

Argument: Crafting your Case

What follows below are descriptions and examples of the pivotal moments in any medical malpractice case. While reason and analysis are keys to victory in motions and other out-of-court battles, often what are more important in the courtroom is credibility, persuasion, and showmanship.

The Open and Close

Plaintiffs will be offered the change to give the first opening and closing statements in medical malpractice cases. The opening statement should accomplish a number of things. It should offer a path of the entire the case for the jury to easily follow, hinting at argument points, testimony, and evidence to come. However, it should not argue or proffer evidence that will not be proven later at trial because these both run afoul of trial rules. The closing statement, in turn, should make inferences from the trial to best bolster the plaintiff's case. Also, it should illustrate how the jury instructions favor finding for the plaintiff. Yet, plaintiffs' lawyers are not allowed to go beyond the scope of evidence proven at trial in their closing statements. Both statements should be clear, concise, and organized. Remember, the burden in civil cases is a preponderance of the evidence, so you do not have to win by a lot but opening and closing statements can put your case over the top! Here is an example of each:

[Opening Statement in Medical Malpractice Case](#)

[Closing Argument in Medical Malpractice Case](#)

Examinations: Direct and Cross

Plaintiffs' lawyers in any field put on their cases through witnesses via direct examinations and challenge the cases of their opponents via cross-examinations of their witnesses. With regard to direct examinations, lawyers must structure their questions so as to elicit the points on the path of their case from their witnesses. Preparation is key. Plaintiffs' lawyers should give their witnesses an indication of the length and setting in which they will be supposed to testify. Instill in them the

fact that it is not so much important what they say as much as how they say it and that they are believed by the jury. They cannot be led on the stand by the attorney in direct examinations (meaning the lawyer cannot suggest the answer within the question) but they can be asked questions of fact, called to identify things, or asked their opinions if they are experts. While directly examining witnesses, lawyers should be ready to answer the objections of defense counsel on grounds such as hearsay, relevance, leading, narrative answer, and assumes facts not in evidence among other objections.

During cross-examinations, lawyers need to attack the credibility of the witness but must do so in the confines in which the opposing lawyer direct examined him or her. Generally, the methods of impeaching a witness include some of the following: bias, inconsistency, or character. Attach the story that the opposing counsel is telling through his or her witnesses but remember that the jury is watching so be gracious. Here are some sample examinations from Illinois medical malpractice cases:

[Examination 1-direct and cross of doctor in medical malpractice suit](#)

[Examination 2-direct and cross of expert witness in medical malpractice suit](#)

[Examination 3-direct of attending nurse in medical malpractice suit](#)

[Examination 4-direct and cross of orthopedic surgeon in medical malpractice suit](#)

Jury Instructions

After both sides have concluded their cases, the judge will give the jury instructions for reaching the verdict. These instructions will include the relevant issues, law, and definitions they must use in finding who is liable, if anyone. While lawyers from both sides can suggest instructions, the judge has ultimate authority on what they will include. However, lawyers can challenge these instructions on appeal. Then, using only the judge's instructions and evidence offered, the jury must come to a verdict by determining the witnesses' credibility and all factual issues presented. Here are sample jury instructions from Illinois medical malpractice cases but see Illinois Pattern Jury Instructions for standardized forms (Civil Nos. 105.01 – 105.11):

[Instructions 1-sample plaintiff's version in medical malpractice suit](#)

[Instructions 2-sample from medical malpractice suit](#)

[Instructions 3-model for medical malpractice suit](#)