago is allowed to serve as an expert.”

Gerry continues, “Some states require a case to be submitted first to a physician screening panel, to which a malpractice claim must be submitted before it can proceed in litigation. Physicians review the claim, and it is my understanding the panels rule in favor of the physician defendant over 90% of the time. That “expert” panel finding is then admissible against the patient at the trial—obviously prejudicing the claim—and the review process itself takes several years to complete, interposing enormous expense and delay.

One problem that we are [constantly] confronted with, that is not legal in nature and is nationwide, is the practice of physician certifying boards reviewing expert witness testimony by their members and sanctioning members whose testimony offends the board. If a defendant physician is unhappy about a plaintiff expert offering criticism of his care, s/he can report the expert to their certifying board for review and/or sanctions, including revocation of board certification. This places in jeopardy a physician's ability to obtain staff privileges at many hospitals, which may require current certification. While this is purportedly a function applicable to both plaintiff and defense experts, I am not aware of any instance in which a defense expert's testimony has ever been referred for review, let alone sanctions imposed. There are actual legal case reports where physicians who have had their certifications revoked have sued, and courts have refused to defend the physician's free speech rights from sanctions. In practice, this makes it extremely difficult to find an expert in some specialties, who will even agree to review a case. This is particularly true in neurosurgery and the sub-specialty of pediatric neurosurgery. I have a particularly egregious case now, of a nine-year-old boy with devastating brain damage due to an untreated ear infection. I sent requests to 30 pediatric neurosurgeons, did not receive a reply from the vast majority, and those that replied, declined to review. There are not many pediatric neurosurgeons in the entire county, and they pretty much all know each other.”

Jury Biases in Medical Malpractice Cases in Ohio:

Gerry explains how once a case makes it to court, there are jury biases to contend with. The average person today is probably far more likely to be familiar with the falsehoods pertaining to Medical Malpractice, than they are regarding the facts and truth.

For example:

1. Medical Malpractice verdicts drive up health care costs;
2. Medical Malpractice verdicts drive up insurance premiums;
3. Medical Malpractice verdicts drive doctors out of your community and out of your state;
4. There are many frivolous lawsuits.

All these have actually been proven to be false, but it makes little difference when dealing with the standard perception of medical malpractice. Perhaps the “greatest lie,” is the one with regard to “frivolous lawsuits,” because there really is no such thing in Medical Malpractice cases. Essentially, this is because it is very costly for an attorney to make a bad call, take on a case, and end up paying for it himself.

With regard to his practice, Gerry states, “We take very strong cases. We bring in the top medical experts in the country and in the world. We hear time and time again where people have talked to jurors after the case and they say, ‘Well, there was probably a mistake, but it wasn’t something we felt we wanted to make him pay for’. Or, ‘That doctor probably has saved a lot of people’s lives, and cured a lot of people, and everybody makes a mistake, so we felt we shouldn’t punish him for it!’ That’s the frustrating part that makes this difficult; and the other part of it is the lack of intellectual integrity on the part of the defendants and their experts. I have yet to find a case, no matter how egregious the facts, where they were unable to find some expert to come in and try to offer some kind of a defense for what the defendant did, no matter how lame the explanation for what the defendant did. The reason for that is that they are told—the lawyers for the insurance companies—they are told, ‘Get an expert—I don’t care how many experts you need to go through before you find one—but find an expert to defend this case. We know if you can get an expert and can go to court, the chances of us winning are really great, because we’ve got the jurors biased in our favor’. They don’t care about the message, they don’t care about intellectual honesty, all they care about is getting to the jury and hoping that the jury will not understand it or be concerned about the effect of the malpractice verdict on the doctor. They don’t care about the facts or what the issue is. That’s the way these cases are defended. I have never taken a case in my entire career that I did not personally believe that the facts were meritorious, and for which I did not have incredibly qualified, intelligent, articulate, medical experts to support the facts of the case. I assume that the vast majority of medical malpractice lawyers follow the same philosophy. In malpractice, all it takes is some doctor to come to court and say, ‘In my opinion, the defendant did all he could’. It doesn’t matter what is written in state-of-the-art medical journals or what has been proven in the past, he is allowed to state that opinion and a jury is allowed to accept that opinion—that is what makes the cases difficult.”

The Politics of Medical Malpractice:

Gerry is particularly skillful in clearly making the case regarding the politics and agendas surrounding Medical Malpractice and detailing what each attorney is up against when they take on a case. Whether that involves the statute of limitations they face, the necessary Affidavit of Merit, the lack (and cost) of medical experts willing to testify, the funds needed to pursue these cases through to the end, jury biases and misperceptions, or the massive political machine positioned against them, (the insurance companies, the American Medical Association, the Chambers of Commerce, etc.) the system itself has embedded impediments, hindrances, and obstacles making these cases as difficult to pursue as possible.

Gerry further explains:

“It is nothing for these corporations or organizations to find and pay for experts for their cases, weight the scales of justice in their favor, create disproportionate expenses for lawyers, wage a war of attrition and propaganda, and place attorneys at extreme financial risk when taking on a case. The insurance industry and Chambers of Commerce have for decades engaged in massive disinformation campaigns to poison potential jurors about the legal system being broken and ruining America, all of which is tantamount to jury tampering on a nationwide scale. In essence, it is not just about fighting to win a case, but fighting to make headway against a biased system which favors the medical industry and insurance companies. The thing that is really discouraging and frustrating and makes it really difficult to do this, is the fact that our state legislature, our supreme court, and our public is so propagandized by the Chambers of Commerce, and the insurance industry, to really believe what we do and what our clients seek is harming society, rather than seeing it for what it is: justice. It is so difficult to walk into a courtroom and know that the vast majority of your jury pool, at the onset, is biased against whatever it is you are trying to accomplish. The lay public has been literally brainwashed by the vast dissemination of lies that include, for example: malpractice verdicts cause defensive medicine that drives up health care costs—totally false; malpractice verdicts drive up insurance premiums—totally false; malpractice verdicts drive doctors out of our community and out of our state—totally false. All of these are demonstrably false. Yet a jury pool during jury selection, will regurgitate every one of those false concepts —that is the bias that we walk into with every one of these cases.”

