Tips For Opening and Closing Statements In Medical Malpractice Cases

While opening and closing statements in medical malpractice cases are not supposed to influence a jury’s decision in reaching a verdict, they often do shape the jury’s perceptions regarding the evidence and the general story of the case. In these ways, they are incredibly important. This page is designed to give you some background and advice about preparing both of them.

The Opening

Before thinking about how to give a great opening statement, think about it from the jury’s perspective. Most likely, they are completely new to the facts and completely ignorant of the law. They may have predispositions to have sympathy for your client or for the defendant. It is also very likely that they come from very different backgrounds. As a plaintiff’s lawyer in a medical malpractice case your goal over the whole trial is to be their tour guide, taking them on the path of the case from evidence to testimony to the conclusion that you need. Therefore, in the opening statement, provide a glimpse-or trailer-of what they will see. Opening statements are not a place to argue, mention the law governing the case, or mention facts that will not later be proven at trial. Here is a further list of things to do and avoid in your opening statement.

DO

- Do prepare. This is the most important thing you can do before giving your opening statement. Practice in front of a live audience without any notes. Also, write several versions of your statement so that you can whittle it down to its most simplest and direct form.
- Do tell the jury its job. This might seem obvious but for some on the jury they may not know their specific role. It is your job to inform them of this within the context of your case and what they need to do for you.
- Do mention major points of evidence and testimony. You will present your case through evidence and witnesses’ testimony. By foreshadowing
what they will see, you paint a path for them to follow so that they can understand the dynamics later at trial.

- Do construct the accident. With simplicity and play-by-play analysis, tell the jury about the accident and the major players involved. Do not paint anyone as morally bad. Just draw out the negligence.

- Do tell them to find for your client for specific reasons. Highlight the difference between civil and criminal actions and note that your case involves the former with a plea for damages.

**DON’T**

- Don’t be aggressive or hostile. Be polite and positive. This will help you develop a bond with the jury. Being a contrarian will build a wall between you and the jury box.

- Don’t be longwinded or technical. For your jury to be convinced, they must understand you. So, try and break down complex terms and issues into digestible parts. Also, speak directly and shortly. This will be more memorable and convincing.

- Don’t comment on jury instructions. Typically it is a no-no to relate the evidence to the relevant standard of law. This is out of bounds and will get you into trouble.

- Don’t undermine your words. While opening and closing statements are not evidence, they are important in shaping the minds of the jury. Therefore, do not use language suggesting your opening statement is unimportant or merely a preamble to the real show.

- Don’t ignore glaring weaknesses in your case. The number-one goal in your opening statement is to build a relationship with the jury. By ignoring a major weakness in your case, it lets the defense present it on its terms and also makes you appear untrustworthy or not credible.
The Close

Closing arguments might be the most recognizable and popular to the general public. They are normally the dramatic parts of great movies. During them, lawyers step outside of the case and become the real stars as they try and steal the hearts and minds of the men and women in the jury. In real life, there are practical ends to be had in addition to delivering a stirring speech. This is the end of the trial. You must neatly package your case as a gift and deliver it. In doing so, highlight the major points on the path of your story to remind them why they should reach the conclusion for which you are advocating. Try and summarize your points and reject the other party’s points in a convincing, sincere, and interesting manner. Maybe structure the case as a simple three-part story with no possible ending but the one you offered: finding for your client.

Here are some more tips to help you structure your closing argument:

**DO**

- **Do use jury instructions.** While not advisable in opening statements, closing statements are a good setting to discuss how placing the evidence within the context of the jury instructions should produce a favorable verdict for the plaintiff.
- **Do prepare.** As in opening statements, it is incredibly important to prepare and practice for your closing statement. Test out how certain sections play on a live audience and how your structure affects the perceptions of the case’s story.
- **Do repeat and contextualize.** Do no merely restate the evidence that was presented. Discuss its place within the overall story of the case and its favorable nature to your client.
• Do look back. Briefly mention your opening statement and remind the jury where they came from and how they got exactly to the destination that you said they would.

• Do retell the story. Repeat your major points of the case then illustrate how, at each point, they are supported with evidence.

**DON’T**

• Don’t forget style. Especially with long trials, the jury may be suffering from exhaustion or even boredom. Be simple, direct, and swift in advancing your conclusion.

• Don’t ignore the defense. If the defense has strong points, note them sincerely but then quickly dismiss them and mention how that does not disturb the theory of your case.

• Don’t misuse facts. Do not under any circumstances use facts or evidence that was not proven at trial.

• Don’t misstate the law. While noting the jury instructions is permitted, do not ever misstate the law. This is objectionable material and will make you lose credibility with the jury or even trust.