



Philadelphia's Medical Malpractice Case Management Program: Expectations for 2025

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Overview of today's webinar

▪ **Speakers**

- Daniel Anders, Administrative Judge, Trial Division
- Susan Schulman, Judicial Leader, Medical Malpractice Program
- Jim Beasley, Esquire, The Beasley Firm LLC
- Carolyn Bohmueller, Esquire, O'Brien & Ryan, LLP
- Clare Bello, Esquire, Enterprise Director – Claims & Insurance, Jefferson Health
- Beth Persun, Director of Claims Administration, Mcare Fund

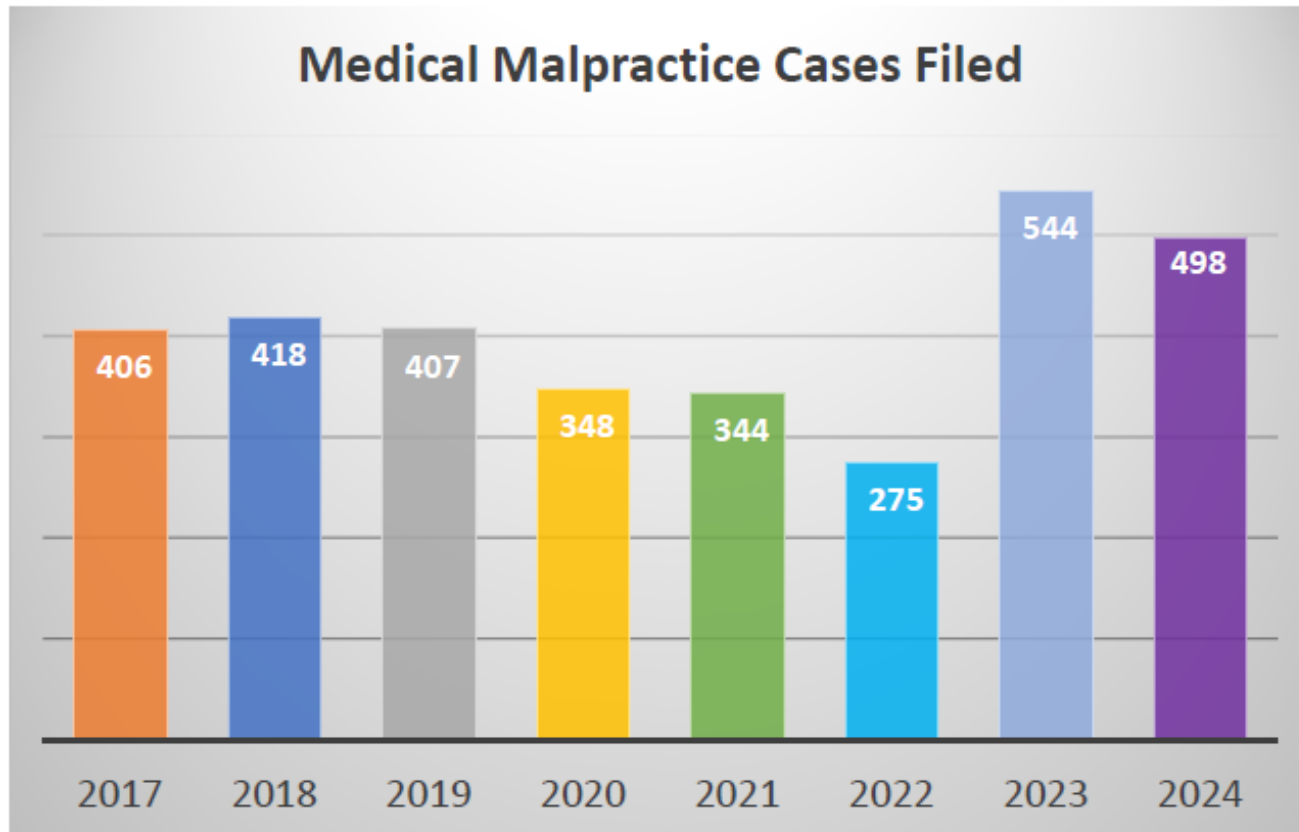
▪ **Topics for discussion**

- Judges Anders and Schulman will provide an update of the medical malpractice program including new case filings, settlement conferences, protocols for pretrial conferences and expected trial dates.
- Leading medical malpractice attorneys will offer first-hand experience and practical tips on how to comply with the case management protocols as well as the opportunity to settle cases earlier.
- Jefferson Health's Clare Bello will discuss Jefferson's approach to claims management and valuation of cases, to resolving litigated matters and to addressing discovery issues in Philadelphia
- Mcare's Beth Persun will provide a statewide perspective on medical malpractice claims as well as the Mcare resources available to assist in resolution of medical malpractice claims.

