



THE

DEFENSE LINE

Spring 2023



A Publication From Maryland Defense Counsel, Inc.

The Depositions of Today: In-Person, Remote and Everything In-Between



By
**Judith Kunreuther
& Michael Murray**

Also Featured

**Setting the Table for Success in Mediation
Life Care Plans: Fundamental Methodology**

**Goodell DeVries New Partner Announcement
Spotlights, and Much More...**

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PRESIDENT'S MESSAGE

Welcome to the spring 2023 issue of *The Defense Line*! Thanks to our editor, Nicholas Philips, and our graphics editor, Brian Greenlee, for their hard work in putting this issue together. This issue includes insights on depositions, life care planning, and mediation, as well as spotlights on wins by members and announcements from member firms regarding recent hires and promotions. We hope you enjoy it! Thank you for your continued interest in MDC.

I enjoyed seeing a number of Board members at our Board meeting on April 18, our first in-person Board meeting since before the COVID-19 pandemic. We anticipate holding more in-person Board meetings in the future, so be on the lookout for notices.

I'm pleased to announce that MDC's Annual Meeting will once again be held in conjunction with a crab feast. The event will mark the end of the 2022 – 2023 fiscal year and the beginning of new executive board terms. The event is scheduled for Thursday, June 15 from 5:00 p.m. – 8:00 p.m. at Nick's Fish House (in the Crab Yard Tent) 2600 Insulator Drive Baltimore, Maryland 21230. We are excited to see everyone there!

Aimee Hiers, our new Executive Director, is off and running and is providing excellent support for MDC. In this regard, you should have recently received an invoice for membership dues for calendar year 2023. Beginning in 2024, invoices will go out in January for the full year.

MDC continues to focus on providing skills programs for our members. Specifically, MDC plans to hold three seminars in the upcoming months. We will once again hold our deposition bootcamp, which will allow attendees to learn about taking and defending depositions of fact and expert witnesses. This year's event will be held at Miles and Stockbridge on June 14, 2023. More information will be sent shortly. Hopefully this will be a well-attended and useful program. We also anticipate holding an additional seminar to discuss *Daubert* and its impact in Maryland. Finally, MDC will hold its award-winning trial academy later this year. Be on the lookout for additional information on all of these upcoming programs.



Christopher C. Jeffries,
Esquire
Kramon & Graham, P.A.

MDC has several committees: Legislative; Membership; Appellate Practice; Publications, Negligence and Insurance; Professional Liability, Labor and Employment, Products Liability, Judicial Selections, Workers' Compensation, and PAC. All of these committees have continued to be active and work hard to promote MDC's interests. Thank you to all of our committee chairs and members for their hard work and contributions to MDC.

If you want to get involved with any of our committees, please feel free to reach out to me or the committee chairs. More information about MDC, including information on our committees, can be found on our website: www.mddefensecounsel.org.

I hope everyone enjoys the rest of spring and I look forward to seeing you all at the Annual Meeting, if not before.

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DEPOSITION BOOTCAMP

June 14, 2023

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A photograph of a classical statue of Lady Justice, the personification of the goddess of justice. She is depicted as a woman wearing a blindfold and holding a pair of scales of justice in her left hand and a sword in her right hand. The statue is set against a dark background.

THE DEFENSE LINE

Spring 2023



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The Defense Line is a publication from Maryland Defense Counsel, Inc.



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Cover Photo Collage: Shutterstock.com

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The Depositions of Today: In-Person, Remote and Everything In-Between

Judith Kunreuther and Michael Murray

As restrictions have eased and in-person activities are taking place again, remote depositions are expected to remain the norm for both court reporters and attorneys.



Part 1 of a 3-part series on how the pandemic changed the litigation process.

Given the strategic value of depositions in litigation practice, remote depositions are an effective and increasingly common option to ensure that your case strategy is not stalled by various factors such as the availability of parties and reporters as well as other resources.

As the whole world was quarantining during the pandemic, remote depositions became the only viable solution if litigation was to proceed. What originally served as a Band-Aid, however, quickly became the norm. Now, even as restrictions have eased and in-person activities are taking place again, remote depositions are expected to remain the norm for both court reporters and attorneys.

Flexibility

The court reporting industry is experiencing a shortage of reporters today, and that's not likely to correct itself anytime soon. The National Court Reporters Association predicted a shortfall of nearly 5,500 court reporting positions by 2018, and today, we're seeing those assessments were accurate.

The court reporter shortage is certain to increase in the coming years. In March 2021, the National Court Reporters Association issued statistics saying the average age of a court reporter is 55, and according to the Speech to Text Institute, 1,120 stenographers are leaving the field every year compared to only 200 entering.

As a result, attorneys that expect to have all their depositions in-person may find obtaining reporter coverage has become

more difficult. Remote depositions greatly increased the capacity of court reporters in the last year.

Notices and Stipulations

It's important to ensure that your notices state the method by which the deposition will be conducted, including the possible use of virtual technology, and covers all contingencies. Many firms have updated their boilerplate notice to include remote language — here is an example:

NOTICE IS FURTHER GIVEN that we reserve the right to conduct this deposition utilizing the secure web-based deposition option afforded by Veritext or in the alternative video teleconferencing (VTC) services or telephonically to provide remote/ virtual access for those parties wishing to participate in the deposition via the internet and/ or telephone. Also take notice that we reserve the right to record the deposition either by stenographic means by a court reporter certified to record depositions or a digital reporter utilizing state-of-the-art digital recording equipment. Both the court reporter and digital reporter are authorized to administer the oath and serve as the deposition officer in the State of [state]. Take note that the deposition officer may also be remote and out of the presence of the deponent via one of the options above for the purposes of providing the oath/ affirmation to the deponent and capturing the proceeding.

