

**MEDICAL
MALPRACTICE
IN
NEW YORK**

THIRD EDITION

**Editor-in-Chief
Robert Devine, Esq.**

New York State Bar Association Continuing Legal Education publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: CLE Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2009
New York State Bar Association
All rights reserved
ISBN: 1-57969-267-2
Product Number: 41309

TABLE OF CONTENTS

Preface	xxv
Chapter 1 Was Matt Right? (The Advantages of Honesty in Trying a Case)	1
<i>Henry G. Miller, Esq.</i>	
Chapter 2 Practical Application of the <i>Frye</i> Hearing in Medical Malpractice Actions	9
<i>Steven B. Samuel, Esq.</i>	
Chapter 3 Technology as a Tool of Persuasion in Medical Malpractice Cases	25
<i>W. Russell Corker, Esq.</i>	
Chapter 4 Deposing the Plaintiff.....	43
<i>E. Marc Hyman, Esq.</i>	
Chapter 5 The Deposition of the Defendant-Physician	67
<i>Thomas J. Principe, Esq.</i>	
Chapter 6 Plaintiff’s Jury Selection	83
<i>Richard Shandell, Esq.</i>	
Chapter 7 Defendant’s Jury Selection.....	91
<i>Bruce G. Habian, Esq.</i>	
Chapter 8 Opening Statements in Medical Malpractice Cases: Plaintiff’s Perspective	101
<i>Donald Drew Goldberg, Esq.</i>	
Chapter 9 Preparing to Cross-Examine Plaintiff’s Medical Expert	113
<i>Clifford A. Bartlett, Jr., Esq.</i>	
Chapter 10 Cross-Examination of Defendant’s Expert	125
<i>Paul Simonson, Esq.</i>	
Chapter 11 Proving Plaintiff’s Case	149
<i>Stanley A. Landers, Esq.</i>	
Chapter 12 Medical and Hospital Record Evidence	161
<i>Martin B. Adams, Esq.</i>	
Chapter 13 Summation: In the End	211
<i>Eleni Coffinas, Esq.</i>	
Chapter 14 The Art and Craft of the Defense Summation.....	229
<i>Bruce M. Brady, Esq.</i>	

Chapter 15	The Jury Charge	243
	<i>Thomas F. Moore, Esq.</i>	
	<i>W. Scott Schneider, Esq.</i>	
Chapter 16	The Precise Art of Preservation.....	257
	<i>Barbara DeCrow Goldberg, Esq.</i>	
	<i>Richard J. Montes, Esq.</i>	
Chapter 17	Are Juries Fair to Physicians?	279
	<i>Linda S. Crawford, J.D.</i>	
Chapter 18	Statutory Law in Medical Malpractice	287
	<i>Elliott C. Winograd, Esq.</i>	
	<i>Amy G. London, Esq.</i>	
Chapter 19	The Expert Witness for the Plaintiff in a Medical Malpractice Case	313
	<i>Steven E. Pegalis, Esq.</i>	
Chapter 20	Anatomy of a Plaintiff’s Medical Malpractice Case: Intake to Note of Issue.....	327
	<i>Steven E. North, Esq.</i>	
	<i>Daniel Kramer, Esq.</i>	
Chapter 21	The Physician-Patient Privilege in Medical Malpractice Litigation	423
	<i>Raymond W. Belair, Esq.</i>	
Chapter 22	Hospital Quality Assurance under New York State Law	459
	<i>Jeffrey C. Gerson, Esq.</i>	
Chapter 23	Medication-Related Malpractice Claims.....	485
	<i>Robert P. Esgro, R.Ph., J.D.</i>	
Chapter 24	The Brain-Damaged Baby Case from Defendant’s Perspective.....	497
	<i>Peter C. Kopff, Esq.</i>	
Chapter 25	Practical Tips for the New Malpractice Attorney	513
	<i>Gil Choi, Esq.</i>	
Chapter 26	Evaluating the Life Care Plan Before and During Trial—A Defense Perspective.....	529
	<i>Nicholas J. Marotta, Esq.</i>	
Chapter 27	War Stories: The Oral Tradition of the Trial Bar.....	561
	<i>David Pollack, Esq.</i>	
	Contributor Biographies	577
	Table of Authorities	587
	Index	609

DETAILED TABLE OF CONTENTS

Preface	xxv
---------------	-----

Chapter 1 Was Matt Right? (The Advantages of Honesty in Trying a Case)

Henry G. Miller, Esq.

[1.0]	I.	First Mentor	3
[1.1]	II.	The Gospel According to Matthew	3
[1.2]	III.	A Different Gospel	3
[1.3]	IV.	The Real World	4
[1.4]	V.	Our First Cases	4
[1.5]	VI.	More Than Ethical: Professional	5
[1.6]	VII.	One Nice Guy	5
[1.7]	VIII.	The Cynic Replies	6
[1.8]	IX.	The Answer According to Matt	6
[1.9]	X.	A Tale of Two Lawyers	7
[1.10]	A.	Evel Sinic	7
[1.11]	B.	Dawn Goode	8
[1.12]	XI.	The Final Word	8

Chapter 2 Practical Application of the *Frye* Hearing in Medical Malpractice Actions

Steven B. Samuel, Esq.

[2.0]	I.	History of <i>Frye</i>	11
[2.1]	II.	Basis for <i>Frye</i> Hearing	11
[2.2]	III.	Admissibility of Novel Scientific Evidence	12
[2.3]	IV.	Case Study of Potential Issues Related to Motion for <i>Frye</i> Hearing	14
[2.4]	A.	Background	14
[2.5]	B.	Basis for <i>Frye</i> Hearing Application	14
[2.6]	C.	Key Issues	15
[2.7]	D.	Basis for Plaintiff's Opposition to Application ..	16
[2.8]	E.	Outcome	17
[2.9]	V.	Misuse of <i>Frye</i> Hearing	18
[2.10]	VI.	Considerations in Determining Applicability of <i>Frye</i>	19
[2.11]	A.	Admissibility of Similar but Not Identical Literature Regarding Causation	19
[2.12]	B.	Use of Supporting Literature Not Directly on Point in Other Cases	22
[2.13]	VII.	Use of <i>Frye</i> Hearings in New York	22

Chapter 3 Technology as a Tool of Persuasion in Medical Malpractice Cases

W. Russell Corker, Esq.

[3.0]	I.	Introduction	27
[3.1]	II.	Importance of Demonstrative Evidence	27
[3.2]		A. Types of Demonstrative Evidence.....	28
[3.3]		B. Advantages of Presentation Software.....	29
[3.4]	III.	Hospital and Medical Records.....	30
[3.5]	IV.	Basic Equipment.....	31
[3.6]	V.	Basic PowerPoint for Lawyers	32
[3.7]	VI.	Emphasis Tools: Get in Focus	32
[3.8]		A. Exhibit Numbers.....	33
[3.9]		B. Titles	33
[3.10]	VII.	Bullet-Point Presentations	34
[3.11]	VIII.	Images and Documents (Hospital Records)	34
[3.12]		A. Callouts.....	35
[3.13]		B. Importing Images or Documents into Slides	36
[3.14]		C. Use of Schedules or Summaries	36
[3.15]	IX.	Timelines	37
[3.16]	X.	Flow Charts.....	38
[3.17]	XI.	Imaging Studies	38
[3.18]	XII.	Trial Graphics	39
[3.19]	XIII.	Medical Illustrations	40
[3.20]	XIV.	Conclusion	40
		Bibliography	41