Medical Malpractice Cases Filed

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg./Mo.
2017	45	34	26	32	50	39	36	33	20	22	34	35	406	34
2018	44	31	29	37	33	33	42	29	36	47	35	22	418	35
2019	24	27	31	40	38	48	36	26	36	25	32	44	407	34
2020	29	33	29	31	24	28	33	36	19	33	30	23	348	29
2021	32	32	31	32	37	23	32	23	26	24	39	13	344	29
2022	18	24	23	24	20	26	21	21	28	20	25	25	275	23
2023	70	47	38	50	53	42	43	50	31	44	33	43	544	45
2024	42	42	51	59	55	57	46	54	36	56			498	50

Medical Malpractice Cases Filed



2024 Year in Review

- **Nearly 600 new medical malpractice cases filed in 2024**
 - 46% increase from new cases filed in 2017-2019 (pre-pandemic)
 - 10% increase from new cases filed in 2023 (post-venue rule change)
- **Earlier trial dates assigned at pretrial conference**
 - 90 days if no reasonable offer made at pretrial conference
 - or confidential authority to settle communicated to Judge Schulman
 - All other cases scheduled for trial within 6 months of pretrial conference unless exceptional circumstances
- **Fewer medmal trials scheduled per week in 2024**
 - 4 to 6 trials scheduled each week from June to December 2024
 - In comparison, 10 to 12 trials scheduled each week from August to December 2023
- **2024 YTD medical malpractice jury verdicts**
 - 73% defense/27% plaintiff in 2024 YTD
 - In comparison, 2014-2024 average of 63% defense/37% plaintiff
- **Increased monthly settlements of medmal cases**
 - 29.6 monthly settlements in 2024 YTD
 - Compare to 23.9 average (2023), 17.3 average (2022); 20.6 average (2019)

2024 YTD – 7 P and 19 D verdicts

VERDICT DATE	VERDICT TYPE	VERDICT AMOUNT
1/8/2024	Verdict for Plaintiff	\$ 750,000
2/22/2024	Verdict for Plaintiff	\$ 572,500
2/22/2024	Verdict for Plaintiff	\$ 10,000,000
3/28/2024	Verdict for Plaintiff	\$ 2,014,000
6/4/2024	Verdict for Plaintiff	\$ 2,500,000
6/17/2024	Verdict for Plaintiff	\$ 201,288
8/7/2024	Verdict for Plaintiff	\$ 44,894,867
		\$ 60,932,656

2023 – 10 P and 9 D verdicts

VERDICT DATE	VERDICT TYPE	VERDICT AMOUNT
2/14/2023	Verdict for Plaintiff	\$ 43,500,000
4/26/2023	Verdict for Plaintiff	\$ 182,737,791
4/26/2023	Verdict for Plaintiff	\$ 1,550,220
5/10/2023	Verdict for Plaintiff	\$ 25,993,331
6/30/2023	Verdict for Plaintiff	\$ 1,650,000
9/6/2023	Verdict for Plaintiff	\$ 400,000
10/3/2023	Verdict for Plaintiff	\$ 3,500,000
11/9/2023	Verdict for Plaintiff	\$ 250,000
11/28/2023	Verdict for Plaintiff	\$ 4,700,000
12/12/2023	Verdict for Plaintiff	\$ 14,000,000
		\$ 278,281,342

Looking ahead to 2025

- **Leveling off of new medical malpractice filings?**
 - average of 50 filings per month?
- **Increased number of pretrial conferences and trials**
 - By March 2025, the number of pretrial conferences will increase to 30 to 35 pretrial per month (currently 12-15 pretrials per month)
 - By June 2025, number of trials scheduled per week will increase to 6 to 8 trials each week (currently 4 to 5 trials per week)
- **Length of time from pretrial conference to trial date**
 - Anticipate scheduling trials within 6 months of pretrial conference
 - Within 90 days if no offer or confidential settlement authority
- **Double booking of trial counsel will continue unless more cases settle before pretrial conference**
 - Earlier attachment order controls, *i.e.*, the later attached case will be continued if attorney is attached on two cases starting on same day
 - 1% of cases scheduled for trial were impacted by double-booking, *i.e.*, the later attached case was continued
 - Where a trial attorney is concluding another trial, jury selection may be delayed for a few days to accommodate trial attorney's schedule

Doe Defendants & Transfers Out of County

■ Pa.R.C.P. 2005

- naming of unknown (John/Jane Doe) defendants in a complaint
 - Better title of Rule should be “known but unnamed” defendants
- Official Comment
 - “It is important to note that **designating a Doe defendant as a mere placeholder** or as use as a class of defendants, e.g., John Doe Defendants 1-10, is **not a valid use of Rule 2005**. The rule is not intended to create a practice of naming Doe defendants as a catch-all category in the event a probable defendant is not named in a complaint. Rule 2005 requires the information in the complaint concerning the Doe defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.”