We further reserve the right to utilize the following: (1) Record the deposition utilizing audio or video technology; (2) Instant visual display such that the reporter's writing of the proceeding will be available to all who are a party to this proceeding to request and receive it in realtime; (3) Exhibit Capture (picture-in- picture) technology in which any exhibit reviewed by the deponent during the deposi-

tion can be captured visually; and (4) To conduct this deposition utilizing a paperless exhibit display process called Exhibit Share or a similar paperless virtual display platform. The parties are advised that in lieu of a paper set of exhibits they may be provided and displayed digitally to the deposition officer, deponent, parties and counsel. The exhibits will be compiled by the deposition officer for the purposes of exhibit stamping, and ultimate production of the final certified transcript.

Please contact the noticing attorney at least five (5) calendar days prior to the deposition to advise that it is your desire to appear via this remote participating means so that the necessary credentials, call-in numbers, firm name, email address, services, testing and information, if necessary, can be arranged and provided to you prior to the proceeding(s).

As notices become more general and broader to cover the contingencies of how the record will be recorded and the locale of the participants, it's good practice to include in stipulations a confirmation of which methods and services are being used for the particular proceeding. This ensures that all the pieces of the puzzle are addressed, the notice is valid and the specifics for the proceeding that are to be utilized are stated for the record.

Technology Considerations and Benefits

Remote and hybrid depositions proved to be an invaluable tool during the pandemic and continue to show their value.

Remote and hybrid depositions — i.e., where some participants attend in-person and others are remote — can be just as impactful and effective as fully in-person depositions if set up and managed effectively. While many attorneys did not consider remote depositions effective in the past,

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Setting the Table for Success in Mediation

Jeff Trueman



Your mediator's resourcefulness can make all the difference between whether you get to the printer or to the courtroom. Stylistic approaches vary greatly and can fluctuate between what appears to be a hard-nosed settlement conference, therapy session, or spiritual encounter. In certain contexts, all of those approaches may be needed. But beyond style, a successful mediation is much more than what the process appears to be on the surface. In my view, it's about how the table is set ahead of time.

Many people believe that the process is worthwhile only if the case settles. While settlements happen most of the time, and your mediator should work hard to bring about a resolution, some cases do not settle, and that's fine. If the process does not generate a set of terms that are acceptable to the parties, then "no deal" is better than a "bad deal."

At the outset, your mediator should be willing to do whatever's needed to understand the dynamic before participants meet in mediation. This may include efforts to get the necessary people involved. In other words, once in a while, a mediator may be needed to convince key players to participate. That may require the mediator to have lunch with the right people. Before meaningful progress can be made, your mediator

must develop enough rapport and trust with participants. With the right approach, opportunities may exist where they seemed dead before. If everyone is committed to the process, the likelihood of success goes up.

Some discussions may need to occur between parties before the mediation, especially when multiple defendants are involved. Otherwise, your mediator will get caught up in the issues that concern them before addressing larger issues that involve everyone. In cases with multiple plaintiffs who reside in numerous states, your mediator can establish rapport with them on Zoom ahead of time, hear their concerns, and answer questions they may have about the process.

Large and complex cases often require more than one mediation. Some issues may need to be resolved before others can be addressed. Insurance coverage concerns may become a central issue in the mediation, involving parallel litigation. Maybe the parties should exchange summaries of their legal positions beforehand so that the mediator can focus on generating settlement terms. Your mediator should ask about the non-economic terms of the release in advance so that a new impasse does not set in after everyone has completed the hard work of finding the right number.

If the mediation will occur in person, make sure the facility has all the bells and whistles such as food (not just doughnuts and coffee), access to various technologies, and plenty of space. Perhaps the par-

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ties should stagger their entrances, allowing them to arrive and depart separately. Mediators should think through the logistics of arrival and departure, allowing for adequate time to transition and focus on the decisions that need to be made in mediation.

Mediators have to be ready for anything, no matter what kind of dispute. Since the challenges can be multi-varied, your mediator's tool kit should be the same. That tool kit should include the means to set a solid foundation, as well as diagnostics to know when to stop. Your mediator should not want the parties to settle more than they do. Although lawyers want mediators to work hard at settling a case, they also do not want their time wasted. It's a judgment call that must incorporate feedback from the participants. As we know, circumstances change and when they do, your mediator must be ready to intervene when the time is right.

Jeff Trueman, Esq., is an independent mediator, arbitrator and adjunct professor at the University of Maryland Francis King Carey School of Law. He can be reached at jtr@jefftrueman.com

(THE DEPOSITIONS OF TODAY) *Continued from page 5*

when the pandemic began and it was the only option for keeping the litigation process moving forward, they had the opportunity to reassess their impressions. One of their fears was that remote depositions would make it more difficult to maintain control over the deposition room, but the opposite has proven to be true.

Speaker view and spotlight functions make it easier to place the focus solely on the witness during testimony and eliminate other distractions. Additionally, attorneys are putting language into their admonitions that describe the behaviors expected of all participants. In many instances the etiquette and behavior in a remote setting are also writ-

ten into the case and trial orders, setting a tone of civility with a reminder of all ethical obligations.

Replacing physical exhibits with digital ones means no more handling or labeling of exhibits. Just be sure you are using technology that is specific to litigation and has all the required safety features built in.

In addition, hybrid proceedings may be an effective option if there is a crucial reason for some in-person interaction to take place. While hybrid proceedings can be more challenging from a technical perspective, your litigation support and court reporting solution provider should manage the setup and support for you.

For any deposition needs with Veritext, please contact: Sharon Rabinovitz, srabnovitz@veritext.com, (443) 836-6887, or **Jenna Lopez,** jspicer@veritext.com, (410) 862-1883.

Judith Kunreuther is the general counsel for Veritext Legal Solutions. She has been in-house counsel with Veritext since 2010 and is responsible for all the company's legal matters.