Chapter 4 Deposing the Plaintiff

E. Marc Hyman, Esq.

[4.0]	I.	Introduction	45
[4.1]	II.	What Can Be Accomplished.....	45
[4.2]		A. Find Out What Happened	45
[4.3]		B. Assess Plaintiff	46
[4.4]		C. Develop Evidence for Trial	46
[4.5]		D. Find Out What You Don't Know	47
[4.6]		E. Make Sure the Story Is Final	49
[4.7]	III.	Preparing for the Deposition.....	50
[4.8]		A. Pleadings and Discovery Responses.....	50
[4.9]		B. Your Client	50
[4.10]		C. Know the Medicine	51
[4.11]		D. Know the Records	51
[4.12]	IV.	Specific Suggestions.....	54
[4.13]		A. Use an Outline but "Follow the Testimony"	54

[4.14]	B.	Rapport, Rhythm and Framework	55
[4.15]	C.	Logical Behavior as Credibility Test.....	55
[4.16]	D.	“I Don’t Recall”	56
[4.17]	E.	Challenging Testimony vs. Setting up Impeachment at Trial.....	57
[4.18]	F.	Plaintiffs Who May Not Be Able to Offer Testimony at Trial	58
[4.19]	G.	Other Witnesses.....	59
[4.20]	H.	Lack of Informed Consent Claims	59
[4.21]	I.	Documents Signed by Witness	60
[4.22]	J.	Wrongful Death Damages	61
[4.23]	K.	Pain and Suffering	62
[4.24]	L.	Special Damages	63
[4.25]	M.	Attorney Conduct at Depositions	63
[4.26]	N.	Handling Disputes During Depositions.....	65

Chapter 5 The Deposition of the Defendant-Physician

Thomas J. Principe, Esq.

[5.0]	I.	Introduction	69
[5.1]	II.	Deposition Preparation	70
[5.2]	III.	Deposition Demeanor	70
[5.3]	IV.	Deposition Tactics	71
[5.4]	A.	Scope of Deposition	71
[5.5]	B.	Lines of Questioning and Tactics	72
[5.6]	1.	Employment Status.....	72
[5.7]	2.	Profit Motive	73
[5.8]	3.	Opinion Questions	74
[5.9]	4.	Establish Importance of Medical Records... ..	74
[5.10]	5.	Clarify Physician-Patient Relationship.....	75
[5.11]	6.	Have Defendant-Physician Read and Interpret Notes into Record	75
[5.12]	7.	Noncompliant Patient Notes.....	76
[5.13]	8.	Conversations with Patient or Family Members	76
[5.14]	9.	Consent Form	76
[5.15]	10.	Then-and-Now Comparisons.....	77
[5.16]	11.	Departure from Standard of Care	77
[5.17]	V.	Conduct During a Deposition	78
[5.18]	A.	Disclosure Guidelines.....	78
[5.19]	B.	Dealing with Obstruction	79
[5.20]	VI.	Conclusion.....	81

Chapter 6 Plaintiff’s Jury Selection

Richard E. Shandell, Esq.

[6.0] I. Overview 85
[6.1] II. Challenges to Seating an Impartial Jury 85
[6.2] III. Voir Dire Strategies and Tactics..... 86
[6.3] A. Expose Juror Attitudes..... 87
[6.4] B. Open Jurors’ Minds to Merits of Case..... 87
[6.5] C. Educating the Jury 88
[6.6] IV. Conclusion 89

Chapter 7 Defendant’s Jury Selection

Bruce G. Habian, Esq.

[7.0] I. Introduction 93
[7.1] II. Considerations During Voir Dire 93
[7.2] A. Climate of Jurisdiction..... 93
[7.3] B. Jury Panel 94
[7.4] III. Preparing for Trial 95
[7.5] A. Define Scope of Trial 96
[7.6] B. Delineate Role of Jury 97
[7.7] C. Familiarize Jury with Injury 98
[7.8] D. Discuss Causation and Negligence..... 99
[7.9] E. Discuss Sympathy..... 100
[7.10] F. Discuss Legal Standards..... 100
[7.11] IV. Conclusion 100

**Chapter 8 Opening Statements in Medical Malpractice Cases:
Plaintiff’s Perspective**

Donald Drew Goldberg, Esq.

[8.0] I. Introduction 103
[8.1] II. Prepare for and Easily Avoid the Legal Pitfalls 103
[8.2] III. New York Law 104
[8.3] IV. Make the Best Impression Possible 105
[8.4] V. Form and Substance..... 106
[8.5] VI. Make Your Opening Substantive 106
[8.6] VII. Develop a Theme or Perspective for Your Case 107
[8.7] VIII. Tell a Good Story 108
[8.8] IX. Be Persuasive..... 109
[8.9] X. Deal Directly with the Medicine 109
[8.10] XI. Concluding Your Opening..... 110
[8.11] XII. Final Thoughts..... 111

Chapter 9 Preparing to Cross-Examine Plaintiff’s Medical Expert

Clifford A. Bartlett, Jr., Esq.

[9.0]	I.	Plaintiff’s CPLR 3101(d) Response	115
[9.1]	II.	Testimonial History of Plaintiff’s Expert	116
[9.2]	III.	Use of Authoritative Texts	117
[9.3]	IV.	Treatment Records.....	118
[9.4]		A. Medications and Tests Administered	118
[9.5]		B. Imaging Studies	120
[9.6]		C. Doctor’s Office Records.....	120
[9.7]	V.	Protocols.....	121
[9.8]	VI.	How to Approach Causation Testimony by Plaintiff’s Expert	121
[9.9]	VII.	Summary of Recommendations	122

Chapter 10 Cross-Examination of Defendant’s Expert

Paul Simonson, Esq.

[10.0]	I.	Research, Research, Research	127
[10.1]		A. Know the Medicine	127
[10.2]		B. Study Other Cross-Examination Transcripts.....	128
[10.3]		C. Identify the Expert.....	128
[10.4]	II.	Cross-Examination Strategies and Tactics	128
[10.5]		A. Preparation.....	129
[10.6]		1. Develop a Script	129
[10.7]		2. Determine Your Examination Approach.....	130
[10.8]		3. Practice Vocal Modulation and Control	132
[10.9]		4. Explore Potential Expert Bias and Impeachment Sources.....	132
[10.10]		5. Use Defendant’s Expert to Bolster Your Expert’s Credentials	133
[10.11]		6. Pay Attention During Direct Examination of Defendant’s Expert.....	133
[10.12]		B. Conducting the Cross-Examination.....	134
[10.13]		1. Apply What You Learned During the Direct Examination.....	134
[10.14]		2. Control Defendant’s Expert from the Start.....	135
[10.15]		3. Use Anger as a Tool	136
[10.16]		4. Establish Parameters at the Outset	136
[10.17]		5. Address Obvious Misstatements of Fact	137
[10.18]		6. Launch a Collateral Attack.....	137
[10.19]		7. Control the Witness and the Examination ...	138

[10.20]	8. Use Hypothetical Questions to Advance Your Theory	139
[10.21]	9. Get the Expert to Acknowledge Texts as Authoritative	140
[10.22]	10. Confront Expert with Defense Contradictions.....	141
[10.23]	11. Contradict Expert with Prior Testimony	143
[10.24]	12. Confront Expert with Absence of Findings or Overlooked Diagnosis	144
[10.25]	13. Dealing with Difficult Witnesses	146
[10.26]	14. When to Stop Questioning or to Change Direction	147
[10.27]	15. Miscellaneous Considerations	147
[10.28]	16. Wrap It Up	147

Chapter 11 Proving Plaintiff’s Case

Stanley A. Landers, Esq.

