



Caseload Highlights

www.courtstatistics.org

Cynthia G. Lee and Nicole L. Waters, Authors

Medical Malpractice on Appeal

Medical malpractice lawsuits, in which a patient alleges that the negligence of a physician or other health care provider resulted in injury, regularly capture the attention of policymakers and the news media and are a frequent target of legal reform efforts. This issue of *Caseload Highlights* explores appellate activity in medical malpractice cases, including the factors that influence the decision to appeal a medical malpractice case, the issues on appeal, and how medical malpractice appeals are resolved. Data are from the *2001 Civil Justice Survey of State Courts: Supplemental Survey of Civil Appeals*, which tracked appeals from civil trials held during 2001 in 46 of the nation's 75 most populous counties.

What's Inside:

A Tale of Two Counties: Medical Malpractice Appeals in Pennsylvania



Plaintiff Win Rate and Rate of Appeal from Trial Court Verdict, by Tort Case Type

Case Type	Total Trials	Plaintiff Win Rate at Trial	Appeal Rate
Conversion	16	56%	38%
Product liability: Non-asbestos	91	43%	33%
Professional malpractice, other than medical	68	52%	32%
Product liability: Asbestos	26	58%	31%
Slander/libel	61	38%	30%
False arrest/malicious prosecution	29	41%	24%
Medical malpractice	850	28%	18%
Intentional tort	251	58%	14%
Premises liability	924	42%	12%
Animal attack	60	65%	10%
Motor vehicle tort	2,819	59%	6%
Other/unknown tort	256	50%	22%
All torts	5,451	50%	11%
Median		50%	22%

The figure above shows the relationship among case type, plaintiff win rate at trial, and appeal rate for all tort cases. Case types typically involving more severe injuries, complex medical or scientific evidence, or expert testimony—for example, product liability claims—were appealed most frequently. On the other hand, the most prevalent types of tort claims, such as premises liability and automobile torts, were least likely to be appealed. About 18 percent of medical malpractice cases were appealed, putting the medical malpractice appeal rate just below the median among tort case types.

Losing Medical Malpractice Defendants Appeal More Often than Losing Plaintiffs

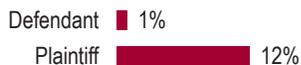
The figure below breaks down the appeal rate for medical malpractice cases by prevailing party and appealing party. Counting cross-appeals, in which both parties appealed aspects of the trial court’s decision, the appeal rate was more than twice as high for losing defendants (26%) as for losing plaintiffs (12%). This disparity may result from resource imbalances between defendants, typically doctors and hospitals whose defense is financed at least in part by insurers, and plaintiffs, usually private individuals whose attorneys work on a contingent-fee basis. Losing defendants may also be more likely than plaintiffs to file appeals for the purpose of increasing their leverage in post-trial settlement negotiations.

Medical Malpractice Appeal Rate, by Party and Trial Outcome (850 trials)

In cases where the plaintiff won, percentage appealed by party



In cases where the plaintiff lost, percentage appealed by party

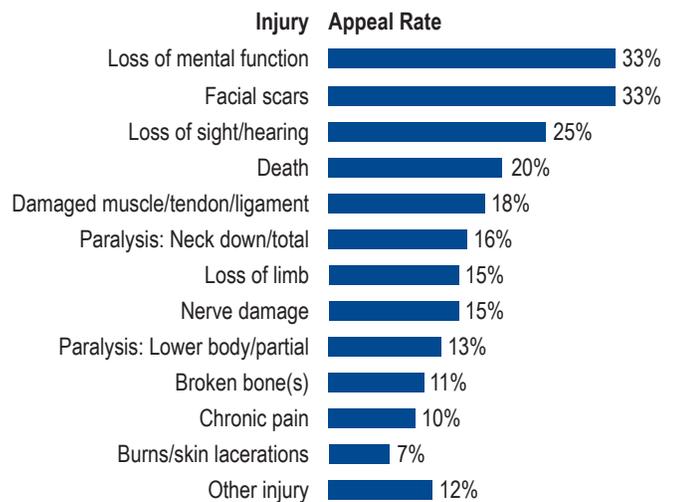


Including cross-appeals, winning plaintiffs were about ten times as likely (10%) as winning defendants (1%, or 5 cases) to appeal. A likely explanation is that a winning plaintiff may still be dissatisfied with aspects of the verdict such as the amount of damages awarded or the judge’s decisions on post-trial motions regarding matters such as attorneys’ fees, costs, or award adjustments, whereas there is usually no room for a defendant who has been absolved of liability to improve the result by appealing.

