Medical Evidence Practice:
Dissecting a Med Mal Case from Start to Finish

Vicki Voisin, ACP
And
Carl H. Morrison II, PP, AACP
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The Presenter: Vicki Voisin, ACP

Vicki Voisin, ACP, is a nationally recognized author and speaker. She publishes Paralegal Strategies, a weekly ezine for paralegals and other professionals who want to create lasting success in their personal and professional lives. Additional information is available at www.paralegalmentor.com.

After spending more than twenty years in the paralegal field, Vicki launched her Paralegal Mentor Program so she could share her knowledge and experience with other paralegals.

Vicki speaks on issues of interest to the legal profession and is the creator and presenter of EthicsBasics®, a unique and enormously popular program designed to raise awareness of ethical concerns by legal professionals. She has worked as a paralegal for more than 20 years and is currently employed by Running Wise & Ford, PLC in their Charlevoix, Michigan office.

Utilizing the EthicsBasics format, Vicki has made numerous presentations throughout the United States, addressing paralegals and other members of the legal staff, in both law firms and corporations. She is also a frequent speaker at meetings of professional associations; these presentations have been approved for Attorney MCLE.

Vicki has authored articles of interest to attorneys and paralegals in publications on the state and national level, including the Michigan Bar Journal, Michigan Lawyers Weekly, The Michigan Paralegal, Legal Assistant Today, LAAM’s Newsbrief, and The Career Chronicle and Facts & Findings published by NALA. Many of those articles have been re-printed nationwide.

Vicki is an active member of the Legal Assistants Section of the State Bar of Michigan, having served as Chair in 2005-06. In 2000, she received the Mentor’s Award from the Section and she was named Legal Assistant of the Year by LAAM, an award that was named in her honor. In 2003, NALA recognized her leadership in the development of the paralegal profession with the presentation of its President’s Award.

She is a past president of the National Association of Legal Assistants (NALA) and until recently served on NALA’s Advanced Certification Board. Vicki presents Basic Ethics I and II, Advanced Ethics, Ethics & Technology, and Time Organization Techniques on NALA Campus LIVE!

Vicki also co-hosts The Paralegal Voice, the nation’s premier monthly podcast for paralegals produced by Legal Talk Network (www.legaltalknetwork.com).

Questions may be directed to Vicki@paralegalmentor.com. Visit her blog at www.paralegalmentorblog.com where she addresses matters of interest to legal professionals. Subscribe to her weekly e-newsletter Paralegal Strategies www.paralegalmentor.com.

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The Presenter: Carl H. Morrison II, PP, AACP

Carl H. Morrison, PP, AACP, is a senior certified paralegal for the law firm of Rhodes, Hieronymus, Jones, Tucker & Gable in Tulsa, Oklahoma, where he concentrates in the areas of medical litigation including medical malpractice and medical products liability, nursing home litigation, vaccine litigation, and personal injury.

Carl has been with Rhodes Hieronymus for 16 years and in the legal field for 19. He has presented numerous seminars, webinars and in-house training sessions over the past several years for the Institute for Paralegal Education, NALS…the association for legal professionals, Tulsa Area Paralegal Association and Rhodes Hieronymus.

Carl is a published author, having written The Paralegal's Guide to Vaccine Litigation - From Roadmap to Resolution, appearing in @Law Magazine, Winter 2009-2010, as well as Basic Medical Literature Researching Skills for Paralegals, appearing in IPE Newsletter November 2010.

He answered Vicki’s Thirteen Questions for the The Paralegal Mentor in December 2010 and was interviewed by Vicki and Lynne DeVenney for The Paralegal Voice on the Legal Talk Network. He received the NALS Continuing Legal Education Award in March 2011 for his outstanding professional development through legal education.

Carl is an active member of NALS…the association of legal professionals, where he serves as Chairman of the Future Leaders Development program, as well as the Tulsa County Bar Association – Paralegal Section Secretary 2010-2011, and Tulsa Area Paralegal Association. He also serves on the Paralegal Studies Advisory Board for Community Care College.

Carl earned his B.S. degree from Northeastern State University with a pre-professional emphasis in medicine and his A.S. degree from Tulsa Community College.

He received his American Alliance Certified Paralegal (AACP) certification through the American Alliance of Paralegals, Inc. and his Professional Paralegal (PP) certification through NALS…the association for legal professionals.
1. An Introduction to Medical Evidence Practice

Malpractice: The deviation from the standard which results in injuries/damages.