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Life Care Plans: Fundamental Methodology

Betsy Keesler



Life care planning is an advanced practice which is collaborative in nature. It includes the “evaluator,” or the person at the center of the plan, family, care providers, and all parties concerned in coordinating, accessing, evaluating and monitoring necessary services.

During the International Conference on Life Care Planning in 1998, the following definition of life care planning was adopted:

“The life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.”

The life care plan should be individualized, comprehensive in nature, and reflect input from a variety of health-related providers. Its purpose is to serve as a lifelong guide to assist optimal outcomes and prevent/reduce future complications for the evaluatee. A solid life care plan is built on specific standards, published methodologies, and consistent tenets.

There are three key concepts to understand about the life care planner and the life care planning process. The International Association of Rehabilitation Professionals (IARP), together with the International Academy of Life Care Planners (IALCP), have published *Standards of Practice for Life Care Planners*, Fourth Edition (2022), to guide the optimal construction for an effective life care plan. Standards, within any profession, are important to ensure the professional is accountable for his/her decisions and actions made in the practice arena, as well as maintaining practice competence during the professional’s career. Secondly, life care planning is a *transdisciplinary* practice. The best life care plans are dependent on credible input from a variety of professionals. Lastly, life care planning is a specialty, practiced by persons with a related healthcare background. Examples of such professionals include Registered Nurses, Physicians, Mental Health pro-

fessionals, Rehabilitation Counselors, and Allied Health professions, such as Physical Therapists and Occupational Therapists. The certification process for the life care planner begins with a mandatory 120 hours of completed post-graduate education in order to sit for the certifying exam.

The life care plan is designed to address multiple areas of need for the evaluatee. Areas of need may include, but are not limited to, medical evaluations and care, medications, surgeries and procedures, allied health care evaluations and treatments, neuropsychological evaluations, durable medical equipment and supplies, prosthetic and orthotic equipment, transportation accommodations, attendant care or other support services, and facility placement (when appropriate). An overarching objective of the life care plan is to reflect a collaborative effort among the various parties to provide goals which are preventive, habilitative, palliative, and rehabilitative in nature. The goals should optimize outcomes for the evaluatee.

Q: What makes a life care plan valid and reliable?

A: A plan which reflects adherence to published standards and consensus statements.

This fidelity sets the framework upon which a life care plan can be designed to be credible, reliable and reproducible. Published standards of practice outline and define the requirements and methodology for development of life care plans. These standards are published jointly by the International Association of Rehabilitation Professionals (IARP) and the International Academy of Life Care Planners (IALCP), which is the largest professional organization of Certified Life Care Planners (CLCP). Of note, other professional groups have developed their own standards for life care planning, including the American Association of Nurse Life Care Planners (AANLCP) and the American Academy of Physician Life Care Planners (AAPLCP). Upon cross-examination of all three published standards, there are some important similarities.

Additionally, there are published Consensus and Majority Statements, found in the *Journal of Life Care Planning* (16 (4)), that are applicable to all life care planners, regardless of educational background and professional affiliation. The current edition of consensus statements was published

The MDC Expert List

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in 2018 following a lengthy Delphi study. The Delphi study, an empirical research method that establishes consensus among subject experts, included consensus information from 17 years of life care planning summits. Following the convening of primary and secondary committees, three separate survey protocols were completed with all participants before arriving at the Consensus and Majority Statements, as published in 2018 in the *Journal of Life Care Planning*. The survey participants included representatives from multiple professional organizations, including the International Association of Rehabilitation Professionals (IARP), the American Academy of Physician Life Care Planners (AAPLCP), the American Association of Nurse Life Care Planners (ANLCP), and the International Commission on Health Care Certification (ICHCC), the certifying body for the Certified Life Care Planner (CLCP). Thus, the Consensus and Majority Statements tie together all life care planners.

Through the publication, *Expert Disclosure: Federal Rules of Civil Procedure 26, 34, & 37*, authors Dr. Timothy Field and Mr. Kent Jayne emphasized to the forensic community the necessity for following established professional guidelines and standards.

“The necessary qualifications for the FRC (forensic rehabilitation consultant) has been well established and documented and any FRC should be familiar and comply with the usual and customary guidelines set forth by professional associations for the profession. Association standards, such as statements on scope of practice, professional ethics, and a standard of practice are all important documents and provide significant information on both the necessary credentials and guidelines for practice.”

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Of critical importance, consensus statements indicate the life care planner must stay within his/her specific professional scope of practice when engaging in the specialty practice of life care planning. This means the life care planner can independently make recommendations for the life care plan, only if it is an action he/she can legally perform under his/her primary licensure, i.e., RN, MD, OT, PT. However, it is incumbent upon the life care planner to seek recommendations for the evaluatee from the current treatment providers and/or through expert evaluation, since the life care plan is the product of a transdisciplinary specialty practice. It is very rare, if ever, for a life care planner to possess all the qualifications necessary to opine regarding all recommendations for an evaluatee with a catastrophic injury or chronic illness.

Within published literature and the treatise referenced, life care planning has been compared in analogous terms to the professional role of a “general contractor.” Like general contractors, life care planners emerge from a variety of professional backgrounds and must follow codes and guidelines to create a sound structure. Additionally, the general contractor relies on the expertise of various practice experts in order to connect all the different parts together. The life care planner, also like the general contractor, must have an intimate grasp of which experts are needed and where their expertise should be utilized in collaborative coordination for best results.

The following points illustrate the necessary elements a life care plan should touch upon:

- Evidence-based with appropriately established research and foundation.
- Formulated from a published methodology.
- Consistent with published standards, guidelines and best practices.
- Individualized to the evaluatee.
- Produced in a collaborative manner.
- Comprehensive in presentation.