Higher Stakes Translate to Higher Appeal Rates

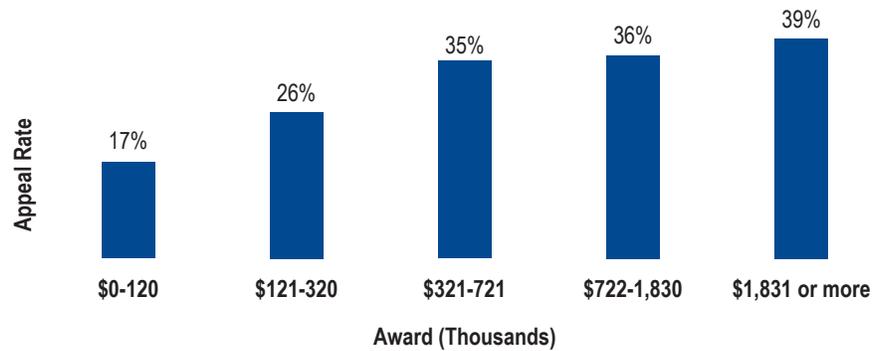
Medical malpractice cases involving severely injured plaintiffs or large awards were more likely to be appealed than those with less severe injuries or smaller awards. As shown in the figure below, appeal rates were generally higher in cases involving more disabling injuries, which are more costly to compensate. Appeal rates ranged from 7 percent for cases in which the plaintiff incurred lacerations or burns to 33 percent in cases in which the plaintiff suffered impairment of mental function or facial scars. Although death is arguably the worst possible injury a plaintiff might suffer, wrongful death had a lower appeal rate than three other injury types. This may result from the fact that, as other studies have shown, damage awards for wrongful death tend to be smaller than those for catastrophic injuries that require expensive lifelong care and result in long-term pain and suffering.

Medical Malpractice Appeal Rate, by Primary Injury Claimed



Similarly, cases resulting in larger awards were more likely to be appealed. The figure to the right breaks down the appeal rate for plaintiff wins by award size. For the smallest one-fifth of awards, the appeal rate was 17 percent; for the largest one-fifth, the appeal rate was 39 percent.

Medical Malpractice Appeal Rate, by Award Amount, Plaintiff Wins Only (232 trials)



Medical Malpractice Appeal Rates Vary Among Jurisdictions

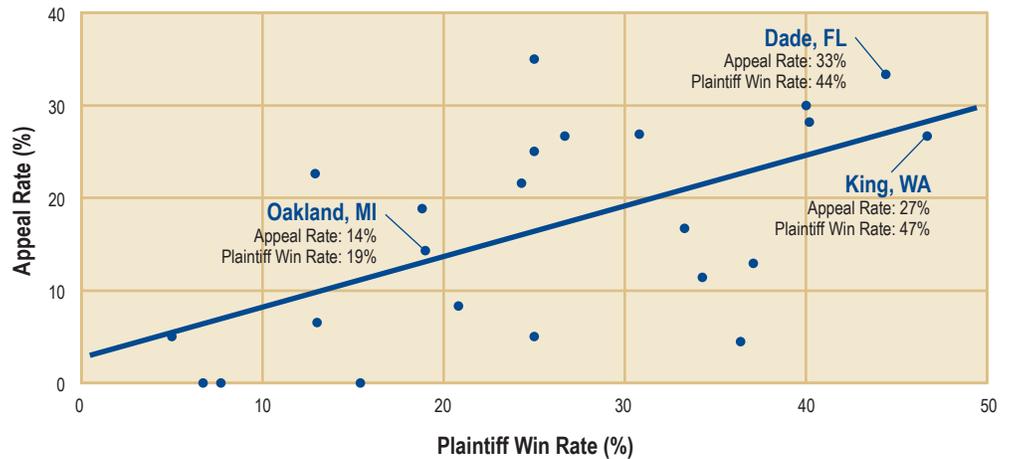
The rate of appeal in medical malpractice cases varies substantially from county to county. As shown in the figure to the right, the appeal rate for medical malpractice cases in counties with more than 10 medical malpractice trials ranged from zero in three counties to a high of 35 percent in Dallas County, Texas. Some of this variation may be attributable to differences in plaintiff win rates among counties.

