

Writing a Demand Letter in Medical Malpractice Claims

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NOTE: Do not attempt a medical malpractice claim alone! These claims require the expertise of an experienced attorney. If you or a loved one is the victim of medical malpractice, [seek legal advice](#) as soon as possible.

Insurance companies vigorously defend most medical malpractice claims. It's quite rare for a malpractice claim to be settled without first filing a lawsuit. Doctors pay staggering amounts of money in malpractice insurance premiums, and they will seldom admit to having been negligent. Their reputations and livelihoods are at stake.

As a result, insurance claims adjusters rarely get to [negotiate settlements](#). If both parties reach a settlement, it will happen only after your attorney files a lawsuit. Any further settlement negotiations are between your attorney and the insurance company's attorneys.

At or near the time your attorney sends her notification letter to the doctor, she will also file the medical malpractice lawsuit. When your attorney files the lawsuit, she'll follow the rules of evidence in your state and the guidelines for pretrial discovery.

Pretrial discovery includes taking depositions from you and your doctor, witnesses and possibly medical experts. It also gives your attorney the right to subpoena business and medical records. These items are important evidence your attorney needs to fight your case. With few exceptions, she won't get necessary evidence without first filing a [lawsuit](#).

After the attorneys take depositions, review documents, and conduct other pretrial discovery, both sides will have a clearer view of the case's strengths and weaknesses. The evidence discovered at this time is often what comes out during a trial.

Relying on the evidence so far, your attorney will write a letter demanding what she believes is a [fair settlement amount](#). Because a demand letter becomes part of negotiations, your attorney will demand the maximum amount she believes a jury might award. She knows it's unlikely the insurance company will agree to pay that amount, but it is a starting point.

The demand letter will take into account all the evidence your attorney gathered during discovery. It will also summarize the facts of the case, the documentary evidence, and the information in the depositions.

Your attorney completes the letter by listing your damages. These include your medical bills, out-of-pocket expenses, and any lost wages.

She also includes an amount she believes you deserve for the [pain and suffering](#) you endured and may endure in the future. Normally, your attorney will demand an amount she knows is excessive. She'll do this in anticipation of the back-and-forth negotiations that will take place with the insurance company's attorneys.

Although most medical malpractice claims are settled before trial, there's no guarantee the insurance company's attorneys will agree to negotiate a settlement. There are occasions when they might believe malpractice didn't occur, or if it did, your attorney doesn't have enough evidence to prove it.

Many claims of malpractice are subjective and open to interpretation. There are times when an insurance company refuses to give any compensation. Sometimes the evidence of malpractice isn't strong enough to convince the insurance company to settle. Or if it does agree to settle, it's for a much lower amount than you'd accept.

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December 6, 2012

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Re: Ms. Nora Fairfax vs. James Clanis M.D.
Cause Number 12-6773A
297th District Court
Dallas County, Texas

FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Vatim:

Pursuant to our telephone conversation of December 3rd, 2012, please accept this as our formal demand for settlement in the above-referenced matter.

FACTUAL SUMMARY

Ms. Nora Fairfax was a patient of your insured client, James Clanis M.D. On July 6, 2012, Ms. Fairfax presented to Dr. Clanis symptoms of high fever, lethargy, dizziness, severe nausea and vomiting. She made clear to Dr. Clanis she had suffered from these symptoms since on or about June 10, 2012. Against all medical protocol Dr. Clanis failed to examine Ms. Fairfax. He dismissed her after spending less than five minutes speaking with her. He failed to order a blood workup or urinalysis.

On July 11, 2012, Ms. Fairfax lost consciousness. An ambulance took her to Misericordia Hospital in Dallas, Texas. After the emergency doctor ordered a blood and urinalysis workup and received the results, he diagnosed Ms. Fairfax with a staph and strep infection. The infection had already spread to her liver, causing irreparable damage. Further testing revealed Ms. Fairfax suffered from toxic shock syndrome. Unfortunately, the delay in treatment from July 6, 2012 until July 11, 2012, resulted in Ms. Fairfax suffering irreparable damage to her liver.

Dr. Clanis' failure to exercise reasonable medical care was reckless and grossly negligent. As a result of his actions and omissions our client Ms. Fairfax suffered irreversible damage to her liver.

EVIDENCE

Summary of Deposition of Ms. Claudia Martinez taken November 2, 2012

Ms. Claudia Martinez is a twenty-four-year-old woman. On July 6, 2012, she was employed by Dr. Clanis as a Licensed Vocational Nurse. In her deposition Ms. Martinez testified that part of her job duties was to take the blood pressure and temperature of all patients before the patients saw the doctor. Additional job duties included her setting up appointments at a local laboratory for patients' blood tests and urinalysis. She testified she made these appointments only when Dr. Clanis ordered them.

She stated on July 6, 2012, or at any time thereafter, Dr. Clanis never told her to set up an appointment for the blood tests or urinalysis for Ms. Fairfax. Ms. Martinez stated when Ms. Fairfax came into the office on the morning of July 6, 2012, she was pale and perspiring profusely. Ms. Martinez took Ms. Fairfax's blood pressure and temperature. She stated she remarked to Ms. Fairfax that her blood pressure was 100/60, and her temperature was 103 degrees. Ms. Martinez stated she noted the blood pressure and temperature results in Ms. Fairfax's file and handed the file to Dr. Clanis.

