

Tennessee Attorneys Memo

Presents



Includes the latest on any 2016 Supreme Court opinions affecting medical malpractice

Your Distinguished Faculty

Brandon Bass

Law Offices of John Day PC,
Brentwood

Judge Tom Brothers

Davidson County Circuit Court

Philip N. Elbert

Neal & Harwell, PLC,
Nashville

Ben Harrison, Jr.

Cornelius & Collins, LLP,
Nashville

Marty Phillips

Rainey, Kizer, Reviere & Bell, PLC,
Jackson

Chris Tardio

Gideon, Cooper & Essary, PLC,
Nashville

Mathew Zenner

McCune, Zenner and Happell,
Brentwood

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2016

Medical Malpractice Conference

for Tennessee Attorneys

When: Friday, May 13

Where: Nashville School of Law

This program features Davidson County Circuit Judge Tom Brothers, along with a faculty of leading defense and plaintiffs' attorneys, explaining the very latest developments in healthcare liability and sharing trial experiences. Highlights include:

- Recent developments in pre-suit notice and certificate of good faith requirements
- New summary judgment procedure
- How to "turn the tables" on a plaintiff's expert
- Defenses, such as patient negligence, that may be raised to defeat a plaintiff's healthcare liability claim
- Trial tips and tactics from both a plaintiff's and defense perspective
- Deposition strategies to help you win at trial
- Using technology to excel as an advocate in a healthcare liability case
- Review of recent healthcare liability appellate court decisions
- A panel discussion of "hot topics" in healthcare liability actions
- Ethical issues that arise when dealing with evidence and experts

BONUS: Attendees will receive a binder of materials during the conference and will be able to download the materials after the seminar.

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7.5 hours of CLE
(6.5 hours of general
and one hour of
DUAL)

Attend this one-day satisfaction-guaranteed event and enhance your professional skill set while gaining valuable CLE credit, 6.5 hours of general CLE and 1 hour of dual CLE.

Get up to date on the hottest issues in Tennessee healthcare liability law:

- Pre-suit notice requirement
- Certificate of good faith requirement
- New summary judgment procedure
- Deposition strategies and techniques
- Raising causation defenses in a healthcare liability case
- Trial tactics and tips
- Using today's technology to be an effective advocate
- Patient medical records and HIPAA issues

PLAINTIFFS' ATTORNEYS WILL LEARN:

- What constitutes substantial compliance with the pre-suit notice requirement
- When does the 120-day extension to the statute of limitation apply
- How the ACA affects plaintiffs' damages awards
- How to use illustrative aids during trial
- How to comply with HIPAA requirements

DEFENSE ATTORNEYS WILL LEARN:

- How to challenge the plaintiff's compliance with the pre-suit notice and certificate of good faith requirements
- Techniques for attacking expert depositions
- Tips for defending a case from beginning to end
- How to use technology to show weaknesses in the plaintiff's case
- How to raise the plaintiff's negligence to defeat a healthcare claim

WHERE

Nashville School of Law
4013 Armory Oaks Drive
Nashville, TN 37204
615-256-3684

Convenient access to 1-65 and 1-440. For complete directions, visit mleesmith.com/MedMal

 **FREE PARKING**

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WHEN

Friday, May 13, 2016
Registration: 7:30 A.M.
Conference: 8:00 A.M. - 5:00 P.M.

CONFERENCE FEES

\$377 for program, \$297 for additional attendees from the same firm, \$197 for materials. Program fee is fully refundable if you are dissatisfied with this event.

Register by April 1 and save \$50.

Registration begins at 7:30 A.M. The conference kicks off at 8:00 A.M. and concludes at 5:00 P.M. There will be a one-hour break for lunch (included with registration), along with two 15-minute breaks.

PRESENTED BY

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Agenda

Ethics, Evidence and Experts

8:00 A.M. TO 9:00 A.M.

Philip N. Elbert
Neal & Harwell, PLC

DUAL
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- Who is an expert
- Avoiding conflicts of interest
- Ethical considerations in expert depositions
- TRCP 26.02(4) as compared to FRCP 26
- The work product doctrine
- Interplay of FRCP 26 and the work product doctrine
- Communication between counsel and experts
- Practice pointers for state court practice
- Influencing testimony
- Expert compensation and ethical issues
- Recent changes to Tennessee Rules of Civil Procedure

Healthcare Liability: Case Update

9:00 A.M. TO 10:00 A.M.

Brandon Bass
Law Offices of John Day PC

Mr. Bass will review recent appellate court decisions.

- Pre-suit notice and medical authorizations
- Complying with the certificate of good faith requirement
- What damages are recoverable
- Nursing home arbitration agreements
- New summary judgment procedure

— MORNING BREAK 10:00 A.M. TO 10:15 A.M. —

Causation Defenses

10:15 A.M. TO 11:15 A.M.