Medical Malpractice Appeal Rate and Plaintiff Win Rate, by County for Counties with More than 10 Medical Malpractice Trials (735 trials)

County	Total Medical Malpractice Trials	Plaintiff Win Rate	Appeal Rate
Dallas, TX	20	25%	35%
Dade, FL	27	44%	33%
Bexar, TX	10	40%	30%
Philadelphia, PA	117	40%	28%
Jefferson, KY	26	31%	27%
Fairfax, VA	15	27%	27%
King, WA	15	47%	27%
Maricopa, AZ	28	25%	25%
Orange, CA	31	13%	23%
Cuyahoga, OH	37	24%	22%
San Bernardino, CA	16	19%	19%
Franklin, OH	16	19%	19%
Harris, TX	30	33%	17%
Oakland, MI	21	19%	14%
Cook, IL	70	37%	13%
Middlesex, NJ	35	34%	11%
New York, NY	72	21%	8%
Allegheny, PA	46	13%	7%
Middlesex, MA	20	5%	5%
Wayne, MI	20	25%	5%
Los Angeles, CA	22	36%	5%
Hennepin, MN	13	8%	0%
Essex, NJ	13	15%	0%
Bergen, NJ	15	7%	0%
Median	21.5	25%	18%

The figure to the right plots the appeal rate against the plaintiff win rate for medical malpractice cases in counties with 10 or more medical malpractice trials. There is a positive linear relationship between plaintiff win rate and appeal rate. This is consistent with the finding that losing defendants are more likely to appeal than losing plaintiffs—in other words, because losing defendants are more apt to appeal than losing plaintiffs, it is not surprising that in counties where defendants lose more often, appeals are more frequent. Other factors, such as rules regarding the admissibility of expert evidence, tort reform measures, and local post-trial settlement culture, may also influence a county’s appeal rate for medical malpractice cases.

Medical Malpractice Appeal Rate, by Plaintiff Win Rate for Counties with More than 10 Medical Malpractice Trials (735 Trials)



Medical Malpractice Appeals Frequently Involve Expert Evidence

The figure to the right compares the percentages of appellate opinions in all tort cases and medical malpractice cases addressing various types of trial court errors alleged by appellants. Evidentiary rulings by trial courts were frequently addressed both in medical malpractice cases (41%) and in tort cases in general (35%). Medical malpractice opinions, however, were 12 percentage points (64%) more likely to involve rulings on expert evidence than were tort opinions in general. The prevalence of expert opinion issues in medical malpractice appeals is consistent with the fact that expert testimony regarding the standard of care, causation, and/or the extent of the plaintiff’s injuries is required in virtually all medical malpractice cases. Jury issues, trial management issues, and trial courts’ decisions on motions for new trials were also much more likely to be addressed in medical malpractice opinions than in the general population of tort opinions. On the other hand, medical malpractice opinions were much less likely than tort opinions in general to address the sufficiency of the evidence to support either the verdict or the amount of damages awarded.

Alleged Trial Court Errors Addressed in Appellate Opinions, by Case Type

Alleged Trial Court Error	Percentage of Opinions Addressing Alleged Error	
	All Torts (323)	Medical Malpractice (81)
Evidentiary Ruling	35%	41%
Expert Evidence	18%	30%
Directed Verdict/Judgment Not Withstanding the Verdict (JNOV)	33%	38%
Substantive Legal Decision	35%	32%
Medical Malpractice: Standard of Care	*	17%
Medical Malpractice: Informed Consent	*	11%
Medical Malpractice: Other	*	12%
Motion for New Trial	20%	28%
Trial Management	13%	19%
Pretrial Case Management	16%	17%
Jury Issue	6%	11%
Sufficiency of Evidence with Regard to Verdict	21%	11%
Post-Trial Award Adjustment	12%	10%
Fees/Costs/Sanctions	6%	5%
Procedural or Jurisdictional Issue	4%	4%
Sufficiency of Evidence with Regard to Damages	8%	3%
Inconsistency Within Verdict/Judgment	2%	1%
Other Error	4%	3%

*Applicable only in medical malpractice cases.

