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Hello, I'm Chet Kurzban. I am the managing partner of Kurzban Kurzban, Katseli in prep PA, your local law firm located in Coral Gables. I've been an attorney for 25 years, I graduated from the University of Miami School of Law. And I'm going to talk to you a little bit about medical malpractice, the nuts and bolts of medical malpractice cases and litigation. By way of background, I was very lucky that I started my career to public defender's office. And that really gave me an understanding of litigation, and how to adjust my cases for litigation, how to try my cases, I then moved into private practice where I handled a number of different types of cases, Family Law, and divorce work, I did some criminal defense work, I did some property work, transactional work, and then got into personal injury work and within personal injury work, I've really developed my reputation and my path in the medical malpractice field, it was something that just felt very natural to me, with the medicine and the doctors. And I really like the aspect of medical malpractice, where you were fighting with people that really thought they had done nothing wrong, even though the results of what their malpractice was was catastrophic. Most of my clients come to me already pretty devastated either in kidney failure or heart failure, fortunately passed away some of them a family comes to me, paralysis. My experience last 25 years has shown me that what I love most about medical practice is no one helps them. But the loiter, their family are devastated, they generally lose their job because they can no longer work, their insurance drops them. The government really doesn't care do anything to help them they're really on their own. And the only people left to help them are us the attorneys. And so I take great pride and get to know my clients and working on their cases. So let's jump into the seminar and talk a little bit about medical malpractice, the nuts and bolts of it. The first thing that any medical practice cases do you take the case? You know, that's number one. And for me, there are five things I generally look at. Number one, are there significant damages, medical malpractice cases, take anywhere from 18 months to three years before they'll get to trial, you're going to invest 10s

of 1000s of hours and anywhere from 100 to $200,000 in costs. To get a medical malpractice case to trial, you need to know that going in. And therefore you need to know that you can recover that and more to make your client happy. And that needs to be a discussion you have in the very beginning with any potential client. When you're reviewing a case, are there damages enough for you to be able to take the case and recover for you, your client. And if you don't know in Florida, medical bills have to be paid back if you collect money. If it's Medicaid, you have to pay back dollar for dollar if it's Medicare, or Arista, you have to pay back most of the money, maybe make minor adjustments. If there are medical bills owed, you can negotiate those to a degree but even then, you still have to pay back the medical bills. So you need to make sure the damages are worth it. Number two, is there good liability? Again, the doctors will find doctors to defend their action, better how egregious the malpractice is, they will absolutely be able to pay for experts to come to their defense. And the experts will muddy the water and make it difficult to understand for the jury. And you need to make sure you have good liability so the jury can understand where the malpractice occurred. Straw book I wrote about this and a lot of the issues that you'll find in medical malpractice is doctors are usually viewed at viewed as people that help and for the most part doctors do help society. So juries come in already with a belief The doctor was right. And whoever they hurt was wrong. You have to overcome that burden. It's very difficult to overcome with liability is 5050. Maybe the doctor didn't do the best job but did an okay job. You need good liability. You need to show a jury. This doctor committed malpractice and he breached the standard of care. Without that, go. Don't take the case. Number three Are you willing to try the case

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auto accident cases have a good likelihood of settling. It's sort of insurance companies know what they're in for, you know what the policy is played over defense lawyers have worked a 1000s of car accident cases. And they will oftentimes settle these cases. Medical malpractice cases do not settle. Like car accident cases, they're going to trial a great percentage more. And unfortunately, defendants when I think the last statistic was about 90% of these cases. So the doctors defend themselves, they rarely ever admit they're wrong. The insurance companies have unlimited money to fight you. They win more of these cases by a great shot and they lose. And so you need to be sure you want to try this case, because most likely it will go to trial. The fourth thing I look at, I look at, can you fund the case, as I said, these cases can take anywhere from 100 to $200,000. To try, experts are very expensive. You need to make sure you can properly fund the case, if you're going to take it. A lot of lawyers I work with send me their large red bow cases, not because they can't try them. They don't want to fund them. They'd rather I take all the risk, and they get you know a fee for working with me. So make sure you can fund the case. If not, you may want to reach out to an attorney. Lastly, does the law allowed for recovery. So you need to make sure you can recover money by law. For instance, in Florida, if a wrongful death suit occurs, because of medical malpractice, there's almost no money to recover. It's really difficult. So the law is