[11.0]	I. Defendant-Physician as Plaintiff’s Witness	151
[11.1]	A. Why Call the Defendant First?	151
[11.2]	B. Inform the Court of Your Plan	151
[11.3]	C. Even a Defense Expert May Be Useful	151
[11.4]	II. Strategies and Tactics for Questioning the Witness ..	153
[11.5]	A. Leading Questions: The Lawyer as Witness	153
[11.6]	B. Using Scholarly Texts and Articles	154
[11.7]	C. Keeping Control	156
[11.8]	D. Sample Questioning.....	156
[11.9]	III. <i>Res Ipsa Loquitur</i>	158
[11.10]	A. When Applicable	158
[11.11]	B. What Must and What Need Not Be Proved.....	159
[11.12]	IV. Conclusion	160

Chapter 12 Medical and Hospital Record Evidence

Martin B. Adams, Esq.

[12.0]	I. Admissibility under the Business Records Rule.....	163
[12.1]	A. Hospital Records.....	165
[12.2]	B. Medical Office Records.....	167
[12.3]	C. Inadmissible Records.....	172
[12.4]	D. Electronic Records.....	173
[12.5]	E. Medical Records in Criminal Proceedings	174
[12.6]	II. Laying a Foundation	177
[12.7]	A. Who Can Authenticate Medical Records?.....	177

[12.8]	B.	Certification	178
[12.9]	1.	Hospital Records	178
[12.10]	2.	Physician’s Office Records	179
[12.11]	3.	Records Produced Pursuant to Subpoena <i>Duces Tecum</i>	180
[12.12]	a.	Contents of Certification	180
[12.13]	b.	Notice of and Objection to Authentication by Certification.....	181
[12.14]	c.	Certification of Out-of-State Office Records	182
[12.15]	III.	Admissibility of Specific Entries in Hospital and Medical Records and Related Testimony	182
[12.16]	A.	Alcohol and Drug Abuse Entries.....	182
[12.17]	B.	Entries Regarding Manner or Cause of Accident	185
[12.18]	C.	Health Care Provider Testimony about Patient’s Medical History	191
[12.19]	D.	Prior Inconsistent Statements	192
[12.20]	E.	Prior Consistent Statements.....	193
[12.21]	F.	Party Admissions.....	194
[12.22]	G.	Statements Relevant to Material Element of Claim	199
[12.23]	H.	Opinions Expressed in Medical Records.....	199
[12.24]	I.	Reports, Letters and Other Documents in Medical Record	200
[12.25]	1.	Medical Reports.....	201
[12.26]	2.	Letters	203
[12.27]	J.	Records and Reports Prepared for Litigation	204
[12.28]	K.	Radiogram Evidence	205
[12.29]	1.	X-rays and the Best Evidence Rule	206
[12.30]	2.	Authentication of X-rays	207
[12.31]	L.	Incident and Accident Reports	208

Chapter 13 Summation: In the End . . .

Eleni Coffinas, Esq.

[13.0]	I.	The Connection	213
[13.1]	II.	What Is It Worth?	214
[13.2]	III.	Jury Questionnaires	215
[13.3]	IV.	The Verdict Sheet	216
[13.4]	V.	Fulfill Obligations	216
[13.5]	VI.	Be Simple. Be Passionate. Be Brief.	216
[13.6]	VII.	Empower Your Jury	217

[13.7]	VIII.	What to Say and Do During Summation	217
[13.8]	A.	Comments about Evidence Not in the Record....	217
[13.9]	B.	Objections and Curative Instructions	218
[13.10]	C.	Damages	219
[13.11]	D.	Take the High Road	220
[13.12]	IX.	Breakdown of Actual Summation	221

Chapter 14 The Art and Craft of the Defense Summation

Bruce M. Brady, Esq.

[14.0]	I.	Overview	231
[14.1]	II.	Planning and Preparation	232
[14.2]	III.	Approach and Attitude.....	234
[14.3]	IV.	Organization of the Summation.....	234
[14.4]	V.	Use of Demonstrative Evidence	237
[14.5]	VI.	Thoughts on Rhetorical Techniques	239
[14.6]	VII.	Legal Constraints	240
[14.7]	VIII.	Conclusion	242

Chapter 15 The Jury Charge

Thomas F. Moore, Esq.

W. Scott Schneider, Esq.

[15.0]	I.	Scouting the Competition	245
[15.1]	A.	Before Trial.....	245
[15.2]	B.	During Trial	247
[15.3]	C.	After Close of Evidence	247
[15.4]	II.	Ethical Considerations	249
[15.5]	III.	Conclusion	250
Appendix		Sample Request to Charge.....	251

Chapter 16 The Precise Art of Preservation

Barbara DeCrow Goldberg, Esq.

Richard J. Montes, Esq.

[16.0]	I.	Introduction	259
[16.1]	II.	Importance of Preservation.....	259
[16.2]	III.	Offer of Proof	260
[16.3]	IV.	Objecting to Preserve the Issues	263
[16.4]	A.	Improper Questions and Trial Court Rulings	263
[16.5]	B.	Loss of Parental Guidance	263
[16.6]	C.	Errors in the Charge.....	264
[16.7]	D.	Inconsistency in Jury Verdict	265
[16.8]	E.	Conduct of Court and Opposing Counsel.....	268
[16.9]	V.	Strategy Issues	271

[16.10]	VI.	Post-verdict Issues	274
[16.11]	A.	Collateral Source Hearing	274
[16.12]	B.	Effect of Tax Obligations on Amount of Award	276
[16.13]	C.	Preservation of Issues Concerning Weight and Sufficiency of Evidence.....	277
[16.14]	D.	Preservation of Issues Concerning Adequacy of Award.....	278
[16.15]	VII.	Conclusion.....	278

Chapter 17 Are Juries Fair to Physicians?

Linda S. Crawford, J.D.

[17.0]	I.	Medical Malpractice Verdicts versus Other Verdicts.....	281
[17.1]	II.	Why Are Physicians Winning More Than Other Defendants?	282
[17.2]	III.	Would Physicians Fare Better with Judges than Juries?	282
[17.3]	IV.	Are Juries Fairer to Physicians than They Are to Their Peers?	283
[17.4]	V.	Are Juries Biased in Favor of Plaintiffs or Physicians?	284
[17.5]	VI.	Who Will Juries Vote For?.....	285
[17.6]	VII.	Conclusion.....	286

Chapter 18 Statutory Law in Medical Malpractice

Elliott C. Winograd, Esq.

Amy G. London, Esq.