The gathering of medical evidence is not limited to malpractice cases. You will also need it for:

- Personal injury matters
- Disability Claims
- Workers Compensations

The purpose of medical evidence:

- Prove the Defendant was negligent
- Prove the defendant was NOT negligent
- Demonstrate the nature of the injury was due (or NOT due) to negligence.
Meeting with the client

✓ Take copious notes

✓ Reassure the client

✓ Available any time

✓ When your client is the defendant:
  - Caution against altering the chart
  - Caution against discussing the case with third parties.
Gathering the data:

✓ Obtain all:
  ⇒ medical records
  ⇒ bills
  ⇒ insurance reports
  ⇒ pharmacy records

✓ If against a hospital – obtain the COMPLETE chart – NO chart abstracts

✓ Make sure you have a complete record from each provider

✓ If death case – obtain coroner/medical examiner’s records & death certificate
2. The Pleadings

The Petition:

✓ Notice Requirements:

- Some States require the defendant be noticed prior to filing __________________________
- Service of lawsuit may not constitute proper notice __________________________
- Know the Statute of Limitations – what is the trigger? __________________________
- Check your local statutes. __________________________

Requirements of the complaint:

⇒ If you plead it, be able to prove it. __________________________
⇒ Keep it simple and to the point __________________________
⇒ Do you need to amend to add cause of action or wrongful death? you may need an expert affidavit __________________________
⇒ Major areas of complaint (See attached sample Petition). __________________________
The Answer: 

✓ Make sure it is meticulously drafted

✓ Admit only those things that should be properly admitted.

✓ Avoid careless admissions and extravagant denials.

✓ Watch for specific allegations of fact.
Discovery Requests

Issue Requests early in the case.

Representing the Plaintiff? Ask for more than medical records:

- Rules and regulations
- Policies and procedures
- Logs
- Incident reports
- QA Documents
✓ Representing the Defendant? Ask for more than medical records:

- Prior work comp claims

- Medical records from prior injuries

- Natural health practitioners

- Pharmacy records
3. The Sources of Medical Evidence and How to Obtain Records

Medical evidence sources:

⇒ Emergency Room records: 

⇒ Admission records: 

⇒ History and physical reports: 

⇒ Doctors’ orders and progress notes: 

⇒ Nurses notes: 

⇒ Consultation records
⇒ Operative reports and operating room records
⇒ Discharge summaries
⇒ Medication administration records
⇒ X-Rays and other diagnostic films
⇒ Lab records
⇒ Billing records
⇒ Incident reports
⇒ Nurse shift change records
⇒ Needle and sponge count records
⇒ Staffing ratios
⇒ Care plans
⇒ Patient assessment forms
⇒ Infant birth records; fetal monitoring strips
⇒ Ambulance run reports
‒ Dialysis flow sheets

‒ Work comp records

‒ Social security disability determination records
How to Obtain the Information You Need

Where to request the information. ________________________________

_________________________________________________________

The Records Custodian. _______________________________________

_________________________________________________________

Do you have the correct address? ________________________________

_________________________________________________________

Does the provider use third party vendors to process requests? __________

_________________________________________________________

Remind clients to provide all bills/receipts they receive. _______________

_________________________________________________________

Is payment required “up front”? _________________________________

_________________________________________________________
**Drafting the Request for Records**

- Include patient’s full name, Social Security Number and Date of Birth 
- Be specific: what do you really want? 
- Include HIPAA compliant authorization 
- Do you need a Court Order? 
- Reference statute re: allowable fee for copying costs. 
- Include time frame for response 
- ABOVE ALL: be kind and courteous with the records custodian!
4. You Have the Records – Now What?

What do you do with the records? 

Organization is key!

- By Provider

- By Date

Bates stamp your records.

Are there missing pages, dates, etc?