Following review of the Standards of Practice and the Consensus and Majority Statements, it can be inferred establishment of foundation for the life care plan can be achieved through a combination of specific actions. The life care planner will consult/collaborate with healthcare providers, be they evaluating or treating providers, with appropriate documentation of the recommendations established. The life care planner will review, analyze and cite information from the evaluatee’s medical records from health care providers. The life care planner will research and/or review and analyze published clinical and/

or medical practice guidelines relative to the evaluatee’s diagnoses and sequelae, as well as note such within the life care plan document. The life care planner will also research and/or review, analyze and cite published research findings and conclusions from peer-reviewed journals relative to the evaluatee’s diagnoses and sequelae. Lastly, cited testimony from healthcare providers, evaluating and/or treating, can be used to establish a basis for recommendations.

Case Scenario 1: A 24-year-old female was involved in a motor vehicle accident (MVA) that resulted in a Traumatic Brain Injury (TBI) and impaired use of her right arm (dominant). The brain injury created residual executive functioning deficits and behavioral problems for the evaluatee. Additionally, impairment of her right arm created self-care

deficits. The Life Care Plan was developed by an experienced Certified Rehabilitation Counselor, who was also a Certified Life Care Planner. The evaluatee’s treating healthcare providers included a Psychiatrist, Speech Language Therapist, Occupational Therapist and a Neuropsychologist. The Rehabilitation Counselor, in the role of Life Care Planner, determined all the life care planning requirements for medical care, psychological care, diagnostic tests, allied health therapies, case management services, and alternative living supports for the evaluatee. While many of the recommendations identified by the Life Care Planner seemed reasonable and necessary for the evaluatee, the Life Care Planner did not consult with any of the treating providers. In addition, the Life Care Planner did not draw

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Editors’ Corner

The editorial staff wish to express our thanks to the contributions made by MDC members to this publication of *The Defense Line*. We wish to thank **Judith Kunreuther** and **Michael Murray, Jeff Trueman, and Betsy Keesler** for their outstanding contributions to this issue. The articles in this edition provide excellent insight and guidance to modern-day deposition practice, how to increase the chances of settling a case in mediation, and the nuances of life care planning. We are also looking for articles and case updates for publication and will accept those submissions at any time. We continue to look forward to opportunities to support the MDC and be a resource to its members.

We hope that you enjoy this edition of *The Defense Line*. If you have any comments suggestions, or submissions for future editions, please contact the Publications Committee.



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Co-chair, Publications Committee

We have a vacancy on the Publications Committee. If you or one of your colleagues are looking to get involved with the MDC and are interested in joining the Publications Committee, please reach out to Nick Phillips or Chris Jeffries.

(LIFE CARE PLANS) *Continued from page 9*

any connections between the Life Care Plan recommendations and information found through medical record review, or through published clinical guidelines or empirical research. Lastly, the Life Care Planner had not reviewed any testimony from the evaluatee’s healthcare providers before release of the Life Care Plan.

Life Care Plan Review Findings:

The Life Care Planner produced a Life Care Plan absent the necessary foundation to draw evidence-based conclusions regarding future medical care, rehabilitative services and psychological treatment. Therefore, the Rehabilitation Counselor breached his scope of practice by independently determining such matters for the evaluatee. The Life Care Planner must remain in his scope of professional practice throughout the development of the Life Care Plan. The profession of rehabilitation counseling does not prescribe or determine medical care, allied health services, and ongoing psychological care for an evaluatee. This Life Care Plan did not follow standards of practice and consensus guidelines. Thus, the Life Care Plan lacks credibility regarding the appropriateness of goods and services with related costs, and it is at risk for being excluded from the evidentiary record.

Case Scenario 2: A 28-year-old female evaluatee tripped while walking through a gas station parking lot and sustained a shoulder fracture and an acromion-clavicular joint separation. Recovery from the injury was prolonged and developed into Complex Regional Pain Syndrome (CRPS), as confirmed by her treating pain management Physician. A Life Care Plan was developed by a Rehabilitation Registered Nurse, in the role of Certified Life Care Planner. The Life Care Plan included treatment with a pain management physician, an orthopedic surgeon and a physical therapist. The Nurse consulted with

the treating Pain Management Physician regarding the types of pain management care the evaluatee required. Within the Life Care Plan, the Nurse credited this consultation as the basis for her recommendations, but she did not include endorsement through signature from the Pain Management Physician. Through deposition testimony, following release of the Life Care Plan, the Pain Management Physician noted multiple pain management procedures may be required in the future. However, he was not able to define the probable future frequency or duration for the procedures, indicating those could not be determined until the outcome from each procedure was medically known. Furthermore, the treating pain management Physician explained a spinal cord stimulator trial was medically indicated to determine if permanent placement of the unit was an option for his patient. The Physician also acknowledged the potential need for future psychological evaluations and counseling as part of a chronic pain management plan, but stated he would defer the determination of such needs to a licensed mental healthcare practitioner. Through medical record notes, the treating Orthopedic Surgeon indicated his patient had reached complete healing, as evidenced by radiology imaging. No further follow-up visits were recommended in the Surgeon’s progress notes. But the Life Care Plan included definite frequency and duration determinations for each of the pain management procedures mentioned by the treating Pain Management Physician. Also, the Life Care Plan included definite costs for initial placement and future replacement of a permanent spinal cord stimulator unit. The Life Care Plan indicated lifetime yearly evaluations with the Orthopedic Surgeon were necessary. The Life Care Plan included recommendations for future psychological care, related to chronic pain, without consultation with a mental health practitioner. Lastly,

the Life Care Plan outlined yearly physical therapy visits for life expectancy. The Nurse Life Care Planner did not indicate awareness of the orthopedic opinion as expressed through the medical progress notes, nor did she did indicate a consultation with the treating Physical Therapist was performed.

