Stopping Medical Injustice

THE JOURNEY OF SELF-EXPLORATION

It was a recurring conversation and deep down, I was worried.

My daily conversations with my nutrition and fitness coach (at MyBodyTutor) usually sounded like a broken record. "I feel great", I told my tutor, "I have no aches or pains, I reached my ideal body weight and I have a lot of energy." But truth be told, I needed help.

I told my tutor, "I'm struggling with mental health. I have racing thoughts and I struggle with anxiety and stress. Sometimes I wake up in the middle of the night and my mind is full of worry about... EVERYTHING. I almost never sleep well. I could use help."

This is when my body tutor introduced me to meditation. Admittedly, I didn't do much at first and I had a healthy dose of skepticism, but with no other alternative, I was ready for a change and I began learning about meditation. Here's what I discovered.

THE BENEFITS OF TRANSCENDENTAL MEDITATION

Studies showing the benefits of transcendental meditation are abundant. Many highly successful businesspersons, athletes and celebrities attribute their success to transcendental meditation. Ray Dalio (hedge fund owner), Jerry Seinfeld, Michael Jordan and Paul McCartney (and the other Beatles) attribute their success in business, comedy, sports and music to transcendental meditation. The radio celebrity, Howard Stern, kicked a 3½ pack per day cigarette habit within 1 month of starting to meditate.

Over 400 peer reviewed studies have shown wide-ranging benefits of transcendental meditation, including reduced high blood pressure, diminished stress and anxiety, better sleep and improved self-control, awareness and mood control and higher cognitive functioning and creativity. The American Heart Association approved transcendental meditation as a complementary treatment for high blood pressure.

"These gifts include better physical well-being and mental functioning. The joys and rewards of being in the zone and accelerated internal growth."

Norman Rosenthal, Super Mind

Those who experience transcendental meditation for the first time report major changes in their lives.

- "The effect on my sleep has been profound."
- "Meditation has sharpened both my senses and my awareness of the world around me."
- "I experience a wonderful, restful feeling."
- "The heightened experience stayed with me longer after the experience."

The empirically based evidence for transcendental meditation is overwhelming. Our society treats mental illness and physical disease with an abundance of high-priced medications, but—I thought—perhaps there is a simpler and healthier solution.

Perhaps a crazy thought, but what if we could eliminate many of the conventional remedies for anxiety and stress and replace them with a technique that offers calmness of mind, less stress and greater creativity? This just might be worth a shot.

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A QUICK OVERVIEW OF TRANSCENDENTAL MEDITATION

Transcendental meditation is not a philosophy or a religion and does not require a change in your lifestyle or diet. There is nothing to believe in. You can be skeptical and the technique works just as well. It does not focus on breathing or chanting, just a resting state of mind. Transcendental meditation is relatively quick to learn and easy to master and it can be done anywhere.

Think of the surface of the ocean. The surface of the ocean can be rough and turbulent, but even in stormy weather, the depth of the ocean is calm and peaceful. Our mind is like the ocean. Our waking thoughts are like the surface of the ocean that can be choppy and constantly changing (all of the things you're thinking of), while a deeper level of consciousness is like the depth of the ocean that is calm and peaceful (where you have no thoughts, but yet you are awake). Transcendence is the level of the mind–much like the depth of the ocean—that is already calm.

"Meditate, dive within, and expand your consciousness. In so doing, you will change, and the world around you will follow."

Norman Rosenthal, Super Mind

There are 3 well known levels of consciousness: the waking state, sleep and dreaming. But there is a 4th level of consciousness (transcendence) that transcends these levels, a state of calmness, silence and inner serenity. This 4th level of consciousness is a deeper level of consciousness that is untapped by most, yet has the potential to change our lives. Athletes refer to transcendence as "the zone" where they are locked in and focused.

THE 20-MINUTE MENTAL SPA MOMENT

Transcendental meditation is easy to learn in just a few days. Transcendental meditation is taught by a certified instructor over the course of 4 90-minute sessions. It can be done anywhere and is a silent technique with your eyes closed. Once learned, you practice transcendental meditation on your own with some occasional refreshers from your instructor.

With transcendental meditation, you will be taught to meditate for 20 minutes twice



a day-once in the morning when you wake and again in the later afternoon, ideally before dinner. Just like an important business appointment, you can schedule your 20-minute meditation into your workday. There is no concentration or control of mind required.

"Both the quality of our consciousness and the way that it affects us are keys to a good life."

Norman Rosenthal, Super Mind

Your instructor will give you a mantra, a word that will give access to the calm level of the mind. You will think of your mantra as you meditate. You do not have to sit on a mat or have a specific body position. Be comfortable and as you meditate, your mind will be naturally drawn to more satisfying thoughts—places in your mind where you want to be. Sooner or later, your thoughts will be gone and you may experience stillness, quiet, and your breathing slows down and your muscles relax. Norman Rosenthal, author of "Super Mind", refers to this as the "quiet bliss of transcendence".