■ Transfer out of county for venue/*forum non conveniens*

- 2024 YTD – 24 transfers of medical malpractice cases
- 2017 to 2024 average – 19 transfers of medical malpractice cases

Case Management Conferences

▪ 1-Year Conference

- Judge Schulman, with assistance from Peter Hoffman or Madeline Sherry, conducts a 1-year conference for every medical malpractice case filed. Discussion of discovery, experts and dispositive motions. All parties must file a 1-year conference memorandum. **Plaintiff must make a reasonable demand** in their 1-year conference memorandum.

▪ 90 day Conference

- A brief conference will be held on each case 90 days before trial, solely to determine whether the case should be referred for a JPT settlement conference.

▪ JPT Settlement Conference

- The JPT settlement program has been extraordinarily successful. We have 21 highly experienced medical malpractice attorneys who serve as JPTs, as well as 2 senior judges. There must be a reasonable demand and a reasonable offer/authority (may be confidential) in place for approval of JPT request. Parties may contact Judge Schulman's chambers at any time to request a JPT. Parties should **not** contact Pete Divon to request a conference.

▪ Trial Readiness Conference

- Judge Schulman conducts a Trial Readiness conference on the Monday or Friday prior to jury selection. Discussion of motions *in limine*, trial schedule and status of settlement discussions. Trial counsel must attend.
- If there is a total of more than 6 motions *in limine*, counsel must prepare a memo prioritizing the motions *in limine* by importance. All agreed upon motions *in limine* must be highlighted for the judge with a stipulated order.

Protocols for Pretrial Conferences

- **Pretrial conference will be scheduled only upon filing of certificate of compliance that all expert reports are exchanged**
 - Plaintiff's counsel must e-file a certificate of compliance as a prerequisite for Court to list the case for actual pretrial conference
 - Only file certificate of compliance if **all** expert reports were exchanged
- **Rule hearings for failure to file certificate of compliance**
 - Judge Schulman will schedule rule hearings for failure to file certificate of compliance regarding exchange of expert reports
- **If there is no offer at the pretrial conference, the case will be scheduled for trial within 90 days of the pretrial conference**
 - Counsel is expected to make a reasonable offer (or communicate authority confidentially to Judge Schulman), or state that it is a "no pay" case.
 - Where a reasonable offer or authority is communicated, trial will be scheduled within 6 months. Counsel may request referral to a JPT settlement conference. Where appropriate, counsel must confirm a tender to Mcare.
 - In all other cases, counsel should expect to go to trial within 90 days of the pretrial conference.
- **Notice to Mcare; copy of pretrial memoranda to Mcare**
 - Where notice of a claim has been provided to Mcare, the party providing notice shall send an electronic copy of all pretrial memoranda filed in the case to Mcare

Notice/Service of Petition on DHS

From Administrative Judge Woods-Skipper:

Pursuant to Phila. Cnty. Local Rule 2206(c), Petitioning attorneys **MUST** provide notice of settlement and a copy of the Petition filed to the Pennsylvania Department of Human Services. The attorney may provide service to DHS by emailing loakes@pa.gov.

Upon service, the Petitioning attorney may request a response from the DHS indicating there is no objection to the petition. If counsel receives this letter, they may file it as a “Praecipe to Attach” to the Petition and the twenty (20) day response period will be waived.

Please note that this requirement is separate from the DHS Lien Letter Requirement. The DHS Lien Letter simply indicates whether the Department holds a lien in the matter. The Lien Letter does not indicate whether DHS has an objection to the settlement.

Notice to Court of Settlement

- **How to notify the Court when your case settles**
 - Trial assignment email:
 - If this matter has settled or the parties have agreed to go to binding arbitration, counsel must immediately **e-file a letter in the conference submissions section** as well reply to the trial assignment email to advise the Court of the parties' settlement or agreement.
 - E-filing the settlement letter is the fastest and best way to notify the Court that a matter has settled.
 - You can also email the team leader and/or assigned trial judge, but that notice does not substitute for e-filing a settlement letter.
 - **Please e-file the settlement letter once the parties have agreed to the material terms of the settlement.**
 - Do not wait until settlement agreement has been fully executed or until settlement funds have been received.
 - Do not wait until petition to approve settlement has been approved.