[18.0]	I.	Introduction	289
[18.1]	II.	The Statutes and Their Purposes	289
[18.2]	A.	Judiciary Law § 474-a	289
[18.3]	B.	Public Health Law § 2805-d.....	291
[18.4]	C.	CPLR.....	292
[18.5]	1.	Statute of Limitations	292
[18.6]	a.	CPLR 208.....	292
[18.7]	b.	CPLR 214.....	294
[18.8]	c.	CPLR 214-a	294
[18.9]	2.	Jurisdiction, Service and Venue	295
[18.10]	a.	CPLR 305.....	295
[18.11]	b.	CPLR 316.....	295
[18.12]	3.	Remedies and Pleadings	296
[18.13]	a.	CPLR 3012-a	296
[18.14]	b.	CPLR 3017.....	298

[18.15]	4.	After Issue Joined	299
[18.16]	a.	CPLR 3406.....	299
[18.17]	b.	CPLR 3045.....	301
[18.18]	5.	Discovery—CPLR 3101	302
[18.19]	6.	Calendar Practice: Trial Preferences— CPLR 3403	303
[18.20]	7.	Trial by Jury.....	304
[18.21]	a.	CPLR 4545.....	304
[18.22]	b.	CPLR 4546.....	305
[18.23]	c.	CPLR 4401-a.....	306
[18.24]	d.	CPLR 4213.....	307
[18.25]	e.	CPLR 4111.....	308
[18.26]	8.	Post-judgment—CPLR art. 50-A	309
[18.27]	9.	Other Significant Statutes	310
[18.28]	a.	Insurance Law § 2343	310
[18.29]	b.	Public Health Law § 2805-j	311
[18.30]	c.	N.Y. Education Law § 6509.....	311
[18.31]	III.	Conclusion.....	311

Chapter 19 The Expert Witness for the Plaintiff in a Medical Malpractice Case

Steven E. Pegalis, Esq.

[19.0]	I.	Introduction	315
[19.1]	II.	Approaching the Prospective Medical-Legal Expert.....	316
[19.2]	III.	Qualifications of the Expert.....	317
[19.3]	IV.	Basis for Expert Medical Opinion	318
[19.4]	V.	Form of Questions for Expert Witness	319
[19.5]	VI.	Form of the Expert Opinion.....	321
[19.6]	VII.	Anticipating Cross-Examination	322
[19.7]	VIII.	Conclusion.....	324

Chapter 20 Anatomy of a Plaintiff’s Medical Malpractice Case: Intake to Note of Issue

Steven E. North, Esq.

Daniel Kramer, Esq.

[20.0]	I.	Initial Contact	329
[20.1]	II.	Initial Interview	331
[20.2]	III.	The Retainer and Other Papers That Must Be Signed	333
[20.3]	A.	Retainer Agreement.....	333
[20.4]	B.	Other Forms	334

[20.5]	IV.	Caveats	336
[20.6]	A.	Don't Let Client Emotions Cloud the Issues.....	336
[20.7]	B.	Make Sure Proximate Causation Exists	336
[20.8]	C.	Considerations Relative to Attorney Substitution.....	336
[20.9]	V.	Potential Client Questions	338
[20.10]	VI.	Getting the Medical Records	341
[20.11]	VII.	Review of the Records and Expert Review	341
[20.12]	VIII.	Commencing Suit and the Pleadings	342
[20.13]	A.	Identification of the Parties	342
[20.14]	B.	Decision Not to Take the Case	343
[20.15]	C.	Submission of Retainer Statement.....	344
[20.16]	D.	Communications with Referring Attorneys.....	344
[20.17]	E.	Preparation of Complaint	345
[20.18]	F.	Addressing the Answer.....	346
[20.19]	G.	Service of Bill of Particulars	347
[20.20]	H.	Preparation for Preliminary Conference.....	348
[20.21]	I.	Discovery.....	348
[20.22]	IX.	Exchange of Medical Information.....	349
[20.23]	X.	Plaintiff's Deposition.....	350
[20.24]	XI.	Defense Deposition Considerations	352
[20.25]	XII.	Expert Disclosure	353
[20.26]	XIII.	Filing the Note of Issue	354
[20.27]	XIV.	Diary, Diary, Diary.....	354
[20.28]	XV.	Conclusion.....	355
Appendix A		Rejection Letters for Medical or Nonmedical Malpractice Actions.....	359
Appendix B		Medical Malpractice Intake Form	363
Appendix C		Thank-You Letter to New Client.....	367
Appendix D		Retainer Agreement.....	369
Appendix E		Power of Attorney to Sign Authorization.....	373
Appendix F-1		Motion for Leave to File a Late Notice of Claim...	375
Appendix F-2		Affirmation and Affidavit in Support of Motion to File Late Notice of Claim.....	377
Appendix G		Substitution of Attorney Letter.....	385
Appendix H		Substitution of Attorney Form.....	387
Appendix I-1		Letter for Recalcitrant Medical Records	389
Appendix I-1		Letter to Joint Commission on Accreditation of Health Care Organizations re: Recalcitrant Medical Records.....	391
Appendix J		Certificate of Merit	393
Appendix K		Client Does Not Want to Sue a Defendant Letter ..	395

Appendix L	Plaintiff’s Counsel Does Not Want to Sue a Particular Defendant Letter	397
Appendix M	Rejection Letters.....	401
Appendix N	<i>Nunc Pro Tunc</i> Statement for Retainer Statement	405
Appendix O	OCA Retainer Statement	407
Appendix P	Letter to Co-counsel	409
Appendix Q	Affirmative Defense Letter.....	411
Appendix R	Combined Demands	413

Chapter 21 The Physician-Patient Privilege in Medical Malpractice Litigation

Raymond W. Belair, Esq.

[21.0]	I.	Introduction	425
[21.1]	II.	Scope of Waiver of Physician-Patient Privilege.....	427
[21.2]	A.	Reports of Nontestifying Physicians	427
[21.3]	B.	Records Pertaining to Unrelated Condition.....	429
[21.4]	C.	Exchange of Medical Records.....	431
[21.5]	D.	Waiver by Persons Serving in Representative Capacity	431
[21.6]	1.	Birth-Injury Cases.....	431
[21.7]	2.	Wrongful-Death Actions	433
[21.8]	III.	Private Interviews with Treating Physicians During Discovery	434
[21.9]	A.	The <i>Anker</i> Doctrine	434
[21.10]	B.	Ex Parte Interviews after HIPAA	436
[21.11]	1.	HIPAA’s Purpose and Perceived Problems	437
[21.12]	2.	Case Law	438
[21.13]	a.	Testimony Precluded on Basis of Ex Parte Interviews	438
[21.14]	b.	Decisions Not to Issue Orders for Ex Parte Interviews	438
[21.15]	c.	Orders Issued for Ex Parte Interviews ..	439
[21.16]	d.	Resolution: <i>Arons v. Jutkowitz</i>	440
[21.17]	C.	Related Issues	444
[21.18]	1.	Professional Duty to Keep Confidential Medical Information	444
[21.19]	2.	HIV Exception	445
[21.20]	IV.	Treating Physician as Expert Witness	445
[21.21]	V.	Standing of Records Custodian to Resist Disclosure of Patient’s Records.....	450

[21.22]	VI.	Defendant’s Physical Condition	452
[21.23]	VII.	Actions for Alleged Wrongful Disclosure.....	454
[21.24]	VIII.	Miscellaneous Problems.....	456
[21.25]	IX.	Conclusion.....	457

Chapter 22 Hospital Quality Assurance under New York State Law

Jeffrey C. Gerson, Esq.

