

# When the Stakes Are High: Understanding Nuclear Verdicts

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When the Stakes Are High: Understanding Nuclear Verdicts




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**PRESENTERS:**

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### Disclaimer

The information provided in this presentation offers risk management strategies and resources, and the slide content is intended to be used only with the accompanying oral presentation.

Guidance and recommendations contained in this presentation are not intended to determine the standard of care but are provided as risk management advice only. The ultimate judgment regarding the propriety of any method of care must be made by the healthcare professional.

The information does not constitute a legal opinion, nor is it a substitute for legal advice. Legal inquiries about this topic should be directed to an attorney.

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### Learning Objectives

This educational activity will support your ability to:

- Identify contributing factors that may trigger nuclear verdicts.
- Implement appropriate documentation practices to enhance claims defense.
- Utilize communication strategies for effective testimony during deposition and trial.

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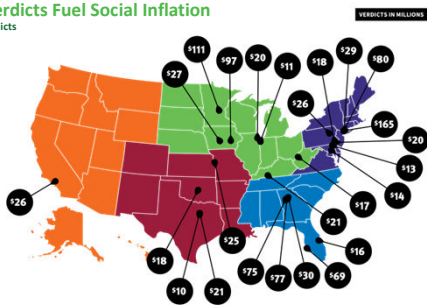
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### Nuclear Verdicts Fuel Social Inflation

2022 Nuclear Verdicts



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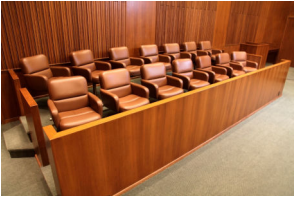
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**Juror Perceptions**

- Numb to awarding large numbers
- Activists with an agenda
- Skeptical of science/medicine
- Angry



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**Attorney  
Kevin T. McCarthy**



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**Case One**

Physician dictates patient's discharge summary indicating 8-units/bedtime dose of Levemir®.

Hospital outsources transcription services, saving 2¢/line.

Indian company transcribes Levemir dosage as 80-units/bedtime.

No clinician reviews discharge summary or questions dosage.

Patient dies as a result of incorrect dosage, and family sues.

Jury finds for the patient.

John v. Amery

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**Case Two**

Primary care physician prescribes oxycodone for patient's lower back pain.


Dosage increases steadily over 4 years to 1,555.94 mg/day.


No documentation of risks/benefits/efficacy/monitoring/dependency.

Patient claims loss of job, possible divorce and enters drug rehabilitation.

Patient sues physician alleging overprescription of opioids caused addiction.

Koenig v. Wadden



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**Case Three**

Patient presents to ED several days after childbirth with fever, chills, nausea, and pain.


NP discharges patient with UTI diagnosis.


Patient returned to ED is diagnosed with sepsis and dies the next day.

Family sues NP and hospital for delayed diagnosis and treatment of sepsis.

Plaintiffs blamed the corporation, no supervision for NP.

Birmingham v. Ed



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**Case Four**

Parents bring 11-month-old to ED following a fall and striking her head.

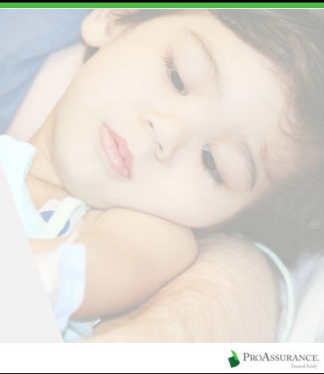
Evaluation by pediatrician and discharge the next day.


Several days later experiences several seizures.

Parents allege child suffered permanent and significant brain injury.

Plaintiffs claim failure to diagnose and treat child's condition.

V.M. v. Nebraska Pediatric Practice, Cooper 2022



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**Case Five**

Patient at 39-weeks pregnant is admitted to L&D in active labor.


Patient requests epidural.

Forceps and vacuum accomplish delivery.

Infant is diagnosed with skull fracture and severe, permanent brain damage.

Parents allege failure to perform a c-section caused injuries.

S.E. v. Mercy Hospital

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**Case Six**

19 YO patient undergoes emergency surgery for leg fracture.


Discharge is next-day despite complaints of extreme pain, leg numbness, burning sensation, and reduced muscle contraction.

Six days later patient is diagnosed with compartment syndrome.

Plaintiff sues alleging delayed diagnosis/treatment of compartment syndrome caused foot drop.

Jury finds for the plaintiff.

Thompson v. St. Cloud Orthopedic Association Limited

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**Catalysts Driving Nuclear Verdicts**

- Profiles of dangerous jurors:
  - Activist jurors
  - Juror victimization
  - Corporate mistrust and a desire to promote the “greater good” among Millennials and Zoomers
- Reinforcement of reptile and trojan horse theories
- Aggressive anchoring
- Inflation and jurors’ perception of the value of money
- Overselling in life care plans

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**Defense Strategies**

- Accepting the emotion of the case
- Developing defense themes early
- Utilizing jury consultants
- Highlighting positive aspects of care
- Counter-anchoring



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**Jury Consultant  
Melissa Gomez, PhD**



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**Melissa Gomez, PhD, Jury Consultant**

- What characteristics do you look for in a juror who would be helpful on the defense side of a medical malpractice lawsuit?
- How can physicians present as better witnesses?
- How would you counsel a physician before a trial?
- What do you think is driving the upward trend in medical malpractice jury verdict amounts?
- What is one thing that can make or break a trial for a physician?
- Do you think that jurors properly understand their role?  
Why or why not?
- When you debrief jurors after trial, what kind of trial evidence seems to have the most impact?
- Do you think that jurors have been “sending a message” with compensatory damages awards?
- Is there a generational component to jury verdicts and awards?

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**Assistant Vice President  
Claims  
Jody Smith**




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**Claims Perspective**




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**Jody Smith, Assistant Vice President, Claims**

- How does medical record documentation impact the defense of a lawsuit?
- What other factors could complicate defending a claim?
- Is there trial preparation assistance for physicians?
- What other factors could harm the defense of a lawsuit?

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**Risk Management Review**

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**Communication Impacting Defensibility**

- Communication
  - Interaction with patient during the encounter
    - Transparency by addressing risks, benefits, and alternatives through education
  - Demeanor throughout litigation

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**Documentation Impacting Defensibility**

- Thorough documentation:
  - Supports details of the workup
  - Leads to sound medical judgement and treatment decisions
  - Demonstrates that adequate time and attention was given to the patient
  - Communicates physician or healthcare professionals' thought process
  - Aids experts in the defense of reasonable care

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**Documentation Impacting Defensibility**

- Late entries
  - Can appear self-serving
  - May result in multiple versions of same medical record
- Inaccurate charting
  - Care that did not occur
  - Data populated forward or copied and pasted

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**Jury Consultant  
Melissa Gomez, PhD**



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