Life Care Plan Review Findings:

The Life Care Planner did not have probable medical foundation to include any of the pain management interventions into the Life Care Plan with definite frequencies. The procedures noted by the pain management Physician should have been labeled as “*potential*” within the plan, until additional information/foundation was available to the Life Care Planner. Moreover, it was not appropriate to include definite costs for a permanent spinal cord stimulator placement into the Life Care Plan. Comparatively, it would have been reasonable to include definite costs for a spinal cord stimulator trial, provided psychological clearance had been obtained. The Life Care Planner breached her scope of professional nursing practice by attempting to create or insert her own medical foundation into the Life Care Plan, which was determined later to be inconsistent with the information obtained during her consultation with the pain management Physician and orthopedic medical records. The Nurse did not cite any foundational evidence for inclusion of ongoing physical therapy or psychological therapy, prompting another breach in her scope of practice.

Case Scenario 3: A 54-year-old man was using his grill at home when the propane tank exploded, creating second and third degree burns over 70 percent of his body. Following acute care recovery, he was under treatment within an outpatient burn program by a burn specialist, reconstructive burn surgeon, physical therapist, and occupational

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(LIFE CARE PLANS) *Continued from page 10*

therapist. The Life Care Plan was developed by an experienced Certified Rehabilitation Counselor, who was also a Certified Life Care Planner. The Life Care Planner completed multiple consultations with the burn team and documented their recommendations for the evaluatee's future care, which was subsequently endorsed through signature by each of the consulted healthcare providers. The evaluatee's treating Psychologist from a separate facility responded to the Life Care Planner's questionnaire through his signed responses. Direct reference was made by the Rehabilitation Counselor to published clinical practice guidelines regarding burns, and this information was included into the developmental process of the Life Care Plan. Functional outcomes, medical services, and potential complications for burn survivors were all reviewed within the academic literature, and the findings were incorporated into the framework of the Life Care Plan. Finally, the Life Care Planner reviewed medical records from other treating healthcare providers and included additional and related treatment (secondary to the explosion) in the Life Care Plan. The Rehabilitation Counselor recommended a future comprehensive vocational rehabilitation evaluation and case management services in the Life Care Plan to assist the evaluatee, as is appropriate to her practice.

Life Care Plan Review Findings:

The Rehabilitation Counselor remained within her scope of practice throughout the development of the Life Care Plan. The resulting Life Care Plan was built upon detailed medical foundation as obtained from multiple healthcare professionals, clinical practice guidelines and empirical research. The Life Care Planner included recommendations consistent with her own scope of practice by recommending a comprehensive vocational evaluation and case management services for the evaluatee. This Life Care Plan was evidence-based and consistent with published consensus statements, treatise guidelines, and standards of practice.

Establishing an appropriate and com-

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plete foundation for a life care plan is not only essential, but mandated, according to Standards of Practice and Consensus Statements. There are five ways to establish foundation: reviewing medical/clinical records, analyzing clinical practice guidelines, reviewing empirical literature, consulting with treating and/or evaluating healthcare professional(s), and/or utilizing testimony citations from the treating and/or evaluating healthcare professionals. The absence of necessary foundation may result in a life care plan being excluded from the evidentiary record. Published consensus statements require all life care planners remain within their scope of practice when developing a life care plan. Life care planning is a specialty practice that a qualified healthcare professional can provide for an evaluatee, but the life care plan requires transdisciplinary data and consultation.

Betsy Keesler, BSN, RN, CLCP earned a Diploma in Nursing from Presbyterian Hospital School of Nursing

in 1987 where she was awarded Clinical Excellence in Pediatric Nursing upon graduation. Ms. Keesler subsequently completed a Bachelor of Science in Nursing during 1990 with receipt of High Distinction through George Mason University. In 2021, she completed 120-hours of post graduate training for life care planning through the Institute for Rehabilitation Education and Training (IRET). Ms. Keesler is a registered nurse (RN) and a certified life care planner (CLCP). She has worked in the hospital setting as a registered nurse (RN) for Pediatric and Neonatal Intensive Care Units and within the outpatient medical setting as a community health nurse. As a community health nurse, she coordinated and provided care for a large and diverse patient population within the school system. Also, Ms. Keesler was a nursing manager for the Adult Evaluation and Review Service within the Maryland Department of Health. Her clinical work through the public health department involved the coordination of medical and nursing services to support ongoing safe community living for persons with catastrophic diagnoses and chronic health conditions. Ms. Keesler has held numerous leadership positions throughout her nursing career and was the recipient of the Maryland Nurse of the Year award during 2009. She currently works full-time as a life care planner with Inquis Global, LLC.

RESOURCES:

1. *Standards of Practice for Life Care Planners*, Fourth Edition. 2022. International Association of Rehabilitation Professionals & International Academy of Life Care Planners.
2. Johnson, C; Pomeranz, J. & Stetten, N. 2018. "Life Care Planning Consensus and Majority Statements 2000–2008: Are They Still Relevant and Reliable? A Delphi Study." *Journal of Life Care Planning*, 16 (4), 5–13.
3. Johnson, C; Pomeranz, J. & Stetten, N. 2018. Consensus and Majority Statements Derived from Life Care Planning Summits Held in 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2015 and 2017 and updated via Delphi Study in 2018. *Journal of Life Care Planning*, 16 (4), 15–18.
4. Weed R. O., Berens D.E., (editors). 2018. *Life Care Planning and Case Management Handbook*. (4th ed.). New York, NY: Routledge.
5. Weed, R. 2002. The Life Care Planner: Secretary, Know-it-All, or General Contractor?" *Journal of Life Care Planning*, 1 (2), 173–178.
6. International Association of Rehabilitation Professionals & International Academy of Life Care Planners, 05/07/2019 Transdisciplinary Position Statement.
7. Field, T. & Jayne, K. 2012. Expert Disclosure: Federal Rules of Civil Procedure 26, 34, 27. Athens, Georgia: Elliott & Fitzpatrick, Inc.
8. Gamez, J. et al. 2017. "A Comparison of Life Care Planning Standards of Practice." *Journal of Life Care Planning*, 15 (3), 37–44.