Mcare's Case Evaluation

▪ **Mcare case evaluation**

- In every case where there is a tender, Mcare will confidentially evaluate the case for total risk/value regardless of Mcare's exposure
 - Where there is a \$10 million demand and 3 Mcare participants, the case evaluation will consider the total risk/value rather than the limit of Mcare's exposure based upon the 3 Mcare participants

▪ **Case evaluation where Mcare participant reached primary aggregate limit**

- Where primary aggregate limit is exhausted and Mcare is in "drop down" status (Mcare \$\$ left), Mcare will conduct a confidential case evaluation in conjunction with all parties including those that have not reached their aggregate limit
- Where only a hospital is sued – and that hospital has reached the primary aggregate limit and Mcare is in "drop down" status – Mcare will conduct a confidential case evaluation with the hospital

▪ **Timing of Mcare case evaluation when comprehensive claims information has been submitted to Mcare**

- Timely notification of tender to Mcare is essential; last minute notification of a tender to Mcare will likely delay any settlement
- Most case evaluations by Mcare can be performed within 2 weeks of request

Medical Malpractice Case Management Program:

Expectations for 2025

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Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Before filing a medical malpractice suit, know the specific rules
 - Certificate of merit – Pa.R.C.P. 1042.3
 - Qualifications of experts – MCARE Act
- www.courts.phila.gov/common-pleas/trial/civil

Medical Malpractice Program

Medical Malpractice Case Events Workflow

 [Medical Malpractice Case Events Workflow](#) (Updated 4/1/24)

Sample Case Management Orders/Scheduling Notices

 [Case Management Order](#)

 [One-Year Status Conference](#)

 [Prerequisite to file Certification for Medical Malpractice Cases](#)

 [Pre-Trial Conference](#) (Updated 7/13/23)

 [JPT Scheduling Conference](#)

 [90-Day Status Conference](#)

Forms

 [One-Year Status Conference Form](#)

 [Certification Regarding Exchange of Expert Reports \(Med Mal\)](#)

***CASE MANAGEMENT ORDER
MEDICAL MALPRACTICE CASE***

- 1-year status conference
- Discovery – 19 months
- Plaintiff's expert reports – 20 months
- Defense expert reports – 21 months
 - Plaintiff to file certification of exchange of expert reports – 21 months
- Pre-trial motions – 21 months

***CASE MANAGEMENT ORDER
MEDICAL MALPRACTICE CASE***

- Pre-trial Conference – 24 months
- Trial Ready – 25 months
- 90-day status conference
- Trial readiness conference

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Prior to filing suit, consider reaching out to explore interest in resolution pre-suit
- Being named in a lawsuit, even a writ, has lasting implications for healthcare providers
- Settlements also have implications for physicians.

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Stay ahead of your deadlines
- Cooperate with opposing counsel
- Think carefully about who you sue and who is needed:
 - Insurance coverage issues
 - Employer issues
 - More defendants means longer trials, harder to schedule a prompt trial
 - Individual healthcare provider defendants = consent requirement, not so with hospitals

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Comply with court deadlines
- Case management memorandum must include a demand – consider it carefully. This can set the tone for the case. If demand is unreasonable and not commensurate with damages, not likely to foster early settlement discussions.
- Defense – provide insurance information

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Prepare your discovery when you prepare the complaint. Get the discoverable materials from your client early, have them ready to turn over like in federal court.
- Defense will need time to gather information. They have not had case as long as plaintiff's counsel.
- Don't file boilerplate discovery requests except for what is actually needed (insurance, etc). Not all cases require the same discovery production.
- Meet and confer, like in federal court, if you have discovery disputes. Be practical.

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- If additional time needed for discovery, must file a motion for extraordinary relief prior to discovery deadline.
- Motions to compel must be filed prior to discovery deadline.
- Do not waste court's time with frivolous motions.

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Experts: be careful of the COM requirements, get the proper experts, take it seriously.
- Get your experts ready ahead of time, hopefully by the time of the one year status conference.
- Be prepared to sign the certification of exchange of reports after the expert deadlines.
- Rule hearings should be avoided at all costs.
- If cannot comply with expert deadline, file a motion for extraordinary relief.

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Settlement negotiations:
 - Be realistic
 - Be prompt in making the demand
 - Work with opposing counsel to get a resolution
 - Use the JPT program and help the JPTs help you get your case resolved
 - Don't use a jury pool as a negotiation tactic
- MCARE: understand Mcare!
 - Plaintiff – be aware of fiscal deadline (August 31) and payment deadline (December 31)
 - Defense – notify Mcare early and provide all necessary information for timely evaluation of the case

Philadelphia CCP Medmal Program: Practical Tips for Unfamiliar Attorneys

- Liens:
 - Begin your lien investigation early
 - Confirm a claim of ERISA is actually correct
 - Recognize the need to have all of the line information to give to MCARE along with the lien letter
 - Be careful of the ethical traps in your lien letter: make sure you read The Phila Bar Assn professional guidance committee opinion 2011-6 (January 2012)