THE FOURTH LEVEL OF CONSCIOUSNESS: TRANSCENDENCE

During meditation, you are not trying to control your thoughts. You let your mind go naturally where it wants, to a place that is more satisfying. And over time, you reach the point of transcendence, which is the absence of thoughts. During transcendence, you reach a state of calmness and inner peace. It is the best moment of your day.

"The key to growth is the introduction of higher levels of consciousness."

Lao-Tzu

And what happens after you meditate? Your calmness carries through the next few hours and you become less reactionary, more reflective and calmer. You don't yell and scream when things don't go your way and you pause and think before reacting. And perhaps most importantly, your energy levels will be boosted by

twice a day meditation. The benefits of transcendental meditation accumulate as you practice it more.

QUESTIONS YOU MIGHT ASK

Why do you need a certified transcendental instructor? You can try meditating without an instructor, but that's like trying to golf without a teacher. You'll struggle. An instructor will guide you through the process in 4 90-minute sessions. Transcendental meditation does not take long to learn.

What if you don't have time to meditate or you can't meditate for the full 20 minutes. Some meditation is better than none at all. You may want to use a meditation app that alerts you when you reach 20 minutes.

Why do you spend 20 minutes in meditation? Research shows that it takes 20 minutes to reach the inner calm and absence of thoughts that transcendence offers. Why do you meditate twice daily instead of once? Research shows that you will only receive half of the benefits of transcendental meditation if you meditate once a day.

Why do you need transcendental meditation if you already have a therapist? If you're struggling with depression or anxiety, therapy works. But therapy might be only once every 1 or 2 weeks and what do you do with the rest of the time? Transcendental meditation eases your mind and provides a boost of calmness and creativity twice a day. Transcendental meditation is a wonderful compliment to therapy.

HOW TO GET STARTED ON YOUR JOURNEY OF SELF-EXPLORATION

A great way to get started is to read Bob Roth's book, "Strength in Stillness", an excellent primer about transcendental meditation. Want to take the next step by speaking with a certified transcendental meditation instructor? There are transcendental centers throughout the U.S. Go to www.TM.org or call 888-532-7686. You can get an introductory meeting with a TM coach and learn more about this powerful technique.

Transcendental meditation gives access to the level of the mind that is largely untapped. The potential benefits—both physical and mental—are enormous. And once learned, you will have transcendental meditation for the rest of your life.



(left) Game day at Notre Dame with my son, Tim, and nephew, Peter (ND, class of 2018). (right) What's better than a football weekend with my son, Tim? Nothing.

7 Secrets about Medical Malpractice Law that Defense Lawyers Don't Want You to Know

Defense lawyers don't want you to know this. Too bad! Here are 7 tips for making sure your next medical malpractice case is a winner.

Secret #1: How to Determine a Physician's Employer

You should always sue the individual doctor and the doctor's employer, but in hospital cases, it can be difficult to determine the identity of the doctor's employer. First, go to New York State Department of Health's "Physician Profile Website", www. nydoctorprofile.com, and enter "Practice Info" and then "Offices." Unfortunately, the information provided by the Physician Profile website is usually outdated or provides no meaningful information.

Next, do a Google search of the physician's name, which might provide the identity of their employer. However, in emergency medicine cases, that usually doesn't work. Sounds crazy, but emergency medicine physicians are often unable to identify the name of their employer, even during sworn testimony at a deposition. So, what can do you?

Get the hospital's billing records. The hospital's billing records will identify the name of the emergency medical company that provides the emergency medicine physicians and/or intensivists to the hospital. The billing records will leave no doubt about the correct identity of the physician's employer. Hence, the billing records should always be requested in any case that you intend to sue.

Secret #2: Who to Sue First in the Caption of the Pleadings

The first defendant in the caption of the pleadings should be the one who the jury will most likely find culpable. Easy enough, right? Not so fast, my friend.

Juries are much more likely to find fault against a corporate defendant or hospital than an individual physician. Jurors empathize with physicians, but they have no sympathy for hospitals or corporate defendants. For these reasons, the hospital or corporate defendant should be first in the caption of the pleadings. This gives your client the best chance of winning.

Secret #3: How to Select the Best Venue for Your Lawsuit

In New York, you can sue a physician in the county of their primary place of business or residence. If there are multiple physicians that you've sued, do a search of their places of business and residential addresses.

You might find that one of the physicians moved away from the county where the malpractice occurred, and now resides in one of the boroughs of New York City. You might have a venue in the boroughs of New York that is more plaintiff-friendly than Upstate New York.

