



Tackling Trial Delays, Social Inflation, and Skeptical Jurors in a Pandemic World

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More than [one in three](#) U.S. physicians will face a medical malpractice lawsuit in their careers. Therefore, healthcare providers may benefit from staying versed in key shifts in medical malpractice litigation:

1. Demographic Shifts Change Courtroom Dynamics

[More than half of Americans are now Millennials or younger.](#)

In a medical malpractice action, the defense team must evaluate whether younger jurors will not only consider the healthcare provider, attorney, and medical experts to be skilled, experienced, and knowledgeable, but also whether these participants are reflective of the community, relatable, trustworthy, and credible.

2. Medical Mistrust Meets Misinformation-Inspired Mistrust

The public mistrust of medical science has surged during the pandemic. We no longer see the “halo effect” (cognitive bias in which our overall impression of a person *positively* influences how we feel and think about their character) we witnessed during the latter half of 2020 stemming from our admiration for healthcare providers battling COVID-19. To the contrary, juries may be consciously rejecting the evidence or law to send a message to society, or because the law conflicts with their beliefs. The defense team must take steps to focus the jury back on the reliable science of medicine.

3. Trial Delays

Courts across the U.S. have experienced a steady increase in case backlogs due to the global pandemic. As a result, alternative dispute resolution (ADR) is garnering growing consideration.

When warranted by the facts and circumstances of the matter at hand, and by the desire of the healthcare provider to return to caring for patients free from the burden of an unresolved claim, mediation presents certain advantages. It is confidential, less expensive, more expeditious, and less disruptive than a trial. However, resolution at mediation also means the parties relinquish their day in court. Nonetheless, parties do not surrender any rights by agreeing to participate.

4. Social Inflation

In 2021, the average cost to resolve a claim handled by The Doctors Company increased 61 percent to \$115,000, compared with \$70,000 in 2007. This social inflation is largely driven by the erosion of tort reform, litigation funding by plaintiffs, distrust of corporations, and large verdicts.

Plaintiffs are better funded and more willing to spend greater amounts on their cases than ever before. Defendants must keep pace with plaintiff spending.

Some juries ignore the evidence and award large sums because “the corporation can afford it” or to “send a message.” Additionally, we are experiencing increasing attacks on tort reform by the plaintiff bar.

We’ve also become desensitized to the value of a dollar, resulting in juries being more willing than ever to award excessive amounts.

Strategies

- Take advantage of pretrial preparation. The Doctors Company offers Surviving Litigation Seminars and peer support to its members.
- Retain attorneys and experts who understand and can relate to today’s juries.
- Reduce the risk of social inflation by presenting a comprehensive damages defense.
- Where warranted, consider methods of ADR.
- Select a medical malpractice insurer with a proven track record of defending the practice of good medicine.