Chris Tardio
Gideon, Cooper & Essary, PLC

Mr. Tardio will discuss means the defense can use to attack the causation proof of the plaintiff's healthcare liability action.

- Review of legal causation in the malpractice context
- Special causation defenses
- "Comparative causation"
- How to attack the other side's causation proof

Taking Depositions to Win at Trial

11:15 A.M. TO 12:15 P.M.

Marty Phillips
Rainey, Kizer, Reviere & Bell, PLC

Mr. Phillips will offer some tips on taking depositions in healthcare liability cases.

- Know the rules
- Using depositions at trial
- Deposing experts
- Fact depositions
- Preparing your witness
- Objections in depositions

— 12:15 P.M. TO 1:15 P.M. —

(*LUNCH IS INCLUDED WITH REGISTRATION)

How to Use Technology to Excel as an Advocate

1:15 P.M. TO 2:15 P.M.

Judge Tom Brothers
Davidson County Circuit Court

Appropriate use of technology to display or play evidentiary exhibits or illustrative aids changes the dynamic in a healthcare liability case in productive and helpful ways. For judges, technology can increase opportunities to control the proceedings, set time limits, and decide matters expeditiously. For jurors, it can increase the sense of participation and improve the understanding of the facts. For lawyers, the faster pace, coupled with the need to respond to visual cues for objections as well as the traditional oral cues, puts a premium on a concise case theory and thorough preparation; there is less and less time for “making it up” as one goes along. Let Judge Brothers walk you through the ins and outs of using technology effectively to excel as an advocate. You’ll learn:

- What types of technology are available
- Why use demonstrative evidence
- How to use illustrative aids during trial
- How to appeal to emotion
- When and how may jurors review computer generated materials
- Video court recording
- What the future holds
- The latest on e-discovery

Panel Discussion of ‘Hot Topics’ in the Healthcare Liability Area

2:15 P.M. TO 3:00 P.M.

Judge Brothers and leading plaintiffs’ and defense attorneys discuss some of the “hottest” issues in the healthcare liability arena. Listeners are invited to ask questions, share their own experiences, and join in the discussion.

Your Distinguished Faculty



Brandon Bass, of the Law Offices of John Day PC in Brentwood, focuses on helping people who have been

badly injured or lost a loved one. His core practice areas include products liability, medical malpractice, and trucking lawsuits. He frequently writes on personal injury and wrongful death legal issues. In addition, he is Associate Editor of the *Tennessee Trial Law Report – Tort Edition*. The *Trial Law Report* is a monthly newsletter on tort law, evidence, civil procedure and trial in Tennessee.



Judge Thomas W. Brothers was appointed to a term on the Davidson County Circuit Court in February

1989, was elected in 1990, and re-elected in 1998, 2006, and 2014. He practiced law in Nashville as a solo practitioner (1978-89) in the law offices of Jack Norman. Judge Brothers is a member of the ABA

Judicial Division’s Technology Committee. As a member of the Tennessee Judicial Conference, he serves as Chair of the Technology for the Courts Committee.



Philip N. Elbert joined the Nashville law firm of Neal & Harwell, PLC, in 1981. He has broad experience in both

civil and criminal cases. He has won multimillion-dollar verdicts at trial and negotiated many millions of dollars in settlements for clients in cases involving serious personal injury or death. He is a frequent speaker at legal seminars on a variety of topics.



C. Bennett Harrison, Jr., joined the Nashville law firm of Cornelius & Collins, LLP, in 1983 and is a partner in the firm.

With over 30 years of litigation experience, Mr. Harrison has handled a considerable amount of professional liability cases. In the healthcare field, he has litigated numerous medical malpractice claims for healthcare professionals and hospitals. He was named 2014 “Lawyer of the Year” in Medical

Turning the Tables on a Plaintiff’s Expert

3:15 P.M. TO 4:00 P.M.

Ben Harrison, Jr.
Cornelius & Collins, LLP

Mr. Harrison will discuss how to use the plaintiff’s expert to benefit the defense. Can the deposition of an expert be used to justify a grant of summary judgment in favor of the defense? Can the credibility of the plaintiff’s expert be destroyed on cross-examination by attacking the credentials of the expert or the foundation of the plaintiff’s case? Are there defense traps into which the plaintiff’s expert can fall as a result of the defense counsel’s preparation and skillful cross-examination?

Litigating Healthcare Liability Claims Under the ACA and HIPAA

4:00 P.M. TO 5:00 P.M.

