



Todd DeStefano
Business Leader of ESIS ProClaim

Todd leads ESIS ProClaim, our specialty division providing professional liability and complex claim adjusting and risk management solutions for medical malpractice, E&O, D&O, EPL, Cyber, and Product Liability as well as toxic tort, asbestos, and environmental risks and exposures.

Todd has more than 30 years of insurance experience in claims and underwriting, including senior executive roles with leading global insurers. He also serves on the boards of industry associations and is a thought leader on a wide range of topics, including Long Term Care, Predictive Analytics, Physician Dispensing, Medical Marijuana, and Opioid Abuse.

The economic cost of settling MedMal claims is soaring.

According to “Trends in malpractice awards” from Medical Economics, between 2010 and 2020 the average of the 100 largest MedMal jury verdicts rose 60%, and MedMal lost case awards inflation between 2000 and 2020 ran at 128%, twice the Consumer Price Index inflation rate.² The *New England Journal of Medicine* report “Malpractice Risk According to Physician Specialty” pegged the average indemnity payment at \$274,887, with mean payments ranging by specialty from \$117,832 for dermatology to \$520,923 for pediatrics.³

5 Things to Know for a Successful Medical Malpractice Defense

One of the fastest growing areas of risk for professionals, Medical Malpractice – or MedMal – cases consume not just resources and time, but also reputation and confidence.

From physicians, hospitals, and nursing homes to nurses and health aides, MedMal risk is felt broadly across the profession. By the time doctors are 65 years old, 75% in low-risk specialties had faced a malpractice claim. In high-risk fields, it was 99%.¹ Against that background, an experienced claims team adds real value, coordinating with defense counsel, guiding preservation of essential information, assisting early investigation and evaluation, and activating supportive allies.

From our experience serving healthcare clients as a third-party administrator (TPA) for MedMal claims, ESIS has developed expertise, networks, and insights that go far beyond efficient claims processing. If you’re looking for MedMal guidance, Todd DeStefano, ESIS ProClaim Business Leader, shares *Five Things to Know for a Successful Medical Malpractice Defense*.

1 Strategy Matters

Strategy starts on day one and should evolve through the lifecycle of the case. Working together as a team, advisors, defense counsel, and the insured need to continuously revisit strategy, building and evolving their approach as the case develops. Throughout this process, communication among all involved parties needs to be intentional.

The importance of starting early to determine strategy, investigate an incident, record recollections, and assemble and retain records can be illustrated by a case involving the birth of a severely and permanently disabled child. Before initial contact from plaintiff’s counsel, investigation determined that the injuries resulted from prenatal asphyxia, not from hospital care, and supported a successful defense.

Success is relative.

Insuring against Medical Malpractice risk is complicated. Cases can involve tragic outcomes, raw emotions, difficult medical decisions, and highly subjective judgments on which experts might disagree. Success is different in each case, and may be a fair settlement, a dismissal, a win on a dispositive motion or a defense verdict.

1 *The New England Journal of Medicine*; August 18, 2011; Malpractice Risk According to Physician Specialty

2 *MedicalEconomics.com*; March 31, 2022; Trends in malpractice awards

3 *The New England Journal of Medicine*; August 18, 2011; Malpractice Risk According to Physician Specialty

For more insights on how we can help you reduce your total cost of risk, connect with us on [LinkedIn](#).

2 Experts Matter

Select your experts wisely and early. Thoroughly evaluate their opinions, how their expertise aligns with the facts and the sentiments of the community, as well as if they will be persuasive to a jury. Don't wait for all the medical records to be received before beginning your evaluation and selecting your team.

In a recent case, securing supportive expert testimony was essential in the case of a woman who claimed that our insured surgeon was negligent when removing a cystadenoma from her neck, severing a facial nerve, resulting in facial "droop" and difficulty speaking. Our expert's review supported having an Independent Medical Examination (IME) that concluded there were negligible neurological deficits from the surgery.

3 Liability & Damages Matter

Develop a damages model starting on day one, evaluating the plaintiff's alleged injuries, encompassing both physical impairment and economic loss. Don't wait for the plaintiff to tell you the value of your case. Create your model from the medical records with assistance from appropriate damage experts. Additionally, assess whether the alleged damages are something a plaintiff will be able to prove.

4 Details Matter

Know your venue, all the parties, and their lawyers – including your co-defendants. Who is your judge? What is their record? Is this a conservative or liberal community? Do you need national or local counsel? How sophisticated are plaintiff and counsel? How does that play in this locale? Is plaintiff's counsel well-connected in this field and geography? What do previous verdicts look like and how do they compare to your facts?

5 Allies Matter

Bringing the full force of your network to bear is critical. Be prepared to draw on a range of support, from structured settlement specialists, mediators, investigators, and witness and jury consultants to appellate specialists and trial media consultants. Don't wait until a suit is filed – engage with an administrator who has a network of MedMal contacts. Plaintiffs can easily find an expert to say a particular point of treatment was "a departure," but did that departure actually cause the alleged injury? A jury can always find something represents a departure, but the defendant will still win the case if the jury decides the departure didn't cause the injury.

To learn more about how we can help your company navigate the complicated MedMal litigation landscape, connect with us today.

Annette Sanchez | SVP, Sales | Annette.Sanchez@esis.com