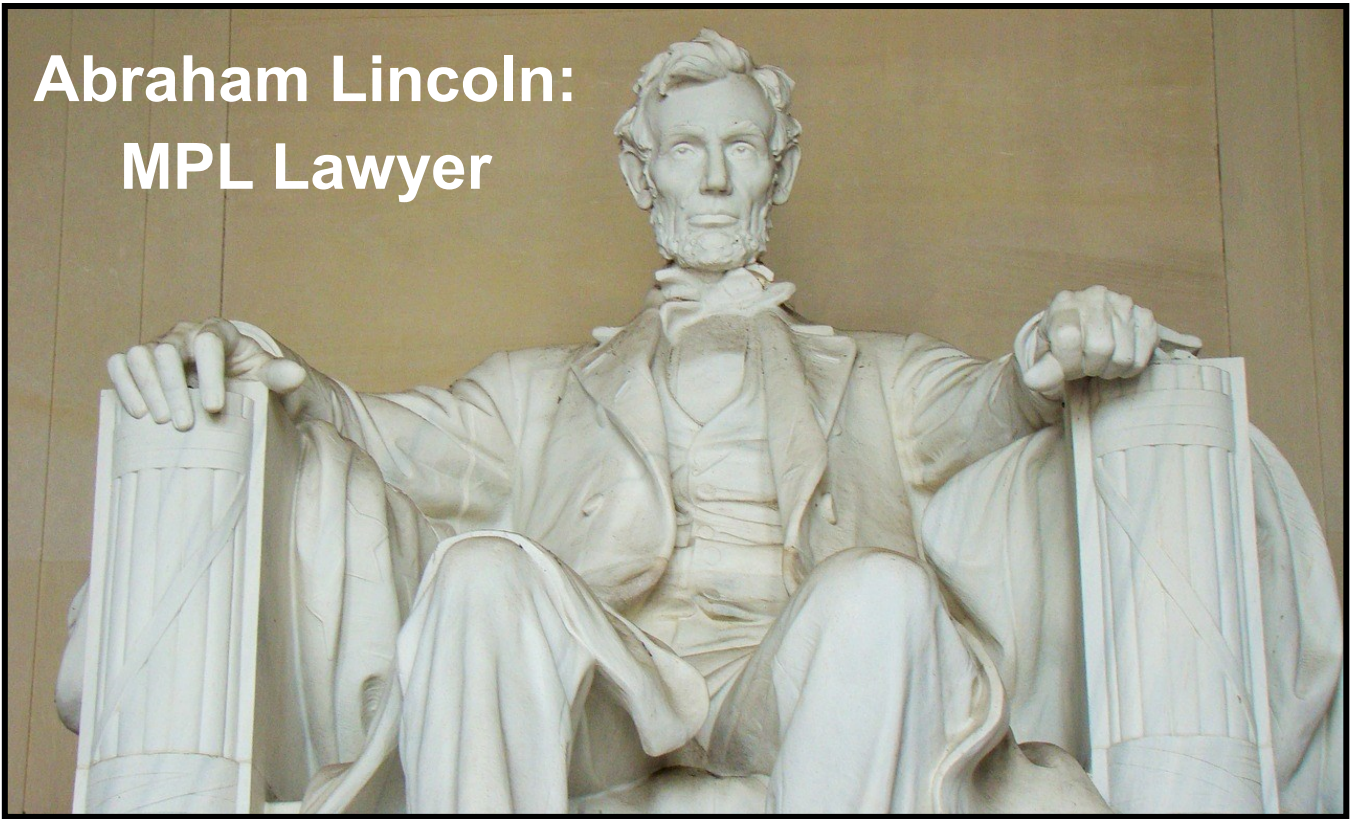


Abraham Lincoln: MPL Lawyer



Yes, it's true. One of Abraham Lincoln's specialties as an Illinois attorney was medical professional liability. He only handled two cases, but they are interesting, and the issues at stake were surprisingly similar to what we see today.

The case Lincoln lost

An improperly healed fracture was the most common reason for the MPL crisis that afflicted the U.S. between the 1830s and 1860s. (Such crises back then, it seems, were rather more protracted than they are now).

And so it was for physician Dr. Powers Ritchey, sued for malpractice in 1855. Lincoln signed on to represent Dr. Ritchey, as his case was appealed to the supreme court of Illinois. Lincoln stayed busy while the appeal proceeded, defending two acquitted murderers and winning acquittals for both. And between the two murder trials, he

debated Stephen A. Douglas while running for the U.S. Senate.

Lincoln was convinced that Ritchey's case had been poorly represented in the lower court. His attorneys had not filed a bill of exceptions in the testimony of the plaintiff's expert medical witnesses. Lincoln attempted to rebut the allegation of a lack of reasonable care and diligence by Ritchey, and tried to secure a new trial for his client.

But in its decision, the supreme court of Illinois disagreed with Lincoln's contention. It did not find any error, and so affirmed the lower court's decision.

The case Lincoln won (well, actually the case settled)—the now famous chicken-bone defense

One Lincoln biographer, William H. Herndon, has alleged that, "I doubt he ever read a single elementary law book in his life." Adding, "I may truthfully say, I never knew him to

read through a law book of any kind."

But of course Lincoln had charm. As one observer noted, "He had wit and charm and an inexhaustible source of anecdotes, always to the point, adding immensely to his powers as a jury advocate."

Here is the case in point. After a fire that started in a livery stable in Bloomington, Illinois, on October 17, 1855, one citizen, William Green, was found dead. Another, Samuel G. Fleming, had suffered two broken thighs. Three physicians provided care, Drs. Thomas P. Rogers, Jacob R. Freese, and Eli K. Crothers.

The physicians dressed the limb, Freese later said, "With care and with the same manner as I have seen it done by some of the most celebrated surgeons of the country, and in the same manner as is recommended by some of the best authors on surgery."

The now famous chicken-bone defense:

“Lincoln then sought to uncover the more technical aspects of the case.”



All went well for two weeks, with Fleming asserting that, “He was getting along first rate, and that, were it not for his confinement, he would scarcely know that his thighs were broken, so little pain did he have.”

That all changed on day 16 after the accident, when Fleming began to complain of severe pain at the fracture point of the right leg. His sister, who had been nursing him, said she thought she could feel with her hand that the “fracture had been misplaced.” The three doctors countered that in fact the leg was mending as it should, and that Fleming’s symptoms were actually due to pleurisy.

But after the bandages came off, 24 days after the accident, Dr. Rogers commented that the legs were “as crooked as ram’s horns.” The physicians asked that they be allowed to reset the thigh and then let the leg begin the knitting process.

The patient and his family agreed. But in the middle of the procedure, it became apparent that the full effects of the chloroform anesthesia had not kicked in. Fleming screamed, and demanded that the procedure be halted. It was. Fleming, whose leg at a later point was

still crooked and shorter than the other one, then hired six lawyers, alleging that his doctors had “failed to use due and proper care, skill, and diligence” in their care. As a result, he claimed, he had “thereby suffered great and unnecessary pain and anguish...and is much reduced and weakened in body.” As compensation, he demanded payment of \$10,000.

To counter the presence of plaintiff’s lawyer Leonard Swett, famous for his knowledge of medical issues and anