

# Medical Malpractice



Weber Gallagher represents a variety of clients in medical malpractice matters. We take cases from initial pleadings through trials in state and federal courts and also appear at arbitration proceedings and before appellate courts. The firm retains experts in various disciplines when litigating matters that are complex or involve catastrophic injury. However, we do so conservatively, only as needed, and with an eye toward costs.

Our clients include, but are not limited to:

- Dentists
- HMOs
- Hospitals
- Individual nurses, physical therapists and physicians of all specialties
- Insurers
- Physician groups
- Technicians
- Nursing home facilities
- Long- and short- term medical facilities

Our lawyers in the medical malpractice group defend healthcare providers in medical malpractice, licensure and Medicare fraud actions. They have extensive trial experience in state and federal courts. Many of our lawyers were formally, or still are, medical professionals including registered nurses, providing a unique perspective to the matters they handle and yielding better results for our clients.

## Experience

- Defended medical negligence action where the defendant physician was alleged to have been negligent in failing to properly diagnose and treat a woman's post- surgical infection, which followed a bilateral breast augmentation and tummy tuck procedure. As a result of infection, both breast implants were removed and the abdominal incision opened and allowed to heal by secondary intention.
- Defended a wrongful death and survival action arising from the care and treatment which the defendant physician provided to decedent, following admission to the hospital for what was diagnosed as pneumonia and possible CHF. After a five day admission, the patient was discharged. Within hours of his arrival at home, he experienced cardiac arrest. Despite appropriate resuscitation he could not be revived. A subsequently performed autopsy revealed the cause of death to be sudden cardiac death.
- Defended medical negligence action arising from a doctor's treatment of a woman's right forearm, slightly displaced inter-articular distal avulsion fracture. The doctor's treatment included a closed reduction and pinning of the right distal radial fracture. Post-operatively, the pin backed out and the fracture collapsed down and shortened. The patient was subsequently seen by another surgeon who repaired her right wrist deformity. The first doctor was alleged to have been negligent in performing the surgery without adequate fixation to prevent a collapse of the fracture.
- Defended medical negligence action arising from an inguinal hernia repair and re-do inguinal hernia repair which was performed on minor-plaintiff, initially in 2005 and for a second time in 2006. Several months following the second surgical procedure, it was determined that minor plaintiff's right testicle had infarcted. The defendant physician was alleged to have been negligent in failing to observe the blood supply to minor plaintiff's right testicle during the surgery, and in failing to diagnose insufficient blood supply to the testicle post-operatively and timely address the same.
- Defended a wrongful death and survival action arising from the stillborn death of the plaintiffs' daughter. Her mother had been a patient of the defendant physician for several pregnancies. During the pregnancy in question, Mom, who had a history of seizure disorder, experienced seizures. Laboratory

tests ruled out preeclampsia. She was seen in the defendant's office where she underwent a non-stress test which was reassuring. After experiencing increasing seizure activity, she was readmitted to the hospital at which time the baby was monitored and was noted to be in good condition. The defendant physician saw her prior to discharge and recommended follow up with neurology. Four days later, she presented to the office with reports of inability to feel fetal movement. An ultrasound revealed a fetal death.

- This wrongful death and survival action arises from the stillborn death of the plaintiffs' daughter. Her mother had been a patient of the defendant physician for several pregnancies. During the pregnancy in question, Mom, who had a history of seizure disorder, experienced seizures. Laboratory tests ruled out preeclampsia. She was seen in the defendant's office where she underwent a non-stress test which was reassuring. After experiencing increasing seizure activity, she was readmitted to the hospital at which time the baby was monitored and was noted to be in good condition. The defendant physician saw her prior to discharge and recommended follow up with neurology. Four days later, she presented to the office with reports of inability to feel fetal movement. An ultrasound revealed a fetal death. This case was tried in the Court of Common Pleas of Allegheny County in September 2011 and resulted in a defense verdict for the doctor.
- Secured summary judgment for two physicians and a physician's practice group in a wrongful death, medical malpractice case by presenting an argument that physician's actions, while allegedly below the standard of care, were outside of the factual chain of causation. Summary Judgment was granted despite the presence of expert reports against the clients.
- Successfully retried a case remanded by the Supreme Court of Pennsylvania involving the Mental Health Procedures Act by representing a Psychiatrist performing a Psychiatric Evaluation on a patient with mental health disorders during his admission to a drug detoxification and rehabilitation facility. The lawsuit filed alleges that the "cocktail" of medications prescribed for detoxification created a lethal combination for the plaintiff and that a cardiac condition was missed by the ED staff. As a Psychiatrist performing a Psychiatric Evaluation, the Mental Health Procedures Act (MPHA) was implicated, increasing the burden of proof for the Psychiatrist to that of actions of willful, wanton, reckless conduct. The Trial Court ruled that the prior Supreme Court Opinion prevented the application of the MPHA in this instance. The burden of proof remained as ordinary negligence as to all defendants. The jury rendered a unanimous defense verdict in approximately 45 minutes. No appeal was filed.
- Secured a defense verdict for two defendant Radiologists in a case where they were alleged to have missed the diagnosis of a thoracic aortic aneurysm on the abdominal CT scans that they interpreted 6 and 18 months before plaintiff's demise. The defense of this case surrounded the fact that a thoracic mid-ascending aortic aneurysm cannot be seen from an abdominal CT scan.
- Secured dismissal before trial on behalf of a surgeon who allegedly ligated the plaintiff's right ureter during surgery resulting in a fistula and the need for repair. This matter also involved allegations that our client did not obtain proper informed consent prior to the surgery.
- Secured dismissal on behalf of an orthopedic surgeon who was alleged to have placed a wrong-sided hip prosthesis in a Plaintiff during hip replacement.
- Represented health care providers in a matter involving the application of the Prison Litigation Reform Act on appeal to the Third Circuit.
- Attained a defense verdict for a Family Practice Physician who allegedly delayed diagnosis of Prostate Cancer in a 65-year-old man with an elevated PSA level. The two-week trial was held in Montgomery county. Plaintiff alleged that, by the time of diagnosis, he had an aggressive Stage IV, metastatic cancer and died before the date of trial.
- Attained a defense verdict as the only remaining defendant, representing a Psychiatrist who evaluated a

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29-year-old man that was admitted to the Step Down Unit of the hospital with hallucinations, delusions, erratic behavior, and a very high ammonia level when brought to the ER. Six hours after the psychiatric exam, the plaintiff got up from the bed where he was lying with his girlfriend, ran across the hall, and jumped through a 4th story window, landing on the 2nd-floor roof. He survived, but with many injuries. All other parties settled before and during the trial, which took two weeks to complete.

- Successfully obtained affirmation of a defense verdict before the Superior Court. In their appeal, the Plaintiff argued that the jury's findings were against the weight of evidence and that the trial court had erred by not instructing the jury on alteration of medical records. The Superior Court rejected the Plaintiff's weight of the evidence claims and held that a request for an adverse inference charge was unsupported.
- Attained a defense verdict in an almost two-week trial completed in York, PA. The plaintiffs were a married couple that alleged negligence against a Christian Counselor who treated the wife at her church as she regained repressed memories related to repeated and profound sexual abuse from the time she was four years old through adulthood.