[22.0]	I.	Governing Statutes	461
[22.1]	II.	Quality Assurance and Peer Review Records Exempt from Disclosure.....	461
[22.2]	A.	Correspondence and Letters	462
[22.3]	B.	Materials Related to Periodic Review of Physicians’ Credentials and Competence.....	463
[22.4]	C.	Protected Parties	463
[22.5]	1.	Nonparty Physician or Employee	463
[22.6]	2.	Defendant	464
[22.7]	3.	Chiropractors	465
[22.8]	D.	Protective Orders	466
[22.9]	III.	Discoverable Records.....	466
[22.10]	A.	Defendant-Doctor’s Medical Records.....	466
[22.11]	B.	Perinatal Database Information	467
[22.12]	C.	Documents Not Alleged to Have Been Used for Quality Review Purposes.....	467
[22.13]	D.	Conversations Outside the Scope of Quality Review	468
[22.14]	E.	Documents Related to Medical Equipment and Facilities Maintenance.....	468
[22.15]	F.	Documents Obtainable but Not Obtained During Review Proceeding.....	469
[22.16]	G.	Defendant’s Statements During Peer Review and Quality Assurance Proceedings	469
[22.17]	H.	Patient Test Results	470
[22.18]	I.	Relevant Documents Not Prepared for Peer Review or Quality Assurance Purposes	471
[22.19]	J.	Inapplicability of Statute	471
[22.20]	IV.	Incident Reports.....	472
[22.21]	A.	Discoverability	472
[22.22]	B.	Discoverability of Department of Health Documents	474
[22.23]	C.	Limited Protection for Reports Concerning Outpatients.....	476
[22.24]	D.	Disclosure of Documents Made in Regular Course of Business	477

[22.25]	V.	In Camera Review	477
[22.26]	VI.	Protection of Documents Used by Nursing Homes...	479
[22.27]	A.	Incident and Other Reports	479
[22.28]	B.	Quality Assurance Documents	480
[22.29]	VII.	Applicability of N.Y. Education Law in Federal Courts.....	481
[22.30]	VIII.	Summary.....	482

Chapter 23 Medication-Related Malpractice Claims

Robert P. Esgro, R.Ph., J.D.

[23.0]	I.	Overview	487
[23.1]	II.	Types of Medication Errors	489
[23.2]	A.	Wrong Dose	489
[23.3]	B.	Wrong Drug	489
[23.4]	C.	Wrong Directions	490
[23.5]	D.	Drug Interactions	490
[23.6]	E.	Excessive Duration	490
[23.7]	F.	Poor Penmanship	491
[23.8]	G.	High-Risk Drugs.....	491
[23.9]	H.	Drug Utilization Review.....	491
[23.10]	I.	Patient Interaction.....	492
[23.11]	III.	Ways to Reduce Medication Errors.....	492
[23.12]	A.	Electronic Prescription	492
[23.13]	B.	Hospital Medication Reconciliation	493
[23.14]	IV.	Potential Defenses to Medication Malpractice Claims.....	494
[23.15]	A.	Contributory and Comparative Negligence	494
[23.16]	B.	Informed Consent	495
[23.17]	C.	Assumption of the Risk	495
[23.18]	V.	Conclusion.....	495

Chapter 24 The Brain-Damaged Baby Case from Defendant’s Perspective

Peter C. Kopff, Esq.

[24.0]	I.	General Considerations in Preparing for Trial	499
[24.1]	A.	Defendant’s Expert Witness Disclosure	499
[24.2]	B.	Theme	500
[24.3]	C.	Visual Aids	500
[24.4]	1.	Reasons for Using Them	500
[24.5]	2.	Enlargements	501
[24.6]	D.	Presence During Trial.....	501
[24.7]	E.	Practice/Rehearse.....	501

[24.8]	II.	Specific Preparation for the Trial of a Brain-Damaged Baby	502
[24.9]	A.	Chronology	502
[24.10]	B.	Review of Pertinent Medical Texts	502
[24.11]	C.	American College of Obstetricians and Gynecologists Standards	503
[24.12]	D.	Literature and Publications.....	503
[24.13]	III.	Identifying and Discrediting Plaintiff’s Expert	504
[24.14]	A.	Publications	504
[24.15]	B.	Website	505
[24.16]	C.	Prior Testimony	505
[24.17]	IV.	Attacking the Parent of the Brain-Damaged Infant... ..	505
[24.18]	A.	Mother as Fact Witness	505
[24.19]	B.	Mother with Expertise	506
[24.20]	C.	Mother Not Trustworthy.....	506
[24.21]	D.	Disputed Cause of Placenta Previa.....	507
[24.22]	E.	Jury Selection	507
[24.23]	V.	Attacking Plaintiff’s Theory of Causation at Trial... ..	507
[24.24]	VI.	The Defense.....	508
[24.25]	A.	Obstetrician Expert Witness	508
[24.26]	B.	Neonatologist.....	508
[24.27]	C.	Pediatric Neurologist.....	509
[24.28]	D.	Pediatric Neuroradiologist.....	509
[24.29]	E.	Placental Pathology	509
[24.30]	F.	Economist	510
[24.31]	VII.	Conclusion.....	511

Chapter 25 Practical Tips for the New Malpractice Attorney

Gilbert H. Choi, Esq.

[25.0]	I.	Introduction	515
[25.1]	II.	Unique Features of Medical Malpractice Litigation	515
[25.2]	III.	Take Time to Learn the Medicine	516
[25.3]	A.	Independent Research.....	517
[25.4]	1.	Internet.....	517
[25.5]	2.	Publications	519
[25.6]	B.	Learn from Colleagues	520
[25.7]	IV.	Work with the Experts.....	520
[25.8]	A.	Involve the Experts Early	520
[25.9]	B.	Be Open-Minded and Fluid	521
[25.10]	C.	Expert Involvement after Filing of Note of Issue.....	522

[25.11]	V.	Discovery and File Management Considerations.....	523
[25.12]	A.	Learn as Much as Possible, as Early as Possible.....	523
[25.13]	B.	Take Advantage of Court Conferences	524
[25.14]	C.	Keep the Client Involved.....	525
[25.15]	D.	Keep up with Discovery	526
[25.16]	VI.	Efforts Following the Filing of the Note of Issue.....	526
[25.17]	A.	Continue Obtaining Information	527
[25.18]	B.	Trial Preparation	527
[25.19]	VII.	Conclusion	528

**Chapter 26 Evaluating the Life Care Plan Before and During Trial—
A Defense Perspective**

Nicholas J. Marotta, Esq.

[26.0]	I.	Introduction	531
[26.1]	II.	Life Care Planner’s Role	531
[26.2]	III.	Scope of Life Care Plan.....	532
[26.3]	A.	Home Care and Facility Care Options.....	532
[26.4]	B.	Narrative Report	533
[26.5]	IV.	Defense Consultation with Independent Life Care Planner	534
[26.6]	V.	Scrutiny of Life Care Plan in Preparing for Cross-Examination of Life Care Planner.....	536
[26.7]	A.	General Scope of Questioning.....	536
[26.8]	B.	Life-Expectancy Projections.....	536
[26.9]	C.	Authoritative Literature	537
[26.10]	D.	Possible Misassumptions	537
[26.11]	E.	Future Therapies	537
[26.12]	F.	Scope of Services Required for Home Care.....	538
[26.13]	G.	Duration of Custodial Care.....	539
[26.14]	H.	Cost of Home Care	540
[26.15]	I.	Cost of Institutional Care.....	540
[26.16]	VI.	Conclusion	541
Appendix A		Verdict Sheet	543
Appendix B		Sample Life Care Plan.....	547

Chapter 27 War Stories: The Oral Tradition of the Trial Bar

David S. Pollack, Esq.