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FOR IMMEDIATE RELEASE

Goodell DeVries is pleased to announce that **Jessica Ayd**, **James Phelan Robinson**, and **Justin E. Tepe** have been elected partners of the firm, effective January 1, 2023



A member of the firm's Medical Malpractice Practice Group, **Jessica Ayd** focuses her practice on the defense of health care providers and institutions. She has experience in all aspects of complex civil litigation in matters before state and federal courts and has served as first chair in several jury trials. Prior to joining Goodell DeVries, Jessica was a civil litigation

attorney at a private law firm where she practiced general liability defense, medical malpractice defense, and construction law. Before entering private practice, she was a law clerk for the Honorable Arlene Coppadge and the Honorable Robert Coonin of Family Court of the State of Delaware. Jessica also served as a volunteer for the United States Peace Corps in the Republic of the Fiji Islands, where she served as Health Promotion Advocate at the Lelean Memorial School. In that role, Jessica designed and facilitated adolescent reproductive health classes.

Jessica has been recognized in *Best Lawyers — Ones to Watch* for Construction, Insurance, and Transportation Law and in *Maryland Super Lawyers — Rising Stars* for Civil Litigation Defense. She is a graduate of the University of Maryland, School of Law (J.D., 2011) and the University of Maryland College Park (B.A., *summa cum laude*, 2006).



James Phelan Robinson is a member of Goodell DeVries's Medical Malpractice and Appellate practice groups. James defends health care providers and health care institutions, including nursing homes and hospitals, as well as insurance companies in all phases of medical malpractice claims, from commencement to completion. Before joining Goodell DeVries, James worked as civil litigation

attorney at an Annapolis-based law firm where he practiced medical malpractice defense. Prior to entering private practice, James served as a law clerk to the Honorable Shirley M. Watts of the Supreme Court of Maryland. He also served as a law clerk to the Honorable William C. Mulford, II of the Circuit Court for Anne Arundel County.

James is Chair of the Young Lawyers Division of the Bar Association of Baltimore City. He also serves as the Baltimore City representative to the Young Lawyers Section of the Maryland State Bar Association. He has been recognized in *Maryland Super Lawyers — Rising Stars* in the Medical

Malpractice Defense and Civil Litigation Defense categories. He is a graduate of the University of Baltimore School of Law (J.D., *cum laude*, 2013), where he served as Staff Editor and Recent Developments Editor at the University of Baltimore Law Forum, and George Washington University (B.A., *magna cum laude*, 2009).



Justin E. Tepe is a co-founder of the Cannabis Law practice at Goodell DeVries and represents licensed entities and ancillary businesses in the cannabis industry. He advises cannabis clients as regulatory advisor and as outside general counsel on matters ranging from employment law and contract negotiations to commercial disputes and transactions. Justin defends cannabis clients

in regulatory enforcement actions before the Maryland Medical Cannabis Commission. He also assists clients in developing compliant operating procedures, drafting management agreements and applications for licenses, and in corporate governance and formation.

Before joining Goodell DeVries, Justin worked as a lobbyist in Annapolis, Maryland, and previously worked for a Mid-Atlantic law firm representing clients in general tort litigation. Before entering private practice, Justin served as a Judicial Law Clerk to the Honorable Shannon E. Avery of the Circuit Court for Baltimore City.

Justin has been recognized in *Best Lawyers in America — Ones to Watch* for Commercial Litigation and in *Maryland Super Lawyers — Rising Stars* for Cannabis Law and Business Litigation. He is a graduate of the University of Baltimore School of Law (J.D., *cum laude*, 2015), where he served as Editor-in-Chief for the *University of Baltimore Journal of International Law*, Volume III, and St. Mary's College of Maryland (B.A., 2009).

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FOR IMMEDIATE RELEASE

Carrie J. Williams Joins Goodell DeVries’s Appellate Practice

Former head of Maryland Attorney General’s Criminal Appeals Division enters private practice, deepens Goodell DeVries’s bench of appellate lawyers



Renowned appellate lawyer **Carrie J. Williams** has joined Goodell DeVries’s Appellate Practice Group.

Carrie brings extraordinary appellate expertise from her 16-year tenure at the Maryland Office of the Attorney General. There, she headed the criminal appellate division, serving as Principal Counsel for Criminal Policy and, before that, Division Chief of the Criminal Appeals Division.

As head of a State appellate division, Carrie argued more than fifty cases before the Supreme Court of Maryland (Court of Appeals) and hundreds of cases in the Appellate Court of Maryland (Court of Special Appeals). She even briefed a handful of cases at the United States Supreme Court.

“Carrie is already an appellate superstar, and we’re beyond thrilled to have her join our team,” said Derek Stikeleather, Chair of the firm’s Appellate Practice Group. “She possesses the rare combination of being able to analyze the most legally and factually complex matters yet still present her final analysis in a plain-spoken manner that is clear, accurate, and persuasive. Not only is she well-known and widely respected in Maryland’s appellate judiciary, but her immense experience allows her to immediately serve our clients both in appeals and as appellate trial counsel.”

Carrie graduated in the top 2% of her class at the University

of Maryland School of Law in 2003, where she served as the *Maryland Law Review* Articles Editor. An active member of the Maryland State Bar Association, Carrie frequently participates in panels on brief writing, oral advocacy, and developments in Maryland appellate practice. From 2014 to 2022, she taught Introduction to Advocacy as an Adjunct Faculty at the University of Baltimore School of Law.