different. If you have a wrongful death case due to a car accident, or a slip, or construction case accident or product liability there you can recover for wrongful death in medical malpractice, the damages are severely limited. And it's really a terrible thing. I read an article on this that I've tried to petition a lobby to change this law. But it really sets a separate class of citizen out. Besides my Florida practice, I have an office in Honolulu, which is a very long story for another day. But I try cases around the country, including Hawaii, I've tried cases in eight states now. And every state has different little quirks about what can be recovered. Hawaii uses an example one, just lie. And two, because in Hawaii, you have a limitation what you can recover for pain and suffering. So when I try case in Hawaii, I've asked for very little money for pain and suffering. However, loss of the ability to enjoy life, loss of quality of life is unlimited. And that is my case in Hawaii. So you need to know the law and where you can recover. It's important. Now for me personally, whether or not the doctor is insured or has insurance doesn't matter to me, if I have a really strong case that I want to try. I don't worry so much if the doctors insured because in Florida, doctors are not required to carry malpractice insurance. I know if you're not aware of this, let me repeat that. In Florida. car mechanics are required to carry insurance. Nurses are required to carry insurance. Doctors are not required to carry insurance. And so many doctors, maybe as many as half the doctors in Florida are bare. They have no insurance. That may dissuade some people from taking the case doesn't dissuade me. Most doctors have assets, they have other things they want to protect. If the case is good enough, I'm still willing to go after them. But that may be something you want to look into, or at least know in the back of your head. They may not or probably don't have insurance. All right. Now for the last thing, the most important part. Do you like your client? Does he seem nice credible. If you don't like your client, the jury will not like your client. And juries do not give money to people they do not like there's a hard and fast rule. Whether the laws on your side whether you did a great job loitering the case. If the jury doesn't like your client,

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you're going to lose. So the most important of everything I gave you is when you sit down face your client and talk to them. You like it's incredible. Are they someone you want to help? Are they some of the jury will want to help? You need to make sure you feel comfortable and confident before You go forward with that it's the most important one. That's why it's last is the thing that will derail more cases than anything else. The jury simply won't make a client. So I do every intake myself. Some lawyers have staff do their intake, that's up to them. But I know, my jury has to like my clients. So I do the intake. And I want to know if I get a good feeling, if I want to help that. And if the answer is yes, and all the other criteria is met, that we've gone through, that's the beginning of my medical malpractice case. At that point, really, the nuts and bolts of it are I accept the client, they signed my contract. They signed HIPAA forms for me to get medical records. If you don't know in Florida, another wonderful recall by our legislature. In Florida, the client has the right to limit the recovery of the lawyer. That's right, only a medical malpractice, no other field. But a medical malpractice decline can limit your recovery. So you need to have waiver language

in your contract, that the client will not limit your fees who will waive the right to limit your recovery. Make sure that to your contract, attend the seminar and hope to give you the information of my name my email, you can always email me and ask me questions, or make sure your contract calls for that waiver language, you could be in trouble if the client was so disposed. Alright, so now I have them signed my client contract, I open up my file, I get the medical records. I always asked my clients to get medical records as well. The reason I asked my clients to get medical records is when I the lawyer request medical records. Not often, but not rarely, the doctors will change the records, they will the doctor will literally doctor the records. They're less odd edge if a client asked for their records. And so I've had several cases where the records were changed from what the client received to what I received when I requested them or got the official chart in discovery. I give you two examples that come to mind. One was an eye case I had a client is actually North Carolina case that I was asked to come in to try the client had eye surgery. And when you do this particular type of bias surgery they put a lens in, they have to give you a drug what's called bio bias and see and what this drug does is it helps the cornea from scarring. It protects the cornea during the slice of the cornea to put the lens underneath. And so the medicine is retained to give it to stops corneal scarring the doctor didn't give the medicine. Lo and behold my client develop corneal scarring, which made everything she saw out of her eye look wavy, so she couldn't read anything without getting horrible migraines and headaches and essentially took away one eye of hers. The records showed no vital assets he given. And we started the case, we went through discovery. And in at the doctor's deposition, I requested him bring his original chart with him. When he brought his original chart, the operative note showed vital biases he was given. I asked the doctor when that was at he explained the game to every surgery. And I said you know what if I have records that show it was not given? And his answer was, can I always give it these are the records. And if I have a record that says otherwise, Nope, can't happen. These are the records. So I finished the deposition. And I then moved for punitive damages against the doctor for lie, committed perjury and attached my record showing who might otherwise see. And defendants rather quickly asked the court to send us to mediation resolve the case with me. So that was one case that did not go to trial, it actually settled. The other one that comes to mind is a case that is a pretty well known case went up to the Supreme Court of Florida

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called Gutierrez, Vargas. And it was a bit of malpractice case for a young girl who developed kidney failure when she was a kid, a doctor, the pediatrician never identified or diagnose kidney failure. As a result, she ended up losing her kidney and having a kidney transplant at the age of eight. Very sad it was very traumatic, very, very nice family. And we got all of the records. And the record showed over a five year period five year analysis where they test the urine and each year analysis showed Kidney Disease, which is a marker that can be found in your urine and blood. And if you know what to look for, it's pretty clear to obvious whether there's kidney disease. In this