[27.0]	I.	Stories, Stories Everywhere.....	563
[27.1]	II.	The Golden Moment.....	564
[27.2]	III.	It’s Not about Me.....	565

[27.3]	IV.	“I’m Your Adversary, but That Doesn’t Mean We Can’t Be Friends”	567
[27.4]	V.	Communicating Effectively with the Judge	568
[27.5]	VI.	Jurors Don’t Miss Much	572
[27.6]	VII.	What to Do When Judges Overstep Their Bounds....	573
[27.7]	VIII.	Closing Statement.....	576
		Contributor Biographies	577
		Table of Authorities	587
		Index	609

ABOUT THE EDITOR

ROBERT DEVINE, ESQ.

Robert Devine is a partner of the firm Ivone, Devine and Jensen in Lake Success, New York. He received his law degree from Georgetown in 1964. His primary area of practice is the defense of medical malpractice and negligence cases. Mr. Devine is a member of the Executive Committee of the Trial Lawyers Section of the New York State Bar Association and a former chair of that section. He also served as that section's chair of continuing legal education for nine years. Additionally, Mr. Devine is a member of the American Board of Trial Advocates. He served as editor-in-chief of *Medical Malpractice: Strategic and Practical Principles* (NYSBA 1986) and *Medical Malpractice in New York* (NYSBA 1993).

ABOUT THE AUTHORS

MARTIN B. ADAMS, ESQ.

A graduate of Case Western Reserve University School of Law, Martin Adams is a member of the New York City law firm of Kopff, Nardelli & Dopf. His primary area of practice is professional liability defense.

CLIFFORD A. BARTLETT, JR., ESQ.

Clifford A. Bartlett, Jr. is a partner in the firm of Bartlett, McDonough, Bastone & Monaghan, with offices in Mineola, White Plains and Manhattan. Mr. Bartlett received his law degree from St. John's University School of Law, and since his admission to the bar in New York State, he has focused his practice on the defense of physicians and hospitals relative to medical malpractice claims. Mr. Bartlett has taken more than 500 cases to verdict and has lectured widely on topics involving the trial of medical cases. Mr. Bartlett also contributed to the original volume of *Medical Malpractice in New York* (NYSBA 1993).

RAYMOND W. BELAIR, ESQ.

Raymond W. Belair is a senior partner in the New York City law firm of Belair & Evans LLP, where his primary areas of practice include trials, professional liability and personal injury. Mr. Belair graduated from Fordham University School of Law and engaged in post-graduate work at New York University Law School. He holds a master's degree from the Institute of Religious Studies and is a doctoral candidate at the Graduate Theological Foundation. A member of the American Association for Justice, he is

certified by both the National Board of Trial Advocacy, for whom he has served as an examiner, and the American Board of Professional Liability Attorneys.

BRUCE M. BRADY, ESQ.

Bruce M. Brady is a partner in the firm of Callan, Koster, Brady & Brennan, LLP. He received his law degree from Boston University School of Law after graduating from Columbia College. Mr. Brady began his legal career as a prosecutor in the Kings County District Attorney's Office. For more than 25 years his primary specialty has been the defense of medical malpractice claims. Mr. Brady is a charter member of the New York State Medical Defense Bar Association, a member of the American Bar Association, the Association of Trial Lawyers of America, the New York State Trial Lawyers Association, the New York County Lawyers Association and the Bergen County Bar Association.

Mr. Brady has taught and lectured extensively on the topic of trial techniques and the defense of medical malpractice cases for the New York State Trial Lawyers Institute and Law Journal Seminars. He is admitted to practice before the courts of the states of New York, New Jersey and Massachusetts, as well as the U.S. District Courts for the Southern and Eastern Districts of New York and the Supreme Court of the United States.

GILBERT H. CHOI, ESQ.

Gilbert H. Choi completed his undergraduate studies at the University of Michigan in 1995 and went on to receive his law degree from Brooklyn Law School in 1998. He is currently an associate at the firm of Shaub, Ahmuty, Citrin & Spratt, LLP, where he is primarily engaged in the defense of medical malpractice actions.

ELENI COFFINAS, ESQ.

Eleni Coffinas is a member of the Manhattan law firm Sullivan Papain Block McGrath & Cannavo P.C., where she began employment after her graduation from Brooklyn Law School in 1985. Ms. Coffinas heads one of the firm's medical malpractice litigation departments and regularly tries medical malpractice cases as well as other cases and has obtained numerous recoveries for her clients in the seven- and eight-figure ranges. She has been featured in *New York Magazine's* Best Lawyers since 2006 and has also been included in the Superlawyers' top 50 women lawyers for 2008. She is also a dean of the New York State Trial Lawyers Institute and a frequent lecturer for many bar associations on the topics of personal injury and medical malpractice.

W. RUSSELL CORKER, ESQ.

W. Russell Corker is the senior litigating partner in the firm Shayne, Dachs, Corker, Sauer & Dachs in Mineola, New York. He received his law degree from Boston University in 1974. His primary area of practice is representing plaintiffs in medical malpractice and negligence cases. Mr. Corker has been teaching trial techniques for more than 28 years. He is a recognized authority in the use of technology as a tool of persuasion in the courtroom.

LINDA S. CRAWFORD, J.D.

Linda S. Crawford, J.D. teaches trial advocacy at Harvard Law School and has been consulting with parties and witnesses on research-based effectiveness at deposition and trial since 1985. Ms. Crawford is a contributing editor for publications of the *National Law Journal*, is past-president of a national association of health-care attorneys and has been a health law commissioner for the American Bar Association. She lectures at Harvard Medical School, Stanford and throughout the country.

ROBERT P. ESGRO, R.PH., J.D.

Robert P. Esgro is a practicing pharmacist and attorney. Mr. Esgro began his career in the pharmaceutical industry at Merck & Co. Assignments included industrial manufacturing pharmacist, pharmaceutical sales and pharmaceutical product promotion manager. Presently, Mr. Esgro is pharmacy manager at a national retail pharmacy chain. In addition, he consults in retail pharmacy malpractice cases throughout the country. His legal practice concentrates on professional licensure defense claims. He also is an adjunct professor of pharmacy law and ethics at the University of the Sciences in Philadelphia. He is a regular speaker on pharmacy law topics for pharmacist continuing education seminars.

JEFFREY C. GERSON, ESQ.

Jeffrey C. Gerson is a partner in the Garden City, New York office of Kaufman Borgeest & Ryan LLP. He received his law degree from Franklin Pierce Law Center in 1991. His primary area of practice is the defense of physicians, hospitals, nursing homes, podiatrists, dentists and other health-care providers. Mr. Gerson has lectured extensively in New York and other states on various topics in malpractice litigation and risk management. He is licensed to practice in New York and Connecticut.

BARBARA DECROW GOLDBERG, ESQ.