One of many things that contributes to Gerry’s success in pursuing these cases is the fact that they have a very good system in place at his firm.

Getting to the Truth in a Medical Malpractice Case:

“First, staff nurses interview potential clients and screen out those cases that look like they should be investigated or pursued. Then, they get the medical records and summarize them; and if it looks like the case is a strong one, they find the best experts in the country who can testify about that specific medical problem. What follows then is diligence and good old-fashioned hard work. The defense will do everything in their power to not reveal and not tell the truth about what happened. It takes hard work to take apart the medical records and discover through depositions what exactly happened and why. Many times you only get the answers to those questions based upon your discovery depositions from people who are not transparent and not cooperative, and perfectly willing to try to delude you from what the truth is; and you cannot allow that. You have to be able to pound the truth out of these people, and that requires being prepared, knowing the facts inside and out, knowing the medical records inside and out, and having good medical experts to help you refute all that. If you are not willing to do those things, you are simply not going to be successful.”

The Emotional Costs of Pursuing Medical Malpractice Cases:

Some of Gerry’s most emotionally difficult cases involve children because he is a parent himself, and for most of his career he has been a single parent, and has been very actively involved in his son’s life. *Gerry says*, “Especially being as paranoid a parent as I was and am—because of the nature of my work—you’re constantly in fear of anything happening to your child. So anytime that I am working on a case which involves a child, there is a lot of personal empathy for what these parents have gone through and what the child has gone through. And it reinforces the fact that no matter how a parent tries to keep their child safe, these accidents happen. Every child’s case really hits home with you as an attorney who is also a parent.

There was a particularly tragic case that involved the death of two, three-year old twins. The grief was horrible, what these parents went through—to lose not only one, but two children, in the space of a few hours— was unimaginable. This was actually a case where I realized that I could not fully immerse myself emotionally in presenting the case the way we normally would, because I would not be able to function. I had to consciously place some walls around me emotionally, in the courtroom, so that I didn't allow myself to think about it—because I would not have been able to function. There comes a point in time, especially during closing arguments, when you have to confront the emotions, where it is unavoidable. And it was excruciating as the lawyer, to deal with that. So that case, far and away, was emotional for everybody; and personally, that was the most difficult case to deal with."

Having said all of this, each attorney has their own course financially, procedurally, and emotionally through each trial.

Gerry says of his own process:

"What keeps you going back the next day...I came to realize that everyone of these complicated trials shortens your life expectancy a little bit. It takes a toll on you. Emotionally, it takes weeks to recover. I found on one or two occasions, and that was one of them—another was with a woman who is still a dear friend of mine who lost both of her legs (it is on my website)—it took me weeks to recover from the trial, the battle if you will. I would find myself spontaneously crying. It's difficult; it really takes a toll on you. You have to allow the grief to go away. What brings you back is the desire to help the next person who is in a terrifying situation. What I really thrive on and am interested in is solving the mystery—going through the records and listening to the medical experts explain to me what went wrong and why. I find it fascinating."

Obtaining Justice in Ohio Medical Malpractice Cases:

Gerry is as committed to obtaining justice for each individual client who walks through his doors seeking help, as he is in moving the Medical Malpractice cause forward for everyone who might find themselves in a similar situation one day. There are many moving parts in the pursuit of Medical Malpractice justice; and to be a resolute, effective advocate—as well as a formidable opponent—means tackling all the issues effectively, not just one. It means discovering the truth of what happened, understanding the science and presenting it clearly to the jury, dealing with the biases and misperceptions, finding the right and most effective legal experts, having the necessary funding to pursue a case fully, dealing with the absurdities and restrictions of regulations and legal proceedings, understanding the political dynamics, and having the heart and emotional stamina necessary to see it all through to the end. It also means not being afraid to go to trial, having critical access to medical literature and experts, and having a reputation for integrity. Gerry's success is a matter of public record and he and his firm have obtained record-high verdicts throughout Ohio and in other states. He says, "We have three nurses on staff, a medical library and computerized access to all published medical literature in the world. This allows us to retain the very best medical experts in the country to assist our clients in their cases. Because of our success and reputation for integrity, we are often consulted by physicians and their family members when they themselves have been the victims of medical malpractice. We do not advertise on television or phone books. Our clients are referred to us by other attorneys who are familiar with our professional experience, success, and aggressive representation on behalf of our clients."

Steve Jobs wrote, "The only way to do great work is to love what you do."

Vincent Van Gogh said, "Your profession is not what brings home your weekly paycheck, your profession is what you are put here on earth to do, with such passion and such intensity that it becomes spiritual in calling."

For any practice area, the most exceptional attorneys are always those you have been referred to by another lawyer or a former client, who know firsthand the attorney's skill, integrity, and effectiveness. It is even more so with a Medical Malpractice attorney—the very best ones are always going to be referred to you by another attorney. You won't find them flashing across the television screen, pasted on a billboard, or plastered across a bus. You will be transfixed by them in a courtroom, you will be intrigued by their verdicts and landmark cases, and you will be unhesitatingly referred to them by other leading attorneys. For these attorneys, and for Gerry, Medical Malpractice is not a job or a lifestyle—it is a passion, a calling, and a quest.