case, it was very clear and obvious, now did this young girl with the mark of kidney disease, but Monaco's disease was progressive each year getting worse. But we sued the doctor upon discovery sent us a six test. Six tests showed no kidney damage at all, all the labs were normal, very hard to explain. The defendants defended the case by saying whatever was going on with her resolved itself, she had normal kidney function, and then had a super rare kidney disease that took her kidneys and caused it to fail very quickly after the normal test. Suspicious the best. Here's the good part. The medical records that we had with our five year analysis, they were ordered. They were billed, they were on a taped a tight lab sheet. They were followed up in a progress note showing what occurred. The six test was not a word was not built. It was hand written by the office manager who happened to be the doctor's wife. And there was no discussion of it in the progress notes. So went to the jury. So here's our fire fear analysis. And here's this weird 106 tests that the doctor you choose to believe the doctor story that this test was real. And this weird, crazy kidney disease happened or these tests showed kidney failure. This is a ridiculous attempt to defend themselves. But those are two instances where the records were altered or changed. And yes, we want to tremendous verdict was appealed what the Supreme Court is a very interesting case. Anyway, that's why I was asked by a lot my clients to get the medical records, in addition to be requested medical records of the HIPAA form. And also through discovery, where I always request a color copy Bates stamp chart, I want to know exactly how many records they say they have. That number will change throughout litigation. Whatever number of records you have at the beginning of the case, will never be the same by the end of the case. There'll be represented that we records deleted. So you want to record to show how many pages were actually provided. Alright. So now we go through statute limitations, right. It's always going to be the first defense of any medical malpractice case. We've signed up our client determined it's a case worth taking. We're getting the medical records, and we know the first offense will be statute limitations. So we look to make sure we comply with statute limitations. Every state is different. They all have different requirements in Florida, section 95 point 11. Four B, which is the Florida statute on statute limitations. Florida has a two year statute limitation from what you do or should have known with due diligence, that malpractice occurred. And that's really art more than science, with due diligence, discover when the malpractice occurred, or when you should have noted occurred. That's really where there's going to be a lot of fight. However, Florida goes on because Florida hates malpractice lawsuits. It is an insurance driven state, and they'll do anything they can to destroy medical malpractice cases in Florida. There's a four year statute of repose. So no matter what you do about practice, you have to bring suit within four years for your cases God. So for instance, if you have a case where a patient went in for back surgery, and the back got worse, the doctor said, you know, relax, this happens to take 610 months to heal. At 1012 months go by your back is worse. And the doctor says no, it's okay.

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Let's give it another four or five bucks, see how it heals. Four or five months goes by. Now the

doctor says Look, I know your pain. I think if I just touch up this one area, it'll help. So now you get a little touch up surgery. Doctor says Alright, let's see how you go. Give me you know a 10 bucks Yeah, recovers. You're now three years past the date of the surgery that committed malpractice. Three years could go by in an instant. And now you're upset. Now the doctor says I don't know why you're having problems. Let me send you to a pain clinic. You see the pain clinic. They follow you for four or five months. They say take these medicines to this therapy. Okay, now four or five months goes by and it pays to You'd set the pain doctor says, I can't help you Something must have gone wrong with the surgery. All right, so that's the date you knew. Now you're being told something went wrong with a surgery. Two years starts now. except you're three months, seven months, three years, seven months in for the surgery is a four year statute of repose. So not only have five months to find the lawyer, get the records, review the case, determine if there's malpractice. So that four year statute of repose is a dirty, nasty thing. It should be removed. Most states don't have that Florida does. The only way to extend the four year statute of repose is if you could prove the covered up the malpractice to fraud, which is almost impossible to prove. But if you could you have seven years instead of four, but you will find that it's almost impossible to prove that frauds, like which, alright, get past statue limitations. And next we go to our pre suit. So in Florida, and again, every state is different in Florida. If you're going to sue a doctor, you can no longer just sue the doctor. You need to go through Florida pre suit, which is Florida statute 766. Florida pre suit requires that if you sue a doctor, you get a like doctor to file an affidavit of malpractice. And you provide a 90 day notice of intent to sue set up forth all of your claims for malpractice, all of your damages as a result of our practice. You have to provide medical records, you have to provide hippos and all of that occurs before you're allowed to file suit against only medical malpractice insurance problem with his pre suit period, which is terrible and horrendous is you have to hire doctors to give you affidavits. And they charge them a lot of money to get these affidavits. And the doctor has to be the same doctor you're suing. So if you're still in an orthopedist, you need to get an affidavit from an orthopedist. If you're suing a neurologist, you need to get an idea from a neurologist. And even though some cases doctors kind of do both work. So for instance, if you have back surgery, back surgery done by a neurosurgeon could be a neurologist could be an orthopedist. You have to get the same doctor an extra suid. So that's the first hurdle get a doctor get it after David. statute 760 6.106 requires that a claim for negligent medical negligence is any claim arising out of the failure to render or failed rendering of medical care. So here you'll see cases where lawyers get trouble. What if you're in the hospital because of a surgery, and they don't put the railings up. Because your fall risk, you fall out of bed and you crack your head is that medical malpractice because not that the doctor hurt you you fell out of bed, but because they didn't put the railing up. And that's a decision made by a doctor and carried out by a nurse. That's medical malpractice. As opposed to maybe you're in the hospital for surgery and unrelated. You go to the restroom and you slip on urine and you fall in crack your head is that medical malpractice? Well, that may be actually a slip and fall and not medical malpractice because cleaning the floor is not a medical decision. It's a janitorial decision, and therefore you may not need to go through pre suit. So look at your claim carefully and determine