Carrie’s addition should immediately strengthen the firm’s growing Appellate Practice Group, which has distinguished itself with several successful challenges to “nuclear” verdicts in medical malpractice actions. In 2021, it secured JNOV on appeal to fully vacate the largest birth-injury verdict in United States history, a \$229 million verdict enrolled as a \$205 million final judgment. The Group has also been increasingly called upon to collaborate with trial counsel (at Goodell and other firms) to develop and preserve the most promising appellate issues. The firm’s national appellate practice has also prevailed in product-liability and commercial appeals in multiple federal circuits and various state appellate courts, including those of New York and California..

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- Litigation Skills Seminar

March 8-10

Chicago, IL

- Insurance Coverage and Claims Institute
- Medical Liability and Health Care Law Seminar
- Fidelity and Surety Roundtable (March 10)

March 13-14

Indianapolis, IN

- Sexual Torts Seminar

April 26-28

New Orleans, LA

- Life, Health, Disability and ERISA Seminar
- Business and Intellectual Property Litigation Seminar
- Toxic Torts and Environmental Law Seminar

May 3-5

New Orleans, LA

- Cannabis Law Seminar (May 2-3)
- Drug and Medical Device Seminar
- Employment and Labor Law Seminar

*Dates and locations are subject to change. Check dri.org for updates.

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- Trucking Litigation Essentials Seminar

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- DRI International

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California Court of Appeal Affirms that Federal Impossibility Preemption Defeats Prop 65 Warning Claims for Over-the-Counter Generic Ranitidine



The manufacturers and retailers of over-the-counter generic Zantac (ranitidine) have secured an important appellate victory in California state court. On March 9, the San Francisco-based California Court of Appeal, First Division, handed

down its reported opinion affirming the Alameda County court's decision dismissing — as federally preempted — a consumer group's Proposition 65 claims against generic ranitidine manufacturers and retailers. Ranitidine-containing products were pulled from the market in 2019, triggering massive nationwide litigation over the products' labeling and various alleged injuries.

The precedential opinion fortifies a key legal defense for manufacturers and retailers of generic over-the-counter medications doing business in California. It is the first appellate decision in the nationwide ranitidine litigation to reach the merits of the *Mensing* impossibility-preemption defense. The U.S. Supreme Court's landmark opinion in *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011), held that impossibility preemption and the federal "duty of sameness" in generic-drug labeling bar state-law claims that would fault generic manufacturers for not changing their labels to add warnings.

Although federal law requires that generic labeling match that of its brand-name equivalent, the California plaintiff argued that generic ranitidine manufacturers could warn ranitidine consumers, as required by California's Proposition 65, through advertisements, point-of-sale signs, and other communications, which it argued were not "labeling." Recognizing the FDCA's broad definition of labeling and the Supreme Court's rejection of similar arguments in *Mensing*, as well as Proposition 65's own exception for claims where "federal law governs warning in a manner that preempts state law governing warning," the appellate court found the Prop 65 claims preempted as a matter of law.

Representing Perrigo Company, and on behalf of all other respondents, **Sean Gugerty** of Goodell, DeVries, Leech & Dann, LLP, briefed and argued the appeal, assisted by Goodell DeVries attorney **Richard Barnes**, who is co-liaison counsel for the 32 generic manufacturer defendants in the Zantac multi-district litigation pending in the Southern District of Florida, and Dennis Raglin of Steptoe & Johnson LLP.

Other respondents and counsel are:

- Target Corporation — Norton Rose Fulbright US LLP, Jeffrey B. Marguiles and Lauren A. Shoor
- Granules USA, Inc. — Lewis Brisbois Bisgaard & Smith, LLP, Paul A. Desrochers
- 7-Eleven — Arnold & Porter Kaye Scholer LLP, Trenton H Norris, Willis M. Wagner
- Apotex Corp. — Blank Rome LLP, Cheryl S. Chang, Jessica A. McElroy, Terry M. Henry
- Reddy's Laboratories, Inc. — Gordon Rees Scully Mansukhani LLP, Brian M. Ledger, Ulmer & Berne, LLP, John R. Ipsaro, Megan B. Gramke



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SPOTLIGHTS



Waranch and Brown partners **Christina N. Billiet** and **Kaitlan M. Skrainar** secured a December 21, 2022, victory in an anesthesia death case. Plaintiffs, the family of Linda Dellinger, claimed the anesthesiologist Defendant breached the standard of care in proceeding

with induction of general anesthesia, resulting in Ms. Dellinger's death. The Baltimore City jury returned a defense verdict on standard of care after deliberating for approximately 30 minutes. Plaintiffs were represented by Christopher Norman and Kieran Murphy of Wais, Vogelstein, Forman, Koch and Norman.



Goodell DeVries Wins Summary Judgment in Hospital Premises Liability Matter

Goodell DeVries attorneys **K. Nichole Nesbitt** and **Ifeanyi Ezeigbo** secured summary judgment for their hospital client in a premises liability matter involving a hospital visitor who claimed that the hospital allowed a hazardous condition to exist in its cafeteria by arranging the chairs too close together. The plaintiff fell and sustained serious injuries after the chair she was sitting on became entangled with another. The court agreed with the hospital's position that the plaintiff failed to establish sufficient evidence that the hospital was aware of any hazardous condition caused by the arrangement of the chairs and that the hospital was in no better a position to notice a hazard than the plaintiff herself, who had visited the cafeteria many times in the days prior to the accident.

The plaintiff fell and sustained serious injuries after the chair she was sitting on became entangled with another. The court agreed with the hospital's position that the plaintiff failed to establish sufficient evidence that the hospital was aware of any hazardous condition caused by the arrangement of the chairs and that the hospital was in no better a position to notice a hazard than the plaintiff herself, who had visited the cafeteria many times in the days prior to the accident.