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Analysis and Evaluation of Medical Evidence

What do you do with the records? ____________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Be a detective. ____________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Know the petition. _________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Think like a juror. __________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Take notes. ________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
Analyze each entry: what role does it play in the allegations? ________________________

______________________________

______________________________

______________________________

Keep track of questions. ________________________

______________________________

______________________________

______________________________
Different Types of Records

Admission face sheet. ______________________________________________________

______________________________________________________________

Discharge summary. ______________________________________________________

______________________________________________________________

Emergency Department records. ______________________________________________

______________________________________________________________

History and Physical Reports. ______________________________________________

______________________________________________________________

Lab reports. _____________________________________________________________

______________________________________________________________

Physicians’ orders and progress notes. _______________________________________

______________________________________________________________

Pharmacy records. _________________________________________________________

______________________________________________________________

Doctors’ office records. ____________________________________________________

______________________________________________________________

Nurses’ notes _____________________________________________________________

______________________________________________________________
Red Flags

- Handwriting differences
- Late entries
- Large gaps of time without documentation
- Missing records
- Different ink
- Dictated note typed long after the event
- Multiple doctors – “doctor shopping”
- Prescriptions filled at multiple pharmacies
- Prescriptions written by multiple doctors for same complaint(s)
Understanding the Medicine

⇒ Medical School 101

⇒ Learn the terminology

⇒ Learn the basics of each of the different body systems (musculoskeletal, respiratory, etc.)

⇒ Medical abbreviations

⇒ Test procedures
  ⇒ Screening vs Diagnostic

⇒ Laboratory values

⇒ Build your medical history
5. Preparing Witnesses and Taking Depositions

Preparing the Plaintiff

✓ Tell the truth

✓ Answer only questions you understand

✓ Answer directly and briefly

✓ Answer all questions asked

✓ Don’t get rattled

✓ Don’t volunteer information
Are you deposing the Plaintiff?

✓ Get the personal background

✓ Get present activities: work and home life (housework, sports, daily living)

✓ Medical background, including prior injuries

✓ Prior litigation and claims

✓ Special damages
How to Prepare the Defendant

✓ Tell the truth

✓ Be patient

✓ Answer directly and briefly

✓ Don’t volunteer information

✓ Don’t be afraid to say you don’t know

✓ Don’t discuss mutual friends in the medical profession with Plaintiff’s attorney

✓ Beware of the games attorneys play

✓ Remain calm and professional
**Are you deposing the Defendant?**

- ✓ Research Defendant’s credentials
- ✓ Treat deponent with respect
- ✓ Goal: obtain the why’s and wherefore’s of diagnosis and/or treatment of the specific patient’s problems
- ✓ What does the Defendant know about different diagnoses of the problem?
- ✓ What medical literature is Defendant relying on as authoritative?
6. Preparing for Trial

Exhibits:

- Review exhibit list with your attorney
- Mark each provider, photo, document separately
- Keep demonstrative exhibits interesting
- Create timelines
- Use 3D models, anatomical drawings, exemplar devices, etc.

Voir Dire/Jury Selection:

- Per FRCP 47: Judge typically conducts Voir Dire
Consider jurors’ and jurors’ spouses’ occupations

Are there prior accidents, claims or lawsuits?

Any unpleasant past medical experiences?

Any present medical care?

Religious attitudes?

Past jury service?

Opening Statements:

Cases can be won on a strong opening statement

Are meant to outline the evidence
✓ A roadmap of what the jury can expect to encounter.

✓ A time for counsel to demonstrate his/her command of the case
7. Trial Tips

Prepare defendant for trial ________________________________

_____________________________________________________

Be sure jury understands medical terms without talking down to them. _______________

_____________________________________________________

Arrange order of witnesses logically/chronologically; end with a strong witness. __________

_____________________________________________________

Successful cross examination requires adequate preparation. __________________________

_____________________________________________________

Keep objections to a minimum. ______________________________

_____________________________________________________

Avoid reference to insurance. ______________________________

_____________________________________________________
Tips for Witnesses:

✓ Remind client that he/she will be constantly evaluated by the jury. ________________

✓ Watch facial expressions. ____________________________________________________________________________________

✓ Don’t take excessive notes. __________________________________________________________________________________

✓ Don’t show boredom/fatigue. ________________________________________________________________________________

✓ Show respect. _____________________________________________________________________________________________

✓ Dress appropriately. ______________________________________________________________________________________
Closing Arguments

✓ A case can be lost with a weak closing argument. 

✓ Summarize the evidence. 

✓ Keep it organized. 

✓ Use informal, conversational style. 

✓ Make an outline; a “checklist” 

✓ Keep it shorter in length. 

✓ Explain the definition of malpractice.
Jury Deliberation

✓ The best time of the trial (note sarcasm here!)  

✓ The more relaxed mood doesn’t mean it’s over.  

✓ Warn against remarks in the presence of opposing counsel.  

✓ Stay close to the courthouse.  

✓ Don’t abandon your client!
8. Conclusion

_________________________________________________________________________________
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