Secret #4: How to Find Medical Records that Hospitals are Hiding

Before you file a lawsuit, you must possess a complete set of medical records. But this is not as easy as you might think. A "certified" medical record only means that there is a meaningless certification attached to the medical records—by no means does it mean that you possess a complete set of medical records.

Here's the secret: many departments of hospital keep their own set of medical records.

Mental Health Records: If a patient undergoes a psychiatrist evaluation at a hospital, the mental health records are often kept in a separate electronic medical record ("EMR") from the emergency department's records. You should make separate requests for the mental health records and the emergency department's records.

Radiology Records: If a patient undergoes radiology tests, the radiology department will have their own set of records, including a requisition request that are not part of the hospital's medical records

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Injury 💝 Malpractice

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for the patient. Again, you have to make a separate request for the radiology records apart from your request for the hospital records.

Original Chart Review: How can you verify that you possess all of the medical records? There's only one way: an ORIGINAL CHART REVIEW. Pursuant to section 18 of New York's Public Health Law (and federal HIPAA law), you and your clients are entitled to conduct a review of the medical records at the hospital or doctor's medical practice.

At the original chart review, you compare the medical records that you possess to the hospital's medical records. The original chart review is the only way to find out whether the hospital did not provide you with a complete set of medical records.

Audit Trail: The audit trail is a computer-generated record showing the date and time that every entry was made in the medical records and the substance of any changes. Under federal law, the audit trail is considered part of the medical records and you and your clients are entitled to it. Easy, right?

But for some crazy reason, plaintiff's lawyers don't request the audit trail. An original chart review and a discovery demand for the audit trail should be standard in all of your medical malpractice lawsuits. In fact, you and your clients have the right to an original chart review and the audit trail BEFORE a lawsuit is filed. Why wouldn't you exercise these rights?

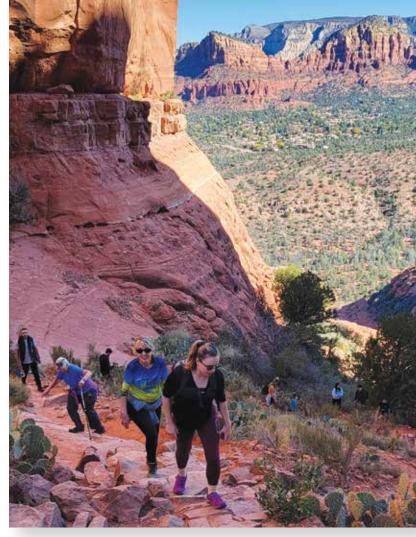
Secret #5: Videotape ALL Depositions of Adverse Parties and Non-Party Witnesses

Non-verbal communication (body language, facial expressions, pauses and communication between the witness and their attorney) is often more meaningful than the verbal testimony. If it's not worth videotaping a deposition, the deposition is not worth taking. Yet most plaintiff's lawyers do not videotape the defendants' depositions and non-party witnesses. This is truly baffling.

Why? There's no good explanation. With virtual depositions, there is no cost to videotaping a deposition. To videotape a deposition, you simply have to click "Record" on Zoom. Videotaping a deposition is simple and has no cost. You only have to serve a notice of videotape deposition in New York (this should be a standard notice in all of your lawsuits).

Secret #6: Never Adjourn a Trial or Deposition

Trial dates are equivalent to \$ for plaintiff's lawyers. You should be pushing to confirm trial dates for all of your lawsuits.



(above) Our daughter, Lily, and my wife, Lisa, hiking in the red rock trails (Cathedral Rock) of Sedona, Arizona.

NEVER agree to adjourn a trial or deposition (with rare exception, e.g., a death in the family of a defense lawyer). Once you confirm a trial date, notify your experts, witnesses and clients and begin getting ready for trial.

Secret #7: Put Expert Witnesses on a Budget

Many outsiders will tell you that medical malpractice lawsuits are prohibitively expensive. Au contraire, my friend. A written budget for medical experts is the only way to control expenses in a medical malpractice lawsuit.

The major expense of a medical malpractice lawsuit are expert witness fees and this is where you've got to be careful. When you retain a medical expert, forward the medical records and ask for an estimate of the time that they need to review the medical records. If the medical expert needs 5 hours to review the medical records and their hourly rate is \$400, then you can set a budget of \$2k for their initial case review.

You should ask the expert witness to agree upon a budget of \$2k in writing. If the medical expert needs more time to review the records than originally anticipated, they will need to get your approval in advance. If the expert exceeds the budget without your approval, you should remind them that they agreed to a budget and refuse to pay the amount of their invoice that exceeds the budget.

Practice Limited to the Representation of Seriously or Catastrophically Injured Persons