



One year later: Update on Philadelphia's Medical Malpractice Case Management Program

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Overview of today's webinar

- Speakers

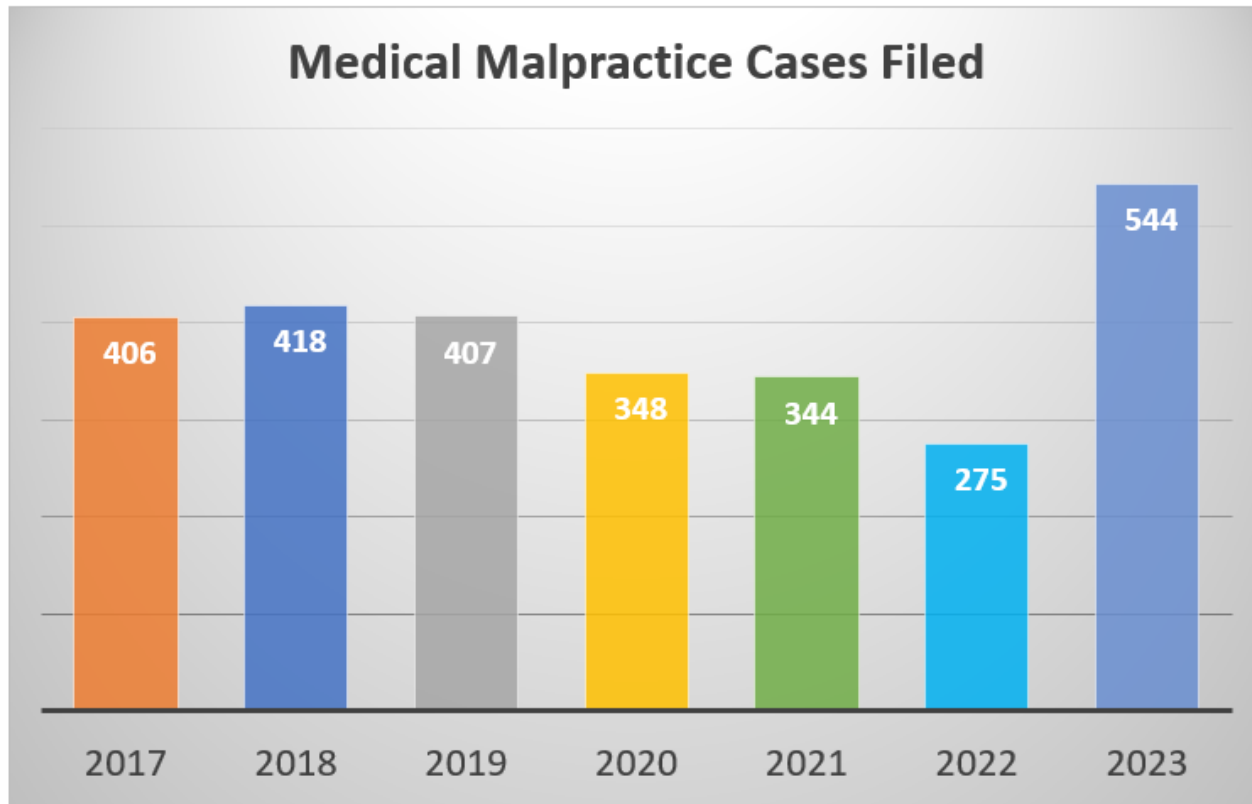
- Daniel Anders, Administrative Judge, Trial Division
- Susan Schulman, Judicial Leader, Medical Malpractice Program
- Rob Ross, Esquire, Ross Feller & Casey, LLP
- Heather Tereshko, Esquire, Post & Schell, P.C.
- Beth Persun, Director of Claims Administration, Mcare Fund

- 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 on compliance with the medical malpractice case management protocols as well as how to successfully resolve cases earlier.
- Mcare's Beth Persun will provide a statewide perspective on medical malpractice claims as well as the many resources available at Mcare 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



