

LAWYER ALERT

Stopping Medical Injustice

The SECRETS of a Malpractice Insider

At a mastermind, a 30-year old lawyer makes a bold proclamation, "I want to be a malpractice lawyer." The lawyer is met with more than a healthy dose of negativity by the members and is told that he should avoid malpractice work due to its complexity and substantial cost.

I did not agree. I told the lawyer, "If you are passionate about this line of work, and willing to die for what you do, heaven and earth will get out of your way to make it happen." The young lawyer absorbed the advice quietly and did not respond.

About 2 years later, I received a text from this lawyer that read, "I just finished my first malpractice trial and I'm waiting on the jury for a verdict." The following day, I received another text from this lawyer, "I won! The verdict was \$9.5 million." This was the largest malpractice verdict that year in the lawyer's State.

The 6 Core Foundations of a Malpractice Law Firm

These are my best tips for malpractice lawyers in the areas of the practice that matter the most, consisting of the 6 core foundations for a malpractice firm.

- 1st Foundation: Office Procedure
- 2nd Foundation: Marketing/Business Development
- 3rd Foundation: Case Management
- 4th Foundation: Client Relations
- 5th Foundation: Trial Practice
- 6th Foundation: Negotiations/Settlement

1st Foundation of a Malpractice Law Firm:

Office Procedure

Work from Home: Your most productive work will be done from home. Turn off the cell phone and do not check email. There will be

no distractions or interruptions. You will be amazed at what you can do when you have a block of time to focus.

Hire Based upon Culture Fit: Hire team members who fit with your firm's culture. To succeed at our firm, team members must be passionate about the rights of the disabled. If a team member is not passionate about our clients' rights, they will not work out. It's that simple.

Embrace Remote Work for Team Members: Let team members work from home. Your team members will be more productive working from home, and if you trust them, you can expand your pool of talent across the country. Our firm's lead paralegal works from Knoxville, Tennessee and she is amazingly productive.

Know Your Purpose, Values and Mission: Personal injury law is not about making as much money as possible. If it was just about money, you would have a shallow existence, and probably not be in business for long.

It's about fighting for a cause that you believe in. When you're fighting for a cause, the bad days are easier to overcome, and you know that you can never give up. Our firm's purpose, "Stopping Medical Injustice", guides every decision our team members make.

(continued on page 2)



(continued from cover)

2nd Foundation of a Malpractice Law Firm:

Marketing/Business Development

Marketing Mindset: Think of lawyers as your clients, not injury victims. Plaintiff's lawyers will be your best referral source.

Over-Communicate with Referral Partners: Be fanatical about communicating with your referral partners. There is no such thing as over-communicating with referral partners.

Every day set aside time to send an email update to a referral partner about the status of a referred case. Even if you decline 98% of the referrals, you are building the relationship with your referral partners with updates, and you are virtually guaranteeing you will get their next referral. Nothing is more important.

Be Extremely Selective: Only accept catastrophic injury or death cases. You must decline moderate injury cases in almost all cases.

3rd Foundation of a Malpractice Law Firm:

Case Management

Speak with the Expert First: Speak with the expert before sending the medical records. Don't waste \$5k on a records review without first gauging the expert's opinions. During a 5-minute phone conversation, you may learn that the expert does not support your case and it would be a waste of \$ to send the medical records to them.

Work in Silos: Divide work among your team members into silos consisting of discovery, motions, intake, medical records retrieval and appeals. With work divided into silos, each team member will excel at their work and there is no question who is responsible for the work.

Think of the work that you don't love doing, such as lien resolution, appeals, probate and medical records retrieval. You should outsource this work to the specialists who will do it much better. Your clients will be the beneficiaries.

Case Expense Financing: Use case expense financing. With virtually unlimited funding, you will be less reluctant to hire the best experts.

Advocate Capital (www.AdvocateCapital.com) has been the ideal strategic partner for our firm. We do not pay any of the case expenses and our clients pay the borrowing cost at the end of the case (if there is a monetary recovery). This frees up cash flow for marketing. Case expense financing has been a no-brainer for our firm.

Be a Trial Lawyer: Push every case to trial aggressively. You will not optimize the result until you get to the trial. Rarely will you maximize the recovery at mediation. Real money comes from juries, not claims adjusters.

No Adjournments of Trials: Never adjourn a trial date. Of course, there are exceptions (e.g., death of a family member), but you should not adjourn a trial date unless it absolutely cannot be avoided.

Beware of the Patient Portal!: Before accepting a case for litigation, make sure you possess email and patient portal communication between your client and the doctor. Internal communications, such as those in a patient portal, are not contained in the medical records.