Mathew Zenner
McCune, Zenner and Happell

Mr. Zenner will explain how the federal Affordable Care Act (ACA) will impact healthcare liability litigation in Tennessee. Mr. Zenner will discuss:

- Key provisions of the ACA
- Impact on healthcare liability damages awards
- Tennessee’s collateral source rule
- Future medical expenses and life care plans
- Use of medical records in healthcare liability claims
- HIPAA core elements
- Litigation and the HIPAA security rule
- Health information in litigation
- Relevance

Malpractice Defense by *Best Lawyers in America*® and has been listed in that publication since 2010.



Marty Phillips, a member of Rainey, Kizer, Reviere & Bell, PLC, in Jackson, has significant experience

representing clinics, hospitals, physicians, and nurses in medical malpractice actions. He also has significant experience in general civil litigation. Mr. Phillips is a member and the Group Leader of the Firm’s Malpractice Practice Group. He is a frequent lecturer on topics related to medical malpractice and trial practice. He is a Fellow of the Tennessee Bar Foundation and has been selected by his peers for inclusion in *The Best Lawyers in America*® in the specialty of Medical Malpractice Law.



Chris Tardio, with Gideon, Cooper & Essary, PLC, in Nashville, has been representing healthcare providers and entities since

2004 in a wide variety of matters. He has extensive experience defending

hospitals, physicians, and other healthcare providers in virtually all kinds of professional negligence cases, from pre-suit investigation through trial and appeal. He has successfully represented parties on both sides of peer review matters. He was named a “Rising Star” by *Super Lawyers*® in 2015 and was listed in *Best Lawyers in America*® (Health Care) in 2015.



Mathew Zenner is a founding partner of McCune, Zenner and Happell, PLLC, in Brentwood, and he concentrates his

practice in the areas of personal injury, products liability, employment discrimination, medical malpractice, and commercial litigation. Mr. Zenner was recently selected as one of Tennessee’s “Top 100” by the National Trial Lawyers Association. He is admitted to the bar in both Tennessee and Minnesota, and is admitted to practice in all Tennessee trial courts, the Tennessee Court of Appeals and Supreme Court, the U.S. District Court (Middle, Western, and Eastern Districts of Tennessee), and the U.S. Court of Appeals (Sixth Circuit).

REGISTRATION FORM. FOR ASSISTANCE, CALL 800-727-5257.

YES! I want to get up-to-date information on the latest and most significant developments affecting my clients and my practice. Please reserve my spot at the **Medical Malpractice Conference for Tennessee Attorneys**. My registration includes the one-day conference, pages of valuable course materials, lunch included with registration, morning and afternoon snacks, and up to 7.5 hours of CLE credit. If I am dissatisfied, I am entitled to a complete refund of my registration fee. Fee: \$377 for program (**\$327 before April 1**), \$297 for additional attendees from the same firm, \$197 for materials only.

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FEE

\$377 for program, \$297 for additional attendees from the same firm, \$197 for materials

Cancellation Policy

- A \$50 processing fee applies to ALL conference cancellations.
- Registrants are responsible for the entire program fee for a cancellation made after 5:00 p.m. three weeks prior to the event (whether or not you attend the program or fail to cancel).
- An alternate may attend in place of the original registrant.

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10 reasons to attend this conference:

- **Quality presenters.** Your presenters are all authorities in the healthcare liability arena.
- **Judicial perspective.** You'll hear from Davidson County Circuit Judge Tom Brothers on the use of technology in a healthcare liability case.
- **Balance.** You'll hear from both plaintiffs' attorneys as well defense attorneys.
- **Practical information.** You'll get information you can put to use in your practice right away.
- **Dynamic interaction.** You'll be encouraged to ask questions and present your own situations for discussion.
- **Timely information.** You'll get up to date on the latest developments in the healthcare liability area.
- **Useful materials.** You'll receive a notebook of materials to take back to the office with you for future reference. And, you'll be able to download the materials after the conference.
- **Convenient location.** The Nashville School of Law is located just off I-65 and I-440, near the downtown Nashville area, and provides you with plentiful, free parking.
- **Internet access.** The Nashville School of Law has free wireless Internet access in its classrooms, allowing you to stay in touch with your office.
- **CLE.** You can earn one-half of your annual CLE credit, including one dual hour.

Comments from past conferences:

"The case law update was fantastic."

"This is one of the best, most comprehensive CLEs out there. I am so grateful for this annual event."

"Relevant, timely, well-organized, great presentations."

"Every speaker was excellent and at the top of their field."

"Excellent materials and experienced and knowledgeable speakers."

"A great seminar year-in and year-out."

When: Friday, May 13
Where: Nashville School of Law

For registration assistance or to register additional attendees, call 800-727-5257 or visit us online at mleesmith.com/MedMal