Peggy Fonshell Ward received a defense verdict in Anne Arundel County in a bench trial spread over two months against a custom home builder. The plaintiff alleged that when he endeavored to build a third story onto his home 21 years after the original construction, he found that the home did not have footings that were called for in the plans and specifications. Though the builder and county inspectors asserted the footings were there, plaintiff nevertheless had his contractor deconstruct much of the first floor of the house to add five new footings beneath the slab, suing the builder for the cost. After having been unsuccessful on both a motion to dismiss and a motion for summary judgment based on the statute of repose, the court entered judgment in favor of the builder, finding the claim was indeed barred by the statute of repose.

inspector's asserted the footings were there, plaintiff nevertheless had his contractor deconstruct much of the first floor of the house to add five new footings beneath the slab, suing the builder for the cost. After having been unsuccessful on both a motion to dismiss and a motion for summary judgment based on the statute of repose, the court entered judgment in favor of the builder, finding the claim was indeed barred by the statute of repose.



Goodell DeVries Prevails in Motion to Dismiss Based on COVID-19 Immunity Statute

The United States District Court for the District of Columbia dismissed a wrongful death action filed by the family of a patient who died from COVID-19 while admitted to a Washington, D.C. hospital. When the elderly patient first came to the hospital, she had symptoms consistent with COVID-19, but her test for the virus was negative. On her seventh day in the hospital, a repeat COVID-19 test was positive, and thereafter her condition quickly deteriorated, ultimately culminating in her death. The family sued for medical malpractice, alleging that the hospital negligently failed to shield their loved one from the virus and then failed to properly care for her once she was diagnosed. The hospital responded with a Motion to Dismiss relying on D.C. Code 7-311(a)(1) (expired Feb. 4, 2022), which provides immunity from negligence to healthcare providers who render care or treatment to a potential, suspected, or diagnosed individual with COVID-19. The court agreed with the hospital that the immunity statute barred the lawsuit.

The hospital was represented by **Janet A. Forero**, **Sean Gugerty**, and **Kaitlyn Holzer** of Goodell, DeVries, Leech & Dann in Baltimore.

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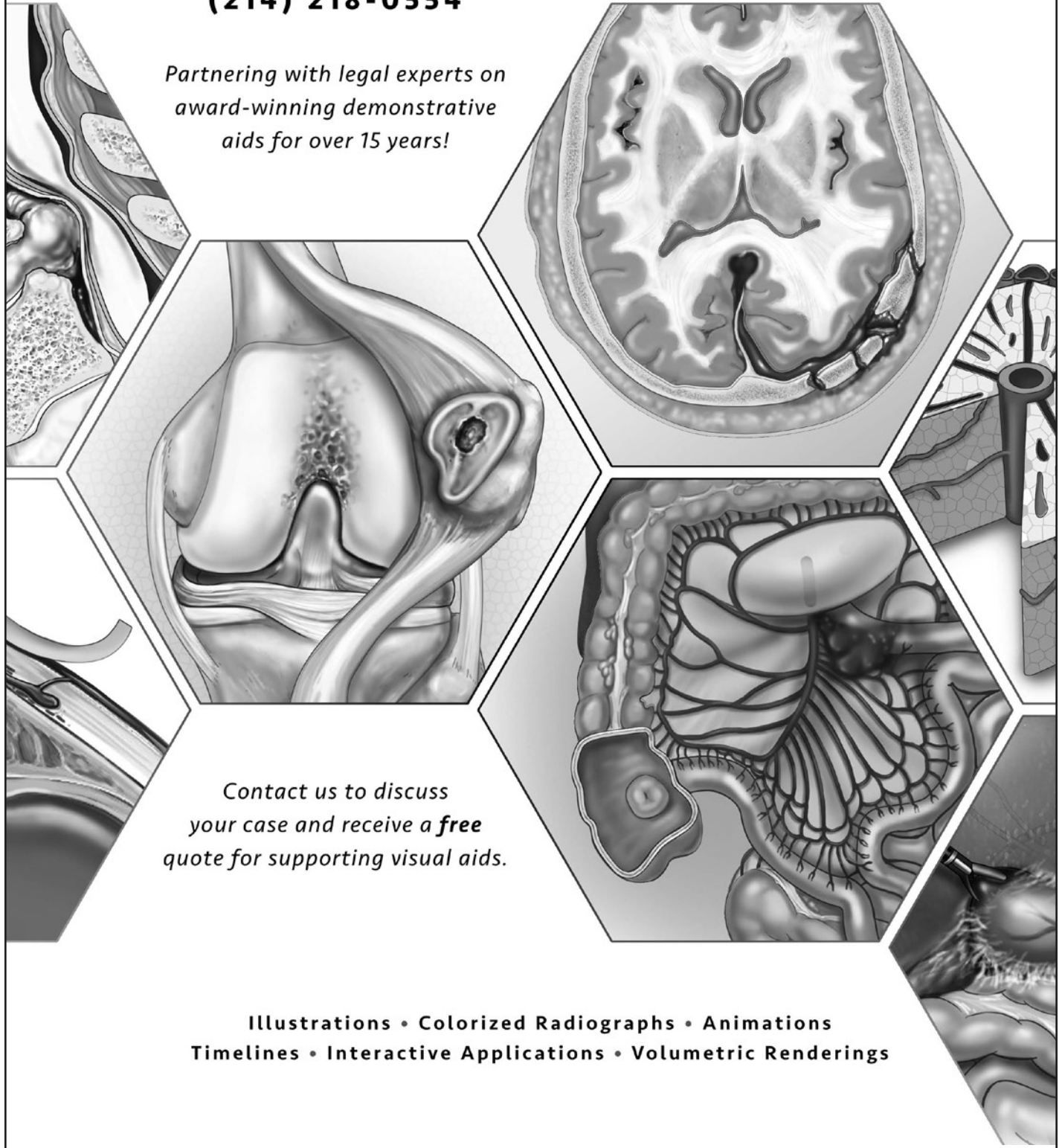
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