Referrals to specialists are often made in the patient portal. The information contained in a patient portal might completely change your expert's opinions.

Identify the Doctors' Employers through the Billing Records: The best way to identify the employer of a potential defendant is through the billing records. The billing records are especially helpful in emergency medicine cases, where the employer of an emergency medicine physician can be difficult to determine.

4th Foundation of a Malpractice Law Firm:

Client Relations

Build Relationships with Your Clients: Spend time with your clients in their

homes. Get to know their daily struggles and disability. Share a meal with your clients. Bonding with your clients won't happen in your office—you need to meet with them in their home.

Spend time with your clients in their homes.

Get to know their struggles and disabilities.

Creating a bond with your clients is invaluable. Your clients will know that you care and they are not a number to you. This personal touch means everything.

5th Foundation of a Malpractice Law Firm:

Trial Practice

Make Trials Fast: Jurors hate long trials. Speed through your trials. Get right to the point with expert testimony and craft 2-3 compelling stories for each lay witness and your client. Don't waste a second of the jurors' time. A bored jury will blame you.

Before the trial, tell the Judge about your schedule for witnesses. Explain to the Judge that you intend to fill every minute with witnesses and you will not waste a moment of time. If the Judge cannot accommodate a speedy trial, you need to know in advance.

Simplicity is the Goal: Complexity is the enemy. Tell the jurors, "This is a simple case." Defense counsel will try to make everything complicated and complex. Your job is to make the facts and testimony simple." As author, Morgan Housel, states: "Simplicity is the hallmark of truth."

Only Work with Clinicians as Experts: Your experts must be actively treating patients. Do not hire experts whose sole job is to testify. Your experts should derive 90% or more of their income from their clinical practice, as opposed to medical-legal consulting work.

Face the Jurors during Cross-Examination: Be bold and do things that other trial lawyers don't do. During cross examination, face the jurors—not the witness--and make the jurors the center of everything you do. The defense lawyer will hate this.

Become one with the jury. During questioning tell your witnesses to "share with us" their testimony.





of defense counsel, especially when the jurors document the opinions from your economist about economic loss.

5th Foundation of a Malpractice Law Firm: Negotiations/Settlement

Wrongful Death Settlements: Submit a Proposed Order approving a wrongful death settlement, rather than serving a motion.

Ask defense counsel to consent to the proposed Order before it is submitted to the Judge. With consent from defense counsel, the Judge will sign the Order and you can forego a motion. This will save time and get your client paid faster.

Never Agree to Confidential Settlements: This has never prevented a settlement and your clients will love that you have a value-driven law firm. If you draw a line in the sand and tell defense counsel that you won't agree to confidentiality, this will not be an issue.

Never Initiate Settlement Discussions: Calling defense counsel or the claim adjuster to initiate settlement discussions is a major mistake. Initiating settlement discussions is a sign of weakness. If the defense wants to settle, they will call you.

Deposit Settlement Funds in a CDARS Account: CDARS (Certificate of Deposit Account Registry Service) accounts are 100% insured by the FDIC and your clients earn interest on the money. In contrast, escrow accounts are only insured by the FDIC up to \$250k and your client earns no interest. If your settlement exceeds \$250k,

you should always ask for court permission to deposit the funds in a CDARS account.

Judges will approve CDARS accounts after you explain their advantages over your escrow account. 146 banks in New York offer CDARS accounts, including Rhinebeck Savings Bank and Ulster Savings Bank

Set Settlement Values with Your Client: Agree upon a settlement value and goal with your client. Tell your client that once you establish a settlement value, you will not change it. You are a trial lawyer, not a settling lawyer.

Once you hear the magic words that the defense counsel is making their "final and best offer", that's when you've got them. Such statements are almost never true.

The Truth about Medical Malpractice

Medical malpractice is a hard way to make a living. You will have more than your share of ups and downs and even the best cases will go to trial. There is no such thing as a "slam dunk" malpractice case.

"What makes life mean something is purpose. A goal. The battle, the struggle—even if you don't win it."

Morgan Housel, Same As Ever

But if you are passionate about malpractice work and willing to keep going despite seemingly insurmountable odds, this is no longer a job, it's your mission. And there's no better way to spend your life than one that is focused on a mission and purpose. God bless those who do.

Use Props to Illustrate Your Key Points: If you want to show that time was running out on the patient, use a sand timer to show the passage of time. The sand timer will show time slowly slipping away. You should refer back to the sand timer during opening statement to illustrate how precious time is, particularly in a delay in diagnosis case.