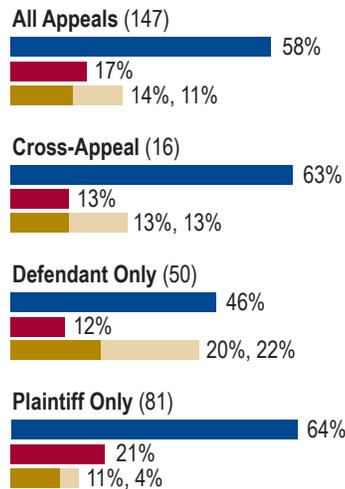
Defendants Withdraw Appeals More Often Than Plaintiffs

As shown below, defense appeals were three times as likely as plaintiff appeals to be withdrawn before the appellate court issued a decision. In addition, more than half of withdrawals of defendant appeals took place by stipulation of both parties, as opposed to around one-quarter of withdrawals of plaintiff appeals. These facts suggest that losing defendants may be more successful than losing plaintiffs in using appeals to gain leverage in post-trial settlement negotiations.

For cases that did reach appellate decisions, however, plaintiff and defendant appeals had generally similar outcomes. The figure below reveals that about one-fifth of both plaintiff and defendant appeals resulted in partial or total reversal of the trial court decision, although defendant appeals were somewhat more likely than plaintiff appeals to result in full reversal. The high reversal rate for cross-appeals (60%) may result from greater case complexity or simply from the small number of cross-appeals (10) that were decided.

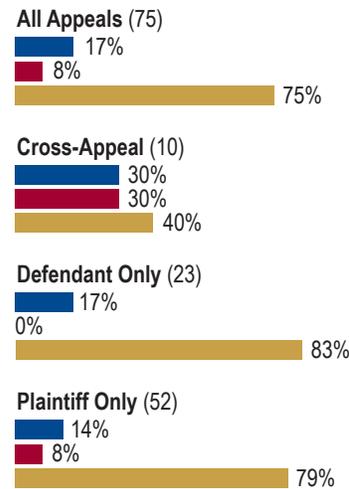
Manner of Disposition of Medical Malpractice Appeals

Reviewed by Appellate Court
 Not Reviewed/Transferred
 Withdrawn by Appellant, by Stipulation of Parties



Outcome of Medical Malpractice Appeals Reviewed by Appellate Courts (Trial Cases Appealed)

Reversed in Whole
 Reversed in Part/Affirmed in Part
 Affirmed in Whole



Note: Percentages may not sum to 100 due to rounding.

Conclusion and Implications

As compared with other types of tort cases, medical malpractice cases involve a large amount of appellate activity. For attorneys developing case valuations as well as for courts and policymakers seeking to understand the unique nature of medical malpractice cases, it is important to consider data on appellate activity hand in hand with information on the outcomes of medical malpractice trials.

A Tale of Two Counties: Medical Malpractice Appeals in Pennsylvania

Appeal rates for medical malpractice cases may vary dramatically among jurisdictions within a single state. The figure at right compares the numbers of medical malpractice trials, plaintiff win rates, and appeal rates for Philadelphia County and Allegheny County (Pittsburgh), Pennsylvania.

In 2001, there was a broad perception among Pennsylvania attorneys, physicians, and malpractice insurers that Philadelphia juries were considerably more generous to medical malpractice plaintiffs than juries elsewhere in the state. This perception attracted large numbers of plaintiffs to file their suits in Philadelphia: twice as many medical malpractice trials per 100,000 county residents were held in Philadelphia County as in Allegheny County during 2001.

Plaintiffs who went to trial in Philadelphia County in 2001 enjoyed a win rate of 40 percent, more than three times the plaintiff win rate for Allegheny County. The appeal rate for 2001 medical malpractice trials was also more than four times higher in Philadelphia than in Allegheny County. This is consistent with the fact that losing defendants are more likely than losing plaintiffs to file appeals in medical malpractice cases.