if it's actually a claim for medical negligence. Alright,

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once you determine the type of doctor you want to use, you then need to create the affidavit showing the breach of the standard of care. The affidavit has to be specific and show the breach. And your 90 day notice of intent needs to be more specific and include what damages are or a result of the malpractice. As you can imagine, you need to have a lot of information very, very early in the case before you to get any actual discovery or any information. And so sometimes your information could be wrong and that leads to motions to dismiss and problems later on in the case. So this is really a disgusting and dirty trick by the legislature to once again get rid of malpractice cases. So you need to be careful here. The next part of the pre suit notice of a Tet which is even more discussed Typically what we've already talked about is the defendants are allowed to conduct pre suit discovery, pre suit discovery could be just interrogatory is request to produce unsworn statements. What does it what sort of statement? And that's what statement is the defendants can force your client to come before court reporter and answer questions about their case. But it's not under oath. It's not admissible in court. It's really sort of a waste. But the Fed has to build for the time, they dragged your client through it, and your client, so your client was destroyed. Maybe they have a family where the baby has erbs Palsy, where they delivered the baby and properly causing a sever of the nerves in the shoulder, causes the baby's arm to shrink and wither. And now the family has to sit there to answer questions about the baby, really, for no reason, because it's not admissible. It's really terrible. They get to talk to the doctors that treated the client and to try to intimidate them and harass them. They get harassed your clients, they get to harass you with 100 different questions that you can't answer because the case is so early, you don't even know what the damages are yet. You haven't calculated the damages, and they get to pound you with these questions. So you need to be careful. You need to be prepared for this discovery. Me I am of the day that I don't like pre suit discovery, it's really not very valuable because it's so early in the case. But if the defendants make my clients sit for this unsworn statement, and they harass my client with questions, then I will in kind respond. So speak to the doctor said the doctor questions. But I don't like it, it's pretty bad. Alright, so now you have your pre suit investigation that you're being prepared to handle and to send if needs be. But now you need to make sure you comply with all the little requirements of the Notice of Intent period. For instance, when you send your notice of intent, it must be by certified mail. You need to list all known health care providers did this notice. Doctors from 12 years ago, ob gyn from 15 years ago, you're going to list all of them. When you risk having your case thrown out. You need to provide copies of all the medical records with the affidavit. So you don't have to acquire all the medical records, which can be very expensive as well put them together and send that and you need to make sure your affidavit is signed and notarized and provide that and provide authorization forms to allow defendants to get more records. The affidavit I haven't I don't think I talked about the qualifications of the APA. David, you're looking for Section 766. Again, the requirements for

qualifications are very specific. You need to list all of the specific qualifications,

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such as where they went to school, what did they reviewed, why they feel they're entitled to this area to testify. They've never been dismissed for perjury. Don't have to David's ever been dismissed. So make sure all that's in there. Alright, so now you've sent out your notice. So your affidavits, your discovery if you want to respond? Now you need to respond to the defendants discovery because defendants 11, it's a lawyer, you know, or really good lawyer, they're going to send discovery because they get the bill for it. It's bill hourly, you need to respond within 20 days. Florida statute 766 provides what responses you must give and when. So look at the statute, you may have to provide your client for a physical or mental examination they can request. So they want to see if your client is you know, really hurt. They go for an early IV, which is a misnomer, because it's really not an IV stands for independent medical examination. But it's not independent because you're not involved. You don't get to see the reports. It's all done through defense counsel. So it's really not independence really compulsory. So I call them CFA compulsory medical examinations, but you may have to comply with one of those. And then the unsworn statement, which again, you have to go through. It's a waste of time you have to do it and You have to prepare your client for it. Remember, juries don't like clients they don't like. So make sure your clients prepared and ready.

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All right.

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After you provide all of this information, and you're sending your notice of attempt, you have to wait 90 days, the 90 days does stop does toll the two year statute limitation. So you don't have to worry about statute limitations during this period. But for those 90 days, you sit, you wait, you get harassed, your client gets harassed. Now it's up to defendants, if they want to accept that they breached the standard of care, at which point they can demand pre sued arbitration, which we'll talk about, they could request pre suit mediation, or they could deny any wrongdoing. And now you could file your lawsuit. So defendants really have the power this stage, you're waiting for them to make that decision. Arbitration is tricky. So arbitration, again, that 766 point, two, one. What pre suit arbitration does, is it creates if you both accept voluntary binding arbitration, so you both have to agree to it. And if you both agree to it, then whatever the arbitrator sets the number as it's the number, so you have 30 days to decide if you want to accept arbitration. Now remember, it is binding if you accept added arbitration damages are limited. So you do not recover as much as you want because they limit them in arbitration. Arbitration is not requested,

