

Sherri Arrigo

Nursing Background, Tenacity a Potent Mix in MedMal Defense

by Mike Bailey



Defending malpractice suits is fraught with inherent difficulties, says Sheryl M. Arrigo, partner in **Donohue Brown Mathewson & Smyth LLC**, one of Chicago's foremost litigation firms.

A jury is presented with someone who suffered an injury. "They empathize," she says, and they instinctively want to help that person.

Arrigo, who worked as a registered nurse throughout law school while raising four children, understands. But she says she has found that juries almost always do the right thing, as she puts it, a fact that still intrigues her after more than 20 years as a litigator.

"At first you can tell they do not completely understand what they are hearing," she says. "They have these puzzled looks on their faces. And then there is that point at which it all seems to click for them, and you can see that they get it. We've talked to jurors after the case, and they pick up the subtle nuances. It's amazing that people with different educational and cultural backgrounds can come together

and (reach the right decision)."

Arrigo represents doctors and lawyers charged with professional negligence or malpractice, as well as pharmaceutical companies.

While she tries a lot of cases, the ultimate decision on how to proceed is up to the client. "I make recommendations, but it is the client's livelihood and business, and therefore it is their case, not mine."

But her suggestions carry a lot of weight. "Sherri is just an outstanding lawyer," says Thomas Browne of Hinshaw & Culbertson. "She was formerly an associate of mine at Hinshaw, and we worked together on some complex legal malpractice cases when she was a young lawyer.

"Since then, we've hired her as our attorney on a couple of legal malpractice cases against our firm. She tried two of them with very successful results. She was a tireless advocate for our interests," he says.

Arrigo's clients may include self-insured hospitals whose risk management teams need

an assessment of their legal exposure. They also include doctors whose insurance companies seek quality representation and a professional assessment of the merits of the case.

"We obtain all the records and go over everything (to determine the merit of the allegation). There's always a lot of hand holding for the individual. This is that person's practice and reputation, and they take this very seriously."

Arrigo also says that for many physicians, it is a matter of restoring their self-confidence when they are accused of improper or negligent behavior, such as a Kane County pediatrician accused of negligence in the care of small children.

Defended Kane County Pediatrician

In one case, Arrigo defended a partner in a pediatric group who was caring for a family with three small children. All had been previously diagnosed with a serious immunological disorder and were being

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treated with intravenous infusions of certain drugs pursuant to the orders of a specialist.

At the parents' request, the pediatrician agreed to continue to order the treatment initiated by the specialist: infusions through a catheter in the chest in accordance with standardized medical procedures.

Arrigo says the pediatrician also recommended that the family seek the care of specialists to monitor the treatment and oversee care of the children's conditions. She says the family did not follow up on that request and did not seek the advice and counsel of the specialists, choosing instead to continue the treatments.

The suit contended that after several years, it was determined that this course of treatment was not needed and had not been needed for some time. The family filed the suit against the doctor for administering unnecessary medication, claiming millions of dollars in unnecessary medical costs. The children were normal and healthy and suffered no long-lasting effects from the medication, but the suit also claimed emotional distress and scarring from the tube used to administer the drugs.

At trial, the physician who then was treating the children did not claim the medication had always been unnecessary. Although specialists testified the drugs were no longer needed, Arrigo's experts said the doctor had made the appropriate recommendations and looked out for the best interests of the children.

On Arrigo's cross-examination, the plaintiff's retained expert admitted that, under the circumstances, the defendant pediatrician had no reasonable choice but to continue the medication infusions unless and until a specialist directed otherwise. The jury agreed and found for the defendant.

David Barry of Corboy & Demetrio has known Arrigo during her entire practice and has worked with her and against her on several cases.

"When I was on the defense side, we worked together. After I switched to a plaintiff's attorney in 2002, we've had four or five cases against each other," Barry says. "She is a very worthy opponent, a tenacious advocate for her client and very professional. After depositions, you can walk out of the courthouse with her (and carry on a normal conversation)."

Barry cites Arrigo's extensive medical background as one of the many reasons she stands out. "Her incredible medical (background and knowledge) make her a very formidable opponent. She is always incredibly well prepared. Also, you can

take her word to the bank. If she says she is going to do something, you can count on her to do it. I wish everyone was like her."

Arrigo's background in medicine has helped her immensely in preparing for medical malpractice cases. She grew up in Palatine, earned an associate's degree in nursing, and started her family. After a while, she decided to go back to school with the original intent of applying to medical school. But she took the LSAT, scored very highly and received scholarship offers from several law schools. Eventually she chose DePaul.

Originally hired at Hinshaw & Culbertson, she migrated to Donohue Brown Mathewson & Smyth, a litigation firm with about 35 lawyers.

"I learned so much from the people here when I was first starting out," she says. "They help you develop your business, and then they leave you alone. There is no one controlling you. We all take pride in our reputation for honesty and integrity."

