

## **APPENDIX**

### **Glossary of Legal Terms**

#### **Appeal**

This is the right of a party, who has lost a case, to take the case to a higher court for a judicial review.

#### **Burden of proof**

The plaintiff has the duty to prove the fact or facts in dispute between the parties in a malpractice case and that they resulted in his/her injury.

#### **Cause of action**

These are the facts that give a party the legal right to bring a lawsuit against another party.

#### **Comparative negligence**

This is the process by which the plaintiff's own negligence is measured against the total negligence. The award is reduced by that percentage.

#### **Complaint**

Notice of a legal proceeding filed in civil court on behalf of a plaintiff against a defendant in a lawsuit.

#### **De bene esse**

A provisional proceeding, such as a deposition, that is permitted by the court in order to preserve the testimony of a witness or party because of the absence or death of a witness.

#### **Deposition**

This is the pre-trial questioning of a witness or party by an attorney before a certified court reporter. The testimony is preserved and will be used during the trial to cross-examine the witness in front of the jury.

#### **Directed verdict**

The judge will, in certain cases, dismiss a case as a matter of law & not permit it to go to the jury when the plaintiff fails to present sufficient evidence to support his/her case. The defense attorney will usually request a verdict for the defense at the end of the plaintiff's case.

#### **Discovery**

The pre-trial phase of a lawsuit where evidence is gathered; parties and fact witnesses are questioned; testimony and documents are preserved in support of the respective positions.

**Expert witness**

This is a person who the court qualifies as having the requisite education or training in field of study to articulate the standard of care. The expert evaluates the facts at issue in a case that are beyond the knowledge of the average person.

**Interrogatories**

A specific set of questions that are designed by an attorney to determine the facts, issues, damages, witnesses, and background information of a case as they are known to the plaintiff and defendant. These questions may be used as evidence in court.

**Malpractice**

A professional deviation from the accepted the standard of care or an unreasonable lack of skill in the conduct of one's professional duty to a patient that gives rise to a cause of action.

**Negligence**

This is the failure of a party to act with the appropriate degree of care required by law in order to protect the public from an unreasonable risk of harm.

**Per quod**

This is Latin for "whereby." Once the complaint lists all the acts alleged, the per quod claim lists the "consequences" of those acts as grounds for special damages to the plaintiff.

**Prima facie case**

In a malpractice case, the plaintiff's prima facie case includes all the evidence in support of the breach of a duty of care by the practitioner that resulted in an injury to a patient.

**Proximate cause**

This is the act that resulted in the injury to the patient. But for this act or acts, the patient's injury would not have occurred.

**Res ipsa loquitur**

This is Latin for "the matter speaks for itself." It is a legal assumption that the specific injury at issue in the case only occurs through negligence. For example, a foreign body left in a patient's abdomen after surgery.

**Respondeat superior**

This is Latin for "let the master answer." This doctrine recognizes that there are instances under the law when the person in charge is responsible for the actions of those under his/her control. This does not include those instances when the servant acts outside the scope of his/her authority.

**Standard of care**

The preferred mode of treatment for a medical condition as practiced in the same field of medicine by physicians with similar training.

**Statute of limitations**

This is the period of time permitted by state rules to file a lawsuit. The clock begins to run on the date when the plaintiff discovered that he/she was treated negligently.

**Summary judgment**

There are those instances when a party is entitled to a dismissal of a lawsuit as a matter of law because there are no factual issues in dispute.

**Summons**

A legal document delivered to a party's office, home or workplace. The summons lists the parties in the lawsuit, the name of the court, the plaintiff attorney, and the time allowed, by the rules of court, to answer the summons.

**Tort**

This is the civil act for which a court will permit the recovery of damages for a failure to comply with the standard of care required by law to meet a duty.

**Torfeasor**

This is the party in the lawsuit who allegedly commits the civil act that results in an injury to a party.

**Voir dire**

This is the jury selection phase of a trial. The rules of court permit a specific number of jurors to sit and deliberate upon the facts at dispute in a civil case. The process permits each party to eliminate, without explanation or "cause", a specific number of the jurors before the final jury is selected.

**Writ of summons**

A notice of intent to sue which typically preserves the statute of limitations and gives a party additional time to articulate the allegations upon which the suit is brought.