often because doctors have to admit liability. And doctors don't like to do that. their insurance may go up if they have insurance, which they probably don't. But Florida has a thing that is passed called three strike rule, if a doctor commits the same type of malpractice three times, he's at risk of losing his license, so doctors don't like to have these strikes on the records. Alright, arbitration, what they do to limit damages is you only recover 80% of your lost earning or incapacity. They all set collateral damage collateral source payments, like those medical bills from it. And future economic loss can be limited as well, in terms of what the past you've lost for the injury, and what you will lose in the future due to the injury. So those all get limited in arbitration. If one of the side requests arbitration, the other side rejects arbitration, then under 766, your award is limited to trial. So they almost forced you to accept arbitration, or the award, your win is so limited, it's hardly worth all the money and effort to try the case. So pre sued arbitration is a dangerous thing you need to be careful of. I've got through it twice in my 25 years, both experiences were difficult for me to accept. But based on the nature of my case, I felt it was worth accepting arbitration, the two times I accepted it. In terms of mediation, mediation is voluntary. It's not bind it. And I've several times were asked to do a mediation after the pre suit notice period. But before I filed my lawsuit, it's a way to save a lot of attorney fees and costs and try to get to a mediated accepted result, the case where you both agree to accept certain sum of money. I've done it several times, and it's been successful a few times. So if it's offered, I will accept generally. But it's not all for that often either. Mostly, they deny malpractice. defendants and once they the defendants denied our practice, now you could follow your suit pretty soon as over, you could do what you would do to any dorable lawsuit file your complaint. Your complaint does require some precedent that you explained to the court in your complaint. So make sure you you follow the rules, but you have to certify that you've attempted in good faith and resolve the case by going through pre suit. So make sure that's your complaint your complaint could be dismissed. With my complaint, I always send out my formal discovery. My formal discovery set of interrogatory is a set of requests for production a set of requests for admission. So that's always in every case off the bat.

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In medical malpractice, it is my belief, read discovery is the most important part of the case, because you'll get all of the things you rely upon and trial for Britain discovery. So whether your doctor works for a hospital, or as an independent contractor of a hospital, or works for a clinic, your clinic rules, hospital rules as well by laws, you want to know what the doctor should have done. You want his own internal process, you want his bills, his records, these are gonna be the most important part of your case. So you need to make sure you follow up the written discovery in medical malpractice moreso than any other type of law that you may practice. There's also something in medical practice, referred to as amended seven discovery. And it's seven discovery discoveries have really been a decade ago or so. Florida Statutes were changed through a constitutional amendment by the citizens of Florida, who were tired of losing all of their rights of

medical malpractice, because the Florida Legislature, every year strips more and more of people's rights when it comes to sewage doctors, and hospitals and insurance companies. If you look at the beginning of the medical practice statue and how it's taken rights away every year based on completely fabricated evidence, false testimony of malpractice, lawsuit overload, fear of doctors leaving the state a lot of nonsense, you'll see how the legislature has truly got after people injured by doctors, it's stripped away their rights, it's really terrible. Pay the citizens were so upset by this, that they created a passage of what's now known as amendment seven, which allows you to request any peer review documents of a hospital. So if you're a medical malpractice case, the malpractice comes out of hospital, and you're suing a hospital, whether it's the doctors fault, or the hospital's fault, you can request all of their peer review information. You want to know if the doctor has ever been sued before? Has he ever been in trouble before? As you've been investigated before? Have you had similar lawsuits like this before, and your download title to that information. So again, look into this discovery, it's again, it's sort of colloquial, notice I've added seven discovery and said that out. The other forms of discovery are obviously deposition testimony. So make sure you take the depositions of the people you want included. If it's again, a hospital or clinic, you want the corporate representative of those facilities. Once you get all of your written discovery, you compile it, you follow it up and do your motions to compel what's next. Next is you acquire this information, and you provide it to your expert and discuss the case with your expert. Once they've had a chance to review all of the information you're providing. There are three levels of experts roughly in medical malpractice, there is your standard of care expert, your standard of care expert will be the expert to use to testify that the defendants breached the standard of care. That could be one or two or three doctors depending on what the breach of the standard of care was. But if an orthopod made a mistake, your orthopod would be your standard of care. If you're suing a hospital and the doctor, that you may also have nurse experts or hospital administrator, those are going to be your standard of care experts. The second level of expert would be your causation experts. So did the breach of the standard of care did the injury cause this permanent damage? And those causation experts are going to be the next level. So I have a reputation as I said for doing these failure to diagnose kidney cases. I have done it around the country. I've had cases got a trial

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that I filed lawsuit on in Florida, South Carolina, North Dakota, Arizona, Hawaii, Washington State. So I get a lot of experts from around the country. I deal with a lot of lawyers from around the country. And these failure to diagnose kidney disease cases always revolve around either a GP or family doctor beside gnosis or an OB GYN, Miss diagnosis or pediatrician Miss diagnosis. So one of those levels would be my standard of care. expert, my causation expert would be because it's a kidney failure case, they generally never referred my client to an A for ologists. And nephrologist is a doctor that treats kidney disease. So I would never the frolla Gist expert, or they may set the client to a urologist by mistake, or urologist does not treat kidney disease, they do treat problems