Summary of Deposition of James Clanis M.D. taken November 11, 2012

Dr. Clanis is a sixty-one-year-old man. He is currently licensed to practice medicine in the state of Texas. His practice is limited to gynecology. In his deposition Dr. Clanis testified on July 6, 2012, he arrived at his office at approximately 10:30 a.m. He stated he was running late that day and as a result overlooked his nurse's (Ms. Martinez's) notation of Ms. Fairfax's blood pressure and temperature in her file. He further testified at the time he saw Ms. Fairfax she didn't appear to be in any discomfort. He stated Ms. Fairfax failed to tell him about her symptoms. If she had, he testified, he would have ordered a blood workup and urinalysis.

Dr. Clanis testified he remained with Ms. Fairfax for over five minutes, but was unsure how much longer that was. Dr. Clanis testified although he is a gynecologist he never diagnosed a patient with toxic shock syndrome. He admitted under oath he wasn't fully aware of what toxic shock syndrome was and only began to read about it after he was served with the lawsuit in this case.

Summary of Deposition of Ms. Nora Fairfax taken November 18, 2012

Nora Fairfax is a forty-one-year-old woman. In her deposition Ms. Fairfax testified she began to feel ill on or about June 10, 2012. Her symptoms, she stated, began as a stuffy nose and persistent headache. Over the next week to 10 days her symptoms worsened. She began to suffer from a high fever, lethargy, dizziness, severe nausea and vomiting.

Ms. Fairfax testified on July 6, 2012, she kept her appointment to see Dr. Clanis at his office in Dallas, Texas. Although her appointment was scheduled for 9:30 a.m., she didn't see Dr. Clanis until approximately 11:00 a.m. Ms. Fairfax testified the nurse, Ms. Martinez, took her blood pressure and temperature and remarked to Ms. Fairfax her blood pressure was 100/60, and her temperature was 103 degrees.

Ms. Fairfax testified upon seeing Dr. Clanis, he appeared distracted and unsettled. She said she told Dr. Clanis all of her symptoms. The doctor, without performing any visible examination, told her it was "probably the flu" and recommended she go home, drink plenty of fluids and rest. She stated the doctor told her she would begin to feel better in a matter of a few days. Dr. Clanis, she stated, never mentioned a blood test or urinalysis. After spending less than five minutes with her, Ms. Fairfax stated Dr. Clanis left the room and did not return.

Ms. Fairfax testified that on July 11, 2012, when she rose from her bed at about 7:30 a.m., she "passed out." The next thing she remembers, she said, was waking up in the hospital. Ms. Fairfax testified she later learned her roommate, Ms. Sara Neville, called 911, and an ambulance took Ms. Fairfax to Misericordia Hospital in Dallas, Texas.

Deposition of Henry Siken M.D. taken December 1, 2012

Henry Siken is a physician licensed to practice medicine in the state of Texas. In his testimony he stated he was on call at Misericordia Hospital on July 11, 2012. At that time he was called to the emergency room and evaluated Ms. Nora Fairfax. At the time Ms. Fairfax had regained consciousness. Dr. Siken testified she presented with a fever of 104 degrees, lethargy, dizziness and severe nausea. Dr. Siken immediately ordered a blood workup and urinalysis. He ordered additional tests as well.

Approximately two hours later, Dr. Siken stated he received the results of Ms. Fairfax's tests. His testimony included

references to blood cell count and its relationship to toxic shock syndrome. Further tests indicated Ms. Fairfax was suffering from a staph infection and toxic shock syndrome. Additional testing, including but not limited to a CAT scan, revealed the staph infection had invaded Ms. Fairfax's liver and caused irreparable damage.

Dr. Siken testified the delay in treatment from July 6, 2012, until July 11, 2012, severely exacerbated Ms. Fairfax's condition. Dr. Siken's medical opinion was the antibiotics could have successfully treated the staph infection. It was his medical opinion the liver damage was avoidable if Dr. Clanis had ordered a blood workup and urinalysis. Doing so, he testified, was reasonable medical protocol for the symptoms Ms. Fairfax presented to Dr. Clanis on July 6, 2012.

DEMAND

The evidence gained from the witness deposition testimony and medical records information in this case plainly shows Dr. Clanis' actions and omissions were reckless and grossly negligent. It is clear that medical malpractice occurred, and as a result Ms. Fairfax's liver was irreparably damaged. Due to her injuries Ms. Fairfax has not been able to work at her profession as a stockbroker. It's estimated she won't be physically capable of returning to work for at least the next 12 months.

To date our client has suffered damages in the following amounts:

Past medical expenses:	\$350,000
Future medical expenses:	\$100,000
Past lost wages:	\$125,000
Future loss of earning capacity:	\$300,000
Future loss of benefits:	\$185,000
Pain and suffering:	\$1,500,000
Total damages to date:	\$2,560,000

Although we would prefer to settle this matter under the terms set out above, we stand fully ready to proceed to trial. If a trial becomes necessary, we will revoke our settlement demand and seek damages in excess of those presently demanded.

Yours truly,

Jacqueline Pierce
Attorney for Ms. Nora Fairfax

In most cases, settlement negotiations begin in earnest after your attorney sends the demand letter. At this time, she has a good idea of what your case is worth and how to best [negotiate](#) your settlement. Now she rolls up her sleeves and gets to work.

How Much Is Your Claim Worth?

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