Ms. Goldberg is a member of the firm of Mauro Goldberg & Lilling, LLP in Great Neck, New York, which focuses its practice on appellate advocacy and litigation strategy. She is a former partner and head of the Appeals Department at New York City's Martin, Clearwater & Bell, a firm specializing in the defense of physicians and hospitals. With more than 20 years of experience in appellate litigation, Ms. Goldberg has handled a wide variety of appeals and is noted for several important decisions in the areas of medical malpractice, negligence, workers' compensation and products liability law. Ms. Goldberg is a magna cum laude graduate of Radcliffe College and obtained her law degree from Boston University School of Law, where she graduated cum laude. She is the author of several articles on products liability, medical malpractice, and evidentiary issues, and has frequently lectured at continuing education programs. In addition, Ms. Goldberg is a member of the OCA's Advisory Committee on Civil Practice.

DONALD DREW GOLDBERG, ESQ.

Donald Drew Goldberg has spent his legal career as a trial lawyer and is a senior partner in the Brooklyn, New York law firm of Goldberg & Lasson. Mr. Goldberg tries medical, labor, general negligence and commercial cases for both his firm and other major New York City law firms. He also has a subspecialty in law firm partnership dissolution litigation. Mr. Goldberg has previously authored chapters on various aspects of the trial of medical malpractice cases for the New York State Bar Association. For more than 20 years, he has taught trial practice for the National Institute of Trial Advocacy at Cardozo Law School. He is member of the New York State Trial Lawyers Association and other legal organizations.

BRUCE G. HABIAN, ESQ.

Bruce G. Habian is a senior partner in the New York City law firm of Martin Clearwater & Bell. His primary areas of practice include medical malpractice defense, hospital liability and attorney malpractice defense. Mr. Habian has specialized in these areas for more than 30 years. Mr. Habian has served as a faculty member for the Practising Law Institute and the Law Journal Seminars-Press (he regularly presents programs on breast cancer and neurologically impaired infant cases). Mr. Habian has been published by Matthew Bender Corporation and The Williams-Wilkins Publishing Corporation. He has served as a faculty member of the National Institute of Trial Advocacy, is continually listed in Best Lawyers in America in his specialty and is a fellow of the American College of Trial Lawyers.

E. MARC HYMAN, ESQ.

E. Marc Hyman is a partner in the law firm Heidell, Pittoni, Murphy & Bach, LLP. He obtained his J.D. degree from the Boston University School of Law in 1984. He has practiced medical malpractice law in New York for 20 years. He was a contributor to the second edition update of *Medical Malpractice in New York*, writing on expert witnesses for the defense. He has lectured on related topics for CLE programs by the New York State Bar Association, the Practising Law Institute and the New York County Bar Association, as well as in other forums. He is a member of the New York State Medical Defense Bar Association.

PETER C. KOPFF, ESQ.

Peter Kopff is a founding partner of Kopff, Nardelli & Dopf LLP, located in New York, New York, where he defends physicians and hospitals in medical malpractice lawsuits. He received his A.B. from Princeton University in 1970 and his J.D. from Albany Law School in 1975. Mr. Kopff is a past president and founding board member of the New York State Medical Defense Bar Association. He is also a member of the Executive Committee of the New York State Bar Association's Trial Lawyers Section and has served as the program chair or co-chair of that section's 2004–2008 summer meetings.

DANIEL KRAMER, ESQ.

Daniel Kramer has co-authored books on medical malpractice and evidence in negligence cases for the Practising Law Institute. He co-wrote a column titled "Medical Malpractice" for the *New York Law Journal* from 1977 until 1989. He is an adjunct professor of law at St. John's Law School, where he teaches legal medicine. He has lectured numerous times for the New York State Trial Lawyers Association and the New York State Bar Association on medical malpractice. He chaired the medical malpractice subcommittee of the New York State Trial Lawyers Association. Presently, Mr. Kramer is retired and spending his winters in Scottsdale, Arizona.

STANLEY A. LANDERS, ESQ.

Stanley A. Landers is senior partner in the law firm of Landers & Cernigliaro, P.C. in Carle Place, Nassau County. The firm concentrates on plaintiffs' medical malpractice. A graduate of St. John's University School of Law, Mr. Landers is a member of the American Association for Justice, the New York State Trial Lawyers Association, the New York State Bar Association, the Nassau County Bar Association and the Queens County Bar Association. He has contributed to two prior editions of this text.

AMY G. LONDON, ESQ.

Amy G. London is a senior counsel in the Tort Division of the New York City Law Department. She graduated from Brown University in 1980 and received her law degree from the University of Pennsylvania in 1983. Her primary areas of practice are municipal liability and medical malpractice. She is author of an article titled “Mediation Offers Promise but No Cure for System’s Ills,” published in the *New York Law Journal* on February 16, 2006. She has also served as a continuing legal education instructor on the subject of defending EMS cases.

NICHOLAS J. MAROTTA, ESQ.

Nicholas J. Marotta was graduated from St. John’s University School of Law in 1985. Following graduation, he was an assistant corporation counsel of the city of New York, ultimately becoming a senior trial attorney in the medical malpractice unit. Since 1990, Mr. Marotta has continued to concentrate his practice in the defense of medical malpractice claims, successfully representing physicians at trial in significant and complex matters. Mr. Marotta was selected by his peers for inclusion in *The Best Lawyers in America 2008*. He frequently has lectured on medical malpractice issues at various New York–area hospitals. He has been a partner at the firm of Aaronson Rappaport Feinstein & Deutsch, LLP since 1994 and is admitted to practice in New York, Connecticut and the U.S. District Courts for the Eastern and Southern Districts of New York.

HENRY G. MILLER, ESQ.

Henry G. Miller, a graduate of St. John’s College (1952) and St. John’s Law School (1959), is past president of both the Westchester County Bar Association and the New York State Bar Association. He is a past regent of the American College of Trial Lawyers, a past director of the International Academy of Trial Lawyers, a fellow of both the American and New York Bar Foundations and a past director of the New York State Trial Lawyers Association. Mr. Miller is presently the senior member of the White Plains, New York law firm of Clark, Gagliardi & Miller, P.C. His trial work has usually been for plaintiffs in civil cases. He has frequently appeared on television and radio. He is the author of the *Settlements in the Art of Advocacy* series, as well as editor of *New York Practice Guide on Negligence*, both published by Matthew Bender, and most recently, *On Trial: Lessons from a Lifetime in the Courtroom*, published by ALM Publishing.

RICHARD J. MONTES, ESQ.

Richard J. Montes is a senior associate in the law firm of Mauro Goldberg in Great Neck, New York, which focuses its practice on appellate advocacy and litigation. He is a former law clerk for the justices of the Massachusetts Superior Court, a judge of the Massachusetts Appeals Court and Justice Anthony Marano, Nassau County. He graduated cum laude from Georgetown University and cum laude from Boston University School of Law. He is also the current chairperson of the Suffolk County Bar Association's Appellate Committee and is secretary of the Long Island Hispanic Bar Association.

THOMAS F. MOORE, ESQ.

Thomas F. Moore has been a law clerk to an acting Supreme Court justice since 1993. He received his law degree from Syracuse University College of Law in 1987, where he was a member of the *Syracuse Law Review* after having graduated from Allegheny College in Pennsylvania with a B.S. He served as an assistant district attorney in Suffolk County from 1987 through 1991.