with the bladder and your return urine, but not kidney disease, I may get a urologist expert, those would be my causation experts. And then the last level that you want to look into would be your damage experts. Damage experts could be your economist, your vocational rehabilitation list, your life care planner, these are all sort of the next level of damage experts you need because you're gonna have to prove your damages. So generally, Life Care planner will talk about what is it like with kidney disease? What is the transplant look like? What does dialysis look like? Are you going to need multiple transplants? What are the costs involved in all of those? what medications Do you need to take? What anti rejection medicines are you taking that could affect other parts of your life. So for instance, anti rejection medicine, recipients have a much higher likelihood of heart disease, or skin cancer, or diabetes, you need to check these things. That's different than a vocational rehabilitation as to vocational rehabilitation as we'll determine, because of these injuries, you can no longer work or work at the same level, or work at the same job. And what are those losses going to look like for your future employment. And then an economist will take your life care plan and your vocational rehabilitation report and actually put numbers to it. So he'll determine based on interest rates, and inflation and investment, what the numbers look like, you're going to need to keep this person moving for the rest of their life. Alright, so those are the third level, those are the damage experts. Whatever you have an expert, one of the things you need to be careful of which is more and more prevalent in Florida are daubert challenges, challenges to your expert that they're not qualified. So you need to make sure with all of these experts, whatever level it is, their qualifications meet the level of expertise, you want to make sure they're thorough with their review. Or if they make a report and are thorough with their report. You want to make sure that if there's any past cases, it doesn't conflict with what they're doing with your case, I don't like to say of experts over and over and over. Because then it looks like they're sort of on your team. And I ever want a jury to think my experts are part of my team. I always want them to think these are independent experts in their field. Once I get all my experts set up, and I prepared them, then I start to work on a liability, the case of proving the breach of the standard of care. And again, that'll go through mostly the medical records, maybe any hospital clinic rules or bylaws, if there are any of how the doctors should work. You know, I had a case in Arizona, where I had a boy who was sent to a doctor, an endocrinologist for failure to grow. And the doctor determined he had a growth hormone deficiency. And so she gave my client this little boy growth hormones to help him grow taller and get back on the scale of where children should be as they develop through age.

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His pediatrician was following up as well. And little boy was also suffered from kidney failure. It was clear from his labs, he had kidney failure. And one of the side effects of kidney failure is a failure to grow. Your body's not processing it's keeping a lot of poisons in the body, and it stunts your growth. But they never connected the two. So one of the things I had to do with that case, is not only get a pediatrician, and an endocrinologist to talk about kidney disease, and grow failure,

but how it relates to by nephrologist at the nephrologist describe it how the inability to filter urine through the body stunts people's growth. And so this was sort of like a real team approach where all three experts were conference calls with me. And we discussed how we're going to move the case forward. But we had to work hand in hand as a team all three of us because the young man did have some growth hormone issues, but he also had kidney disease. And so that was a real collaborative approach for us to get to the jury and show where this little boy suffered It was a very good result for him and his family. Luckily he stood well. And actually a couple years ago, what? ASU Arizona State, like I said, it's the case that Arizona and was a college, still short, still has issues with his kidneys. Probably he already had a transplant at the age of 14, he'll probably need another transplant in his 20s. But luckily, his family are doing well. It's nice to see, again, no one helps these people, just as the lawyers, so it's a nice thing to continue to follow up with your clients and see how they do. Throughout the years I do that and a truth. Not only is it can be a nice sense of satisfaction of what I do, but clients are still my best referral source. A happy client sends your clients. So keep your clients happy. It's my most important advice. All right. Once we get all of our liabilities sort of discussed, now we work on damages. The thing with damages are, most young lawyers are nervous, ask the jury for money, don't be juries understand. The case is about money. Right? 500 years ago, if someone hurt you, you took a sword and you go killed several of their family to get back at them. And with retribution. We don't do that anymore. We now seek compensation through money. So don't be afraid to talk about money. Money is part of the case. Now let's say you ask for $10 million in every case, because the jury will laugh at you. It's ridiculous. But discuss reasonable adequate compensation for what your client went through. The jury will understand and usually by damage sort of presentation tracks, the Florida jury instructions, which are pretty good at describing what damages are allowable. So like Florida standard jury instruction by personal injury damages are the elements of it. It allows for pain, injury, disability, discomfort, loss of capacity for joy out of life. Talk about that. And I want you to think about this for a minute.

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Our pain and injury the same. No

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pain is because we didn't discover the kidney disease. You needed a kidney transplant, it is painful to have your body cut open and lose a kidney and have a new kidney implanted. That is very different from injury. injury is because you have a new kidney, you have to drink 50 bottles of water a day to go to the bathroom not stop, you have to limit what you can eat. You can't eat salty foods, you can't eat sugary foods, they've taken away some of your ability to do your normal everyday life. That injury is different than the pain of the surgery. Or in the back surgery case. We had a very successful case of back surgery case where they the client when it was terrible back

