



Garden State CLE
 21 Winthrop Road • Lawrenceville, New Jersey 08648
 (609) 895-0046 fax- 609-895-1899
Atty2starz@aol.com

Video Course Evaluation Form

Attorney Name _____

Atty ID number for Pennsylvania: _____

Name of Course You Just Watched _____

Please Circle the Appropriate Answer

Instructors: Poor Satisfactory Good Excellent

Materials: Poor Satisfactory Good Excellent

CLE Rating: Poor Satisfactory Good Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

What criticisms, if any, do you have?

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

GARDEN STATE CLE LESSON PLAN

A 1.5 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

DEFENDING A MEDICAL MALPRACTICE CLAIM

WITH

**RICHARD RAMSEY, Certified Civil Trial
Attorney (Florida)**

Interviewed by

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

Certified Civil Trial Attorney Richard Ramsey shares his expertise and quarter century of experience in this all-encompassing discussion of zealously defending medical insurance carriers, doctors, and their patients presents unique challenges for trial advocates. This 1.5 credit CLE will offer you vital details on effective defense advocacy in a wide array of medical malpractice areas.

I. INTRODUCTION

- **Garden State Continuing Legal Education**
- **Panelists**
[Richard Ramsey, Esq. & Ramsey, Esq.]
- **Scope of Topic**

II. WHO IS THE CLIENT?

- **Insurance company or Doctor?**
- **The insurance company is merely the payor of the bill**
- **The Doctor is owed an undivided duty of loyalty**
- **Potential for ethical conundrums in this area of law; resolve by motion to withdraw if necessary. Conflicts arise rarely.**
- **Avoid coverage issues altogether**
- **Policy limits are critical to know for the defense attorney; there are excess recovery issues about which the client should be advised.**

- **The right to personal counsel. e.g. \$500,000 judgment and \$250,000 coverage**

- **Bad faith laws in many states are “pro Plaintiff” and apply in situations where the Defendant Insurer does not offer the limits and did not act fairly in settlement and must pay the excess**

- **In some states, consent to settlement by the physician is required**

- **Insurers like the consent requirement because it insulates them from liability; Doctors like it because there are ramifications to settlement that they may want to control**

- **Administrative Hearings often follow civil verdicts**

III. HOW DOES AN ATTORNEY DRUM UP THIS TYPE OF BUSINESS?

- **Seminars for clients**

- **Recommendations**

- **Teaching at other seminars**

- **Multiple methods**

- **Fees? Company policies vary. Sometimes you need to say no to a client whose pay rates are too low.**

- **Administrative Hearings often follow civil verdicts**

IV. EXPERTS

- **Cost is a major issue; in some cases multiple experts are required to prove/defend a case**

- **“Loser pays” states can require the plaintiff to pay the costs of experts**

V. BURDENS OF PROOF

- **The defense disproves the theories of the Plaintiff and must prove its own affirmative defenses, by a preponderance of the evidence.**

- **Duty/Breach/Causation/Damages**

- **Rarely is Duty an issue. Duty cases usually center around whether the Doctor-Patient relationship exists.**

VI. INSURANCE POLICIES

- **“Claims Made” versus “Occurrence policies”**
- **“Claims made” policies cover the physician if a claim is timely BROUGHT during a contract period. The carrier must provide coverage. And it must relate to professional skill. These policies do not cover slips and falls, etc.**
- **Statutes of limitation: they can be moving targets. The Discovery Rule applies in Florida and, as to children, it must be brought before age 8 as to birth injuries.**
- **“Occurrence” policies cover the defendant for a claim arising during the policy year, irrespective of when the claim is brought.**
- **Exclusions: fraud and sexual molestation; Doctor-assisted suicide as it is outside the scope of the lawful practice of medicine.**

- **Failing to disclose a “bad event”, coverage may be denied**
- **Insurance is NOT required in Florida, bonds may be required at hospitals where Doctors have privileges. Premiums are driving Doctors out of practice.**

VII. TRIAL

- **How do you show reasonableness?**
- **Start in jury selection**
- **Tailor your *voir dire* according to the case and the demographics of the county of trial**
- **Mock trials are often helpful, panelist does not prefer to use jury consultants**
- **Focus on the alpha leader of the jury**
- **Unanimous verdicts in Florida**
- **Alternates are used in Florida**
- **Peremptory challenges: 3 per side**
- **Challenges for cause are unlimited; jury selection is the game of Chess—with human pieces**

VIII. WORD ASSOCIATION SECTION

- **Misdiagnosis is a huge problem. Example: breast cancer. Multiple defendants possible.**
- **Surgical mistakes: tools and instruments left behind.**
- **Dental: were rare, now very common. Most involve nerve damage. More finger pointing.**
- **Bad baby cases: dead and brain damaged babies. You MUST build up a base of hope for the Plaintiff so that the jury will vote for your Doctor with belief that the victim has hope.**
- **No good for the defense can come from a crying jury.**
- **Psychiatric: violence. Shooting, assault etc.**

IX. EXPERTS

- **Finding them**
- **Choosing from among a group**
- **Impeachment**
- **Depositions: live or video hookup.**
- **Use of deposition transcripts at trial.**
- **Use of videotaped deposition**

X. OTHER ISSUES

- **Greed, is it a part of the case?**
- **Will Obamacare affect med mal cases?**
No.
- **Advice for Young Med Mal Plaintiff and Defense Attorneys**
- **Don't be blinded by greed, pick your cases carefully and don't throw money at undeserving cases**
- **Choose your law firm carefully too**