STEVEN E. NORTH, ESQ.

Steven E. North is the founding partner of Steven E. North, P.C., a law firm formed in 1986 to prosecute selected major medical malpractice and personal injury cases. Mr. North has been listed as having achieved some of the highest verdicts in the state of New York. He has been included in *Best Lawyers in America* for more than the past ten years and has been named in the *New York Times*, Super Lawyers Section—Top New York Lawyers, *New York Magazine's* New York Area's Best Lawyers and Law Dragon's Leading Plaintiff Lawyers in America. Mr. North is a legal commentator on television, a lecturer at law schools, a contributing author to the *New York Law Journal* and author of more than 20 legal publications, including a text on deposition tactics and strategy. He has also been a guest lecturer at medical schools and teaching hospitals in the New York metropolitan area. He serves as a referee for the New York State Commission on Judicial Conduct.

STEVEN E. PEGALIS, ESQ.

Steven E. Pegalis is a medical malpractice trial lawyer, practicing in Lake Success, New York. He has spent his legal career representing plaintiffs in personal injury and medical malpractice cases. He earned his B.A. from Queens College of the City of New York and his J.D. from New

York Law School. Mr. Pegalis has been in his own firm since 1972. He authored *American Law of Medical Malpractice*, Volumes I, II, and III, to help other trial attorneys understand the medical aspects of particular malpractice cases. He has lectured for the New York State Bar Association, the New York State Trial Lawyers Association, the New York Law Journal-Seminars Press Series and the Practising Law Institute on medical malpractice litigation and trial practice. Mr. Pegalis is a member of the board of trustees of New York Law School and the National CLE Program Advisory Committee of the American Bar Association on "The Experts Analyze Brain-Damaged Baby Cases." He also is an adjunct professor of medical malpractice at New York Law School.

DAVID S. POLLACK, ESQ.

David Pollack maintains a law office in Port Washington, New York. He received his law degree from New York Law School in 1980. His practice is focused on the representation of plaintiffs in medical malpractice and personal injury cases and as trial counsel to the profession. Mr. Pollack has been an attorney adviser to the local high school mock trial team for 15 years and served as a director of the New York State Trial Lawyers Association for 9 years. He has been recognized with an A-V rating by Martindale-Hubbell, a listing in the *Bar Register of Preeminent Lawyers* and *The Best Lawyers in America*. He is also a member of the Million Dollar Advocates Forum.

THOMAS J. PRINCIPE, ESQ.

Thomas J. Principe is a partner in the New York City law firm of Kramer, Dillof, Tessel, Duffy & Moore, where his practice focuses on civil litigation, including medical malpractice, products liability and general negligence. He is a 1973 graduate of St. John's University School of Law. A brigadier general in New York's Army National Guard, Mr. Principe was staff judge advocate for the 53rd Troop Command. He retired in July 2006 with the Legion of Merit medal given by the U.S. Army. He is a member of the New York State, Florida, District of Columbia, Queens County and the New York County Bar Associations and the New York State Trial Lawyers Association. Mr. Principe has also authored "The Law of Vehicular Homicide in New York" (Queens County Bar Bulletin, July 1986) and "No Need for Plaintiff's Bar to Panic: Contingent Fee Rulings May be Dicta" (N.Y.L.J., Feb. 14, 1995). Mr. Principe makes frequent CLE presentations regarding medical malpractice for St. John's University and the New York State Trial Lawyers Institute.

STEVEN B. SAMUEL, ESQ.

Steven B. Samuel received his law degree from Albany Law School in 1974, after which he was employed as a prosecutor in the homicide bureau of the Kings County District Attorney's Office. Additionally, he attained the rank of major in the Judge Advocate General's Corps. Mr. Samuel's current primary area of practice is in the prosecution of medical malpractice and serious personal injury matters. He is a frequent lecturer in the St. John's University continuing legal education program and was appointed as an adjunct professor of forensic sciences at the Touro Health Science School.

W. SCOTT SCHNEIDER, ESQ.

W. Scott Schneider is an associate at the firm of Ivone, Devine & Jensen, LLP in Lake Success, New York. He received his law degree from the University of Bridgeport School of Law in 1987 and then worked as a prosecutor for the Suffolk County District Attorney's Office until 1992. At that time he joined the Suffolk County Attorney's Office Trial Bureau, later becoming its deputy bureau chief. Mr. Schneider joined his current firm in 2003, where his primary area of practice is the defense of medical malpractice and negligence cases.

RICHARD E. SHANDELL, ESQ.

Richard E. Shandell is Of Counsel to the firm of Shandell, Blitz, Blitz & Ashley. He is a medical malpractice trial lawyer with 50 years' experience. Mr. Shandell earned a B.S. in economics from the University of Pennsylvania and a J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar and an editor of the *Columbia Law Review*.

He is past president of New York State Trial Lawyers Association and a former governor of the American Association for Justice. He is a former advocate of the American Board of Trial Advocates, a former diplomate of the American Board of Professional Liability Attorneys and a former certified civil trial advocate of the National Board of Trial Advocacy.

Mr. Shandell is a dean emeritus of the New York State Trial Lawyers Institute. He has lectured all over the state of New York and throughout the country on trial practice and the trial of medical malpractice cases. He is an author of *The Preparation and Trial of Medical Malpractice Cases*, published by Law Journal-Seminars Press.

PAUL SIMONSON, ESQ.

Paul Simonson is a founding partner of Simonson Hess & Leibowitz, a New York– and New Jersey–based plaintiff’s malpractice and personal injury firm. He received his law degree from St. John’s University School of Law in 1974 and since that time has practiced exclusively in the prosecution of medial malpractice claims on behalf of injured patients. Since 1981 he has written and lectured extensively across the country at the behest of numerous continuing legal and medical educational groups and institutions, as well as the New York Supreme Court bench. He is a member of The Association of the Bar of the City of New York’s prestigious legal referral panel in the area of medical malpractice.

ELLIOTT C. WINOGRAD, ESQ.

Mr. Winograd has more than 40 years of extensive litigation experience in the areas of products liability, professional malpractice and general liability. After a brief foray into the realm of retirement, he is now the senior counsel and negotiator for the New York City Law Department-Tort Division. His responsibilities include evaluation, in conjunction with the New York City Comptroller’s Office, of the most serious tort cases filed against the city of New York.

Mr. Winograd has chaired eight separate sections of the American, New York State and Nassau County Bar Associations and has chaired, moderated and lectured at numerous litigation-related symposiums, seminars and conventions in the field of torts. His expertise in the areas of evidence and trial practice procedures is well known throughout the state of New York. He has published numerous articles in, for example, the *New York Law Journal*, the *Nassau Lawyer* and the *New York Trial Lawyers Quarterly*, as well as other publications published by the New York State Bar Association and Matthew Bender. In addition to the many memberships he holds in bar associations, Mr. Winograd is a diplomate in the American Board of Trial Advocates and is a member of the board of directors of the New York State Trial Lawyers Association, Long Island Chapter.

Mr. Winograd is admitted to the state bars of New York, Pennsylvania and the District of Columbia, as well as the bars of the Supreme Court of the United States, U.S. Court of Appeals for the Second and Sixth Circuits and the U.S. District Court for the Eastern Districts of Michigan and Wisconsin.