pain, they did a surgery. And not only did they not relieve the pain, but they now paralyzed the left side of the body. So the pain is his back is killing him. Still every day. He can't sit, he can't stand. Everything hurts his back. That is pain. But his left side is now paralyzed. And he can't lift the pad he can't lift water with his left hand. That is injury. So seperators disability disabilities another separate cause of action, but not cause of action but Another cause of damage. Disability is the inability to function the way you did prior to the injury. If you love soccer, and now you can't play soccer because they disabled your foot or your leg, the disability may have a separate element of damage, that there's disfigurement to erbs Palsy case for the arm shrivels up on the baby as a separate damage and then loss of capacity, enjoyment of life. And that in my mind is always the biggest. Whatever you love to do with life, so we're Florida, we're blessed with great weather, baby You love to golf. Maybe you love to fish, baby, you love to play sports. Maybe you love chess, if you lose what you love most in life. What's the value of that? So I had a case early in my career, where I had a fisherman he came from Cuba since he was three years old. All he ever did was fish. He didn't go to school. He fished every day. Every day he fished he loved to fish He got hurt in his 40s with a bridge patrol boat, swapped his little boat throwing him out of his boat, a little boat spot around the propeller sliced the quadricep muscle. So now my client couldn't use his right leg. He couldn't get in or out of a boat. He couldn't stand to fish, he lost his ability to fish. And everything else he went through, the pain of his habit is washed up severed the pain of three surgeries to try to reattach the injury of having to drag his foot as he walks his finger, but of having a loose, limp leg that he couldn't really use, all terrible, all worthy of compensation. The loss of his ability to fish, the thing he loved most of life is what made him cry every day. He cried every day before trial, he cried every day at trial. And he cried after the trial, because he could never fish again. And even though we got a tremendous award for him, nothing made up for the ability, or the loss of ability to fish that loss of capacity for joy of life. Make sure you understand the meaning of the significance of that before

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you get in front of a jury. One of the things that I like to do with trial

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is during voir dire where I talk to my jury, I'll ask several of them what they love most of life that you'll find someone else say something like, I love golf, I golf four times a week, it's my passion, or I love boating, I do it every weekend, I used to boat with my father died boat with my wife, and I both my kids, I love boating. So those are the people I talked with saying what if I took that away from you? What is it worth for you to have that love? What's it worth if I took it away. So those are the elements of damages. On top of that there's medical expenses, medical expenses will be past medical bills, and future medical bills for whatever the injury is. And those medical bills could be hundreds of 1000s of dollars, depending on the case. You also want to care treatment. So I get it a

kidney case, if it's a little kid, they be they may be paired to the old diabetes, dialysis, where they need a nurse to come to the hall but hold the baby up. So the baby could have dialysis. So it's not just the medical bill, it's the cost of the nurse. It's the cost of gauzes of needles. Those things all have cost to that. In addition to medical expenses, there's lost earnings and earning capacity. And this is a big difference. lost earnings is let's say you work at enterprise rent a car and you make $16 an hour. And you lost that job because of malpractice. You get to tell the jury, I lost these last 18 months of work 40 hours a week for for two weeks a year, and that number is x. But in the future, I was not only going to work those 40 hours, I was on a path to become a manager. And once I become a manager, they pay for my health insurance. And now do they pay for my health insurance, but they give me a credit card I have an expense every month that I could charge things on. That's your earning capacity. That earning capacity needs to be calculated separate from your past earnings. earning capacity could be huge, because most people would like to expect that in their job will advance to a degree and with advancement comes greater rewards, whether it's health insurance, it may be if you work somewhere for 15 years, you get you know, matching 401k or you may get more vacation time. Those are all earning capacities. So make sure you calculate those as well. In addition to your injuries, you may have a spouse and therefore you'll have spousal consortium injury.

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So if you have you know if you're injured I had a case where a young woman was injured during

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an epidural that went wrong during the delivery of her child. And she lost the ability to stand for long periods of time. And she was actually a waitress and she made buddy for the family and and had a good career as a waitress. So not only did she lose her ability to work, but the husband now had to stay home and help the wife because they had a baby and she couldn't stand. So he lost his job. totally lose his job but he Was that in that particular case, he worked actually as an adjuster for an insurance company. But he now became a nurse, essentially, he went from being someone who worked to now someone got to care for his wife, almost full time, because she couldn't care for herself any longer. And what is the damage psychologically, for becoming a sort of partner, spouse, lover, companion, to now a full time caregiver, you do it because you love the person, but there's a loss, there's a value for that loss. Or you may have children, and there are potential damages for the children. Or if a child gets hurt like a young man in Arizona, there's damages for the parents parental Consortium. So make sure you cover your consortium charges were losses for parents, spouses, children, all of those are potential losses. Now, those are all different from wrongful death, Wrongful Death is different, because you state recovers. And again, remember I told you in malpractice, it's very limited what you recover, because you no longer recover for pain and suffering. You may not be able to recover for lost income. What you