Medical Malpractice Trials and Appeals in Two Pennsylvania Counties

Medical Malpractice Trials	Philadelphia		Allegheny	
	2001	2005	2001	2005
Total Trials	117	60	46	38
Trials per 100,000 Population	8	4	4	3
Plaintiff Win Rate	40%	37%	13%	24%
Appeal Rate	28%	*	7%	*

* Not yet available.

In 2002, the Pennsylvania legislature ended the practice of “forum-shopping” by amending the state’s venue rules to require that medical professional liability actions against health care providers be brought in the county where the cause of action arose. Data from the *2005 Civil Justice Survey of State Courts* reveal that population-adjusted rates of medical malpractice trials equalized substantially between Allegheny County and Philadelphia County following this reform. The number of medical malpractice trials per 100,000 residents in Philadelphia County fell by 47 percent to just over 4 trials per 100,000 residents; in Allegheny County, the rate fell by a much smaller 14 percent to around 3 trials per 100,000 residents.



The overall decline in the number of medical malpractice trials affecting both counties may be at least partly attributable to other reform measures designed to limit plaintiffs' ability to pursue medical malpractice claims, including a statute of repose barring most claims brought more than seven years after the occurrence of the alleged act of negligence, new qualifications for expert witnesses, and a requirement that a licensed medical professional certify that the medical care did not meet acceptable professional standards.

In 2005, plaintiff win rates for medical malpractice trials were also less disparate between the two counties than in 2001: the plaintiff win rate in Allegheny County nearly doubled to 24 percent, while the plaintiff win rate in Philadelphia County fell slightly to 37 percent. Data on appeals from these trials will be collected during the *2005 Civil Justice Survey of State Courts: Trials on Appeal*, currently in progress. These data will reveal how the changes in the number of trials and plaintiff win rates have affected medical malpractice appeal rates in Philadelphia and Allegheny Counties.



RESEARCH DIVISION
800.616.6109

Court Statistics Project

Since 1975, the Court Statistics Project (CSP) has provided a comprehensive analysis of the work of state courts by gathering caseload data and creating meaningful comparisons for identifying trends, comparing caseloads, and highlighting policy issues. The CSP is supported by the Bureau of Justice Statistics and obtains policy direction from the Conference of State Court Administrators. A complete annual analysis of the work of the state trial and appellate courts will be found in *Examining the Work of State Courts, 2007*.

**About the 2001 Civil Justice Survey of State Courts:
Supplemental Survey of Civil Appeals**

The *2001 Civil Justice Survey of State Courts: Supplemental Survey of Civil Appeals* was funded by the Bureau of Justice Statistics and conducted by the National Center for State Courts. It tracked appeals from all tort, contract, and real property bench and jury trials held during 2001 in the state trial courts of general jurisdiction in 46 of the nation's 75 most populous counties. Of the 8,038 trials in the study, 1,128 (14%) were appealed to state intermediate appellate courts. In 214 cases, one or more parties sought review of the intermediate appellate court's decision by the state court of last resort. Twenty-eight cases, or about .3% of all trials, were reviewed by state courts of last resort.

For further analysis of the *2001 Civil Justice Survey of State Courts: Supplemental Survey of Civil Appeals* see *Caseload Highlights: Civil Trials on Appeal – Part 1* and *Caseload Highlights: Civil Trials on Appeal – Part 2*.



**National Center
for State Courts**

300 Newport Avenue
Williamsburg, VA 23185-4147

Nonprofit
U.S. Postage
PAID
Richmond, VA
Permit No. 9

PRESIDENT
Mary Campbell McQueen
VICE PRESIDENT RESEARCH DIVISION
Thomas M. Clarke

COURT STATISTICS PROJECT STAFF

DIRECTOR
Richard Y. Schauffler
SENIOR COURT RESEARCH ANALYSTS
Robert C. LaFountain
Shauna M. Strickland
COURT RESEARCH ANALYSTS
Chantal G. Bromage
Sarah A. Gibson
Ashley N. Mason
William E. Raftery
PROGRAM SPECIALIST
Brenda G. Otto
INFORMATION DESIGN
Neal B. Kauder,
VisualResearch, Inc.