2023 Year in Review

- 33% increase in medical malpractice cases filed in 2023
 - 544 cases in 2023 compared to 410 cases filed in 2017-2019
- 27% increase in medical malpractice settlements in 2023
 - 23.9 settlements per month in 2023 compared to 18.76 settlements per month in 2017-2019
 - 61% increase from July to December 2023 (30.33 per month)
- Pretrial conference held only if expert reports exchanged
 - Started 2023 with average of 51.2 pretrials per month
 - Increased number of pretrials was result of COVID backlog
 - Ended 2023 with average of 20.6 pretrials per month
 - Lower number of pretrials was result of clearing of backlog plus adjustment to new case management protocols requiring exchange of expert reports
 - In 2024, expect an average of 25 pretrials per month
 - Fewer trials to schedule reduces likelihood of double booking

2023 Year in Review (cont'd)

- 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 will be scheduled for trial in 5 to 6 months from pretrial conference
- Fewer trials scheduled per week in 2024
 - Maximum of 8 medmal trials scheduled per week in 2024
 - Compare to mid-August to early December 2023
 - 10 to 12 medmal trials scheduled each week
- Shorter time between pretrial conference and trial
 - As of today, only 7 medmal trials scheduled after September 1, 2024
 - No case scheduled for trial more than 1 year from pretrial conference
 - Compare: As of January 1, 2022, 20% of medmal cases had trial dates more than 1 year from date of pretrial conference

Looking ahead to 2024

- Monitor monthly filings
 - 45 filings per month may be the “new normal” for Philadelphia
- Number of pretrial conferences will slightly increase as counsel adjust to requirements for pretrial conference
- Length of time from pretrial conference to trial date should remain within 6 months for most cases
- Double booking remains an option
 - Earlier attachment order controls, *i.e.*, the later attached case will be continued if attorney is attached on two cases starting on same day
 - Where a trial attorney is concluding another trial, jury selection may be continued for a few days to accommodate trial attorney’s schedule
 - Only 3 out of nearly 300 trials scheduled were impacted by double-booking

Conferences: 1-year; 90 day; JPT Settlement; Trial Readiness

▪ 1-Year Conference

- Judge Schulman will conduct a 1-year conference, along with JPTs Peter Hoffman and/or Madeline Sherry, for every medical malpractice case filed. Discussion of discovery, experts and dispositive motions. Plaintiff is required to make a reasonable demand in their conference memorandum.

▪ 90 day Conference

- JPTs Peter Hoffman and Dan Sherry will conduct a brief conference 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 program has been extraordinarily successful. We currently have 21 highly experienced medical malpractice attorneys who serve as JPTs, as well as 2 senior judges. Parties requesting a JPT conference must first be approved either by Judge Schulman, or by Peter Hoffman or Dan Sherry at the 90 day conference. Parties should not contact Pete Divon to request a conference.

▪ Trial Readiness Conference

- Judge Schulman will conduct 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 are required to attend.

Protocols for Pretrial Conferences

- Pretrial conference will be scheduled **only** if 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 Court will schedule the case 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, counsel may request referral to a JPT settlement conference. Trial will be scheduled within 6 months. 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.
- Protocols for medical malpractice case management program
 - Published on Court's website at <https://www.courts.phila.gov/common-pleas/trial/civil/>

Trial Readiness Conference

Dear Counsel,

The above matter is scheduled for jury selection in the next week. A brief Trial Readiness Conference is scheduled on March 4, 2024 at 3:30 pm with Judge Schulman. This is a mandatory conference and **trial counsel** must attend via the Zoom link below. You should be prepared to discuss the following:

- identification of critical Motion(s) in Limine;
- agreements regarding disposition of Motion(s) in Limine;
- any prior trial attachments.

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 as well reply to this email and attach the letter advising the Court of the parties' settlement or agreement.

Susan I. Schulman
Medical Malpractice Judicial Leader

Notice/Service of Petition to 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 this email advising 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 or fax 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 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
 - Most case evaluations can be performed within 2 weeks of request
 - In extraordinary circumstances, case evaluation performed within 1 business day