get now is that accumulation, think about this net accumulation. What did you have at the end of your life, you're in debt accumulation, meaning whatever money you would have made, you spent on rent bills, health insurance, as you get older, your costs may go up. So it's very easy for defendants those cases to show in a wrongful death case, due to medical malpractice, whatever you would have earned, you would have spent most of it at the end of your life. Therefore, your debt accumulations may be zero. So you may have recovery of zero, or 1000s of dollars. Whereas this was a wrongful death due to an auto case, your damages can be in the millions. Terrible. All right. Oh, once your case is set up, you have your damages and your liability or defendants with 90% of these cases, you need to be perfect, pretty close to perfect to win these cases. I always, always when I go to trial create a what I call a bad order. I love sports, a sport guy, call it whatever you want, by bad orders, sort of like my outline of the case, who's going to testify in what order on one side of my sheet. And what they're going to testify to in the middle of the sheet. And what exhibits from our discovery or rib discovery of the left side of the sheet, what exhibits they're going to use. So I have that sort of prepare to my outline. I do that in every case. So I have a very strong understanding of what I want to do with my case. Again, the read discoveries report because it's going to be the exhibit to use. But you may also have demonstrative aids separate from exhibits, the bus today, it's maybe timelines, it may be below up on the page of the chart. It could be a curve showing your client maybe got hurt, it was get better, better, better went to the doctor fell off a cliff in terms of injuries. So all those things need to be prepared and ready to go. When you take your case to trial. So here's a question for you. Take a moment Think about this. If I have a medical malpractice case, let's say I had a case where they did a heart catheterization of a client. And when they're trying to determine the rhythm of the heart, they accidentally punctured the heart. I believe it or not, that is an accepted risk. puncturing the heart, doctors do not think that's malpractice. So they punctured the heart. They pull the needle out of the heart, blood pressure drops, they see Oh my God, we puncture the heart, they could actually

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close that puncture up, you know, they use different doctors use different techniques, whether it's artificial tissue, or like a silicone caulking material, actually, they could close the puncture of the heart. But what if the doctor pulls out the needle and quick to go to his golf game, it doesn't realize the blood pressure is dropping, leaves the O R.

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Now the patient starts to crash because they never close the puncture. He has terrible heart attack. Heart Attack causes the patient to have a stroke.

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The patient gets paralyzed on one side of their body. Used to the doctor there's a case that actually I had Who's your first witness? Who where do you start this case, you start this case with your client talk about how bad his life is, or what they did to him. You start the case with his wife to say how she lost this vibrant, wonderful man and husband. And now as a shell of a man to care for, you start the case with your expert to say how the doctor malpractice the case, you start the case with your life care planner. So right off the bat, you've sobered up, they're saying, because of what they did, these are all the problems my clients gonna have, it's gonna cost millions of dollars to keep it alive. And then from there, you move the case forward. So when it comes to medical malpractice, it's very tricky the timing of how you want to present your evidence, and how you want to present your case. But it's something to think about very carefully whenever you take these cases. But at the end, you need to know, you read these cases for two to three years, it's gonna cost you 100 to $200,000. to bet it's what 90% of these cases, every law, the books the Florida Legislature made, is made to make you lose to live it your recovery, to live your ability to bring suit, and to make sure the feds had every advantage across the board. Now, do you still want the case that that is better? Well practice in a nutshell. So again, if you have any questions, anything I discussed, I'm happy to provide me information at the end of this email be asked for questions call me, one of the things I will always say is, it is better to pass out a case than to take a bad medical malpractice case, a bad medical malpractice case, can can destroy your firm, you take two or three of those, you can't recover from that. So be very careful the cases you take selection is the most important part to determine if the case you want because you'd rather pass on a case that gets stuck into a bad case. But once you decide the case is for you. I hope I helped you provide steps on how to think about your case, prepare your case, and what you need to be successful by the time you get to trial. And try it a bit of a practice case is a whole nother seminar for another day. I'm happy to discuss that with you. Try it a case is the most fun for me. I love to try cases, I love juries. But I tell every associate that works with me. For every hour I talk a trial, I've spent 50 hours preparing that one hour. And that is the truth when it comes to medical malpractice. your medical records could be six 8000 pages, and you're good to go. You don't leave anyone else you have to go line by line, page by page and look for where these things occur. I'll leave you with another case that was taken up it was pretty well known. It's a case where a client was in a coma. And they were feeding the client in the Cobra, which is dangerous. And so they put in what's called a trend to work position. So you get a call you like a client flat, sometimes we will put the feet up a little bit. But when you feed them, you need to make sure the head is up a little bit. So they don't choke. Make sense. My client was in a coma and he suffocated when they fed up and he died. And their answer was your defense was we did all that we could he was in a coma was really nothing else we could do it. It's a very unfortunate situation. And the COBOL was not their fault. COBOL was from a motor cycle accident. But taking care of him to combo was their fault. So I went through I don't know 60,000 pages of medical record. Can you imagine all the nurse or no doctor notes for patient I was in a coma for six months. The day before my client died. There was a nurse of note saying the client was coming out of his coma. That's what she wrote. She wrote patient coming out of cola visual startup cup awake and alert. And

that's why maybe he choked because they put it in his head up. They put it down but because he felt the choking he panicked and swallowed, aspirated and died.

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So we fought the case and I took that one sheet of paper which I put up a giant big foam board and a bottle for the jury said basically coming out of Cobra so they tell you it's hard to feed a patient in a coma today Tell you what the patient was coming out of the coma. It was easier to feed the patient had they done their job correctly. And the jury was a rapist. They were rightfully pissed. And they righteously rewarded justice to the family for what the hospital did. But that's a tough case if you don't go through every single record, and you find that evidence, so it's up to you. So good luck, I wish you well, and get my name is Jed Kurzban. I think many of our practices in excited area of the law, and it's well worth it if it's the right case, but know what you're up against. So, good luck and thank you