Ask for a Pretrial Instruction regarding the Burden of Proof: At least 2 weeks before trial, ask the Judge to give a pre-trial instruction to the jury about the burden of proof. Most jurors are only familiar with "beyond a reasonable doubt" as the burden of proof and they will likely apply that burden of proof to the evidence and testimony.

You want to make sure the jurors are aware—before the trial begins—that a much less demanding burden of proof applies.

Ask the Judge to Permit Note Taking by the Jurors: Note taking by the jurors is discretionary with the court. You should always ask the Judge to permit note taking by the jurors, as this will help them remember testimony. Otherwise, jurors' memory of testimony will be quickly forgotten.

Note taking by jurors scares the hell out

THE BEST THING THAT YOU CAN DO

What is the best advice you would give the young version of yourself? Platitudes don't help. You won't get away with advice based upon platitudes, such as "work hard" or "pursue your dreams".

My advice would be simple. Join an elite mastermind and leverage the knowledge and wisdom of high achieving lawyers. Don't make the same mistakes that other lawyers have made. Make sure you are the dumbest person in the mastermind and build relationships with other lawyers who have already created the roadmap for a successful law firm.

Sound simple? It is, but how many lawyers do this. Almost none...and that's a damn shame. Let's say you agree with this advice, but you don't

know how to join an elite mastermind. We created the Mastermind Experience (www.MastermindExperience.com) to solve this problem. Our mastermind meets every 3-4 months and brings together amazing law firm owners who have thriving firms. During the mastermind, we collaborate, brainstorm and have fun.

Relationships are formed that will last a lifetime. There's nothing like it.

(continued on back page)



Having a few laughs at the farewell dinner of the Florida mastermind. How can you fail with friends like this?

278 Wall Street • Kingston, New York 12401
Phone 845-303-1000 • Cell Phone 518-265-9131
Fax 845-802-0052

Email address:
jfisher@fishermalpracticelaw.com

(continued from page 3)

HOW IS THE MASTERMIND EXPERIENCE UNIQUE?

No Long Term Fees: We have no recurring or long-term fees. You pay a one-time fee to attend a mastermind and if you're not happy, you have no further obligation. Come and go as you wish.

New Members at Every Mastermind: We bring roughly 50% new members to every mastermind. You won't be rehashing the same ideas at every mastermind. You will meet new friends and learn new business ideas at every mastermind.

Lifetime Membership in Our Tribe: Even if you only attend one mastermind, you will be a part of our tribe for life. Our tribe shares ideas and referrals on a daily basis on a private Facebook page. Our tribe has 248 members from across the country (and Canada).

Exclusivity for Members: Every member of our tribe has 100% veto power over new members. If you do not want one of your competitors in our tribe, they will be excluded. All you have to do is ask.

Not everyone can join. We are exclusive and there is an application process. We are looking for members who are givers and have no limits in their abundance mindset. Truth is, this is hard to find, but when you find lawyers like this, they are invaluable to our tribe.

We Lose Money: We lose money on every mastermind. Why? Our mastermind was not created to make money. We simply want to assemble the leading law firm owners in the country. Trying to generate a profit is not consistent with our goals.

WHO BELONGS IN THE MASTERMIND EXPERIENCE?

About 75% of our members are plaintiff's personal injury lawyers, but our mastermind has nothing to do with the technical practice of law. This is a business mastermind. Our sole focus is on the marketing and management of law firms. We have law firm owners in immigration, trusts and estates and divorce law.

There are no revenue or income requirements for law firm owners. You simply have to be willing to share everything you know and give as much as you can. If you do this, you will be a perfect fit for our tribe.

Being part of the Mastermind Experience has easily been the best thing I've ever done in my career and I know it can have the same impact for you.



(above) "Bill "The Law Man" holding court at the Florida mastermind.

APPLY AT MASTERMINDEXPERIENCE.COM

Our next masterminds will be held in **Boston on Friday, April 12th, 2024** and **Sicily on Saturday, July 6, 2024**.

This decision can be transformative for your law firm's future. We've seen the impact first-hand and we know our tribe can do the same for you and your law firm. So, what do you think? If you have any questions, you can call John Fisher at 518-265-9131 or you can apply at www.MastermindExperience.com.

Let's make 2024 the best year for you and your law firm!

FROM JOHN'S CASE BOOK

\$2,500,000 Recovered for Injured Veteran in Truck Wreck

53-year old seat-belted passenger sustained a severe fracture of his left leg in a collision with a tractor trailer on a major interstate highway. The tractor trailer jackknifed and flipped over moments before the collision. The passenger was airlifted to a trauma center, where he was a patient for 113 days.

Practice Limited to the Representation of Seriously or Catastrophically Injured Persons