"Sherri is very competent and exceptionally confident, with good reason," says Browne. "We picked her to represent us because we knew she was exceptionally intelligent, experienced and 100 percent reliable. She's a fierce competitor, and she wins.

"I think her first trial was representing Hinshaw Culbertson in a legal malpractice case. She's exceptionally talented. She retains huge volumes of information and pulls out the most relevant parts in defense of her clients."

College of Trial Lawyers Fellow

Arrigo's reputation in this competitive field resulted in her induction as a fellow in the American College of Trial Lawyers this summer at an event held in London. It is an honor she takes very seriously, as did members of her firm, several of whom flew to London to be with her.

Recently, she was preparing for a trial in which she represents a drug company being sued on allegations that it did not provide adequate warnings about potential side effects.

Many cases don't go to trial because the insurance company or legal counsel for a pharmaceutical firm realizes that discovery and depositions are extremely time-consuming and very expensive. Although they may dispute that any wrongdoing occurred, it is financially expedient to dispose of the matter rather than try it. But some cases must be tried.

Arrigo says the law concerning drug companies' exposure to such suits includes a provision called the "learned intermediary," meaning the doctor who

prescribed the drugs. The law requires that the pharmaceutical companies inform the doctor — the learned intermediary — of any potential side effects so the doctor can relay them to the patient.

She says the defense does not attempt to shift blame to the doctor, but rather centers on the adequacy of the warnings. While summary judgment motions were filed, a judge ruled there were questions of fact that a jury needed to decide concerning whether the warnings were indeed adequate.

"Our defense is that the warnings were proper based on what we knew," she says. The defense also contends the drug was appropriate for the condition and was properly prescribed to treat it.

"The plaintiffs will try to show that the pharmaceutical company knew years ago that certain other side effects were possible and chose not to disclose those in order to not jeopardize its profit. These cases are very expensive to try because we need all the epidemiological records and the chemical reactions (within the body). We then have to show that all of the clinical studies that were conducted show no such cause and effect as the plaintiffs claim."

Sometimes the decision to try a case is based not just on the strong belief of innocence, but also to avoid multiple suits sparked by a willingness to settle. Still, trying a complex drug case is a dicey proposition.

"We've had years to examine and research this to come to a full understanding," she says. "A jury has days or maybe weeks in which to absorb all this."

That's where Arrigo's considerable talent comes in.

"I've known Sherri for at least 15 years," says Kathleen T. Zellner of Kathleen T. Zellner & Associates. "She's one of the best trial lawyers I've been up against, and I've tried cases against some of the best in Chicago.

"What I admire most about her is her devotion to her client. She takes their cases personally. After a number of years, a lot of attorneys in this field are good in a practiced kind of way. But they lack the passion for their clients. They remain detached. What I've noticed about her is that she remains a powerful advocate, almost like family."

Legal Malpractice: Nested Cases

Legal malpractice is another growing field, as clients sometimes seek to recover losses from the attorney who represented them. But the bar to succeed in a legal malpractice case is very high.

"We have what is known as the case within a case," she explains. "The first

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defense is that we did what we were supposed to do in this matter and are not guilty of misrepresenting the clients. But even if we did, they weren't going to win the case anyway, so there is no harm."

That means that even if, for instance, a lawyer failed to file a motion in a timely manner that resulted in the dismissal of a suit, the plaintiff suing that lawyer also has to prove he or she would have prevailed had it not been for that inaction.

"That can be awkward," Arrigo admits, "because in making our defense we have to say, for example, that the suit was filed in good faith, but that after discovery, it wasn't as good a case as it first appeared." The point of that argument is to avoid raising the issue that the defendant should never have filed the suit to begin with.

Arrigo and her husband, Andy Huguenard, an engineer at Fermilab in Batavia, enjoy traveling and spending time in their lake house in southwest Michigan. After her induction ceremony in London, they went on what she described as a European marathon, visiting Paris, Venice, Rome and Florence.

They also dote on their three dogs, two small breeds and a loving black Labrador they adopted on a whim during an Illinois motorcycle trip to Geneva.

"We were on a motorcycle ride, and we saw these rescue dogs from PAWS (an animal rescue and adoption group). I suggested we should just stop and look at the puppies, and my husband just fell in love with this 10-week-old black Lab."

They also spend considerable time with family, including their four children: Robert will graduate from Stanford's medical school in 2015; Katie is manager of clinical research for Sage Products, a provider of medical products; Thomas is working toward a business degree; and Daniel is an employee of a consumer electronics company.

The consummate honor of her induction is not lost on her or her colleagues, who respect her tenacity and integrity.

"We had one medical malpractice trial together," Zellner recalls. "Sherri won the case, but it was very tense and hard fought. We argued with each other a lot, but we maintained a good relationship. I identified with her because we have similar styles. We both fight very hard for our clients.

"I admire her. She is one of the unrecognized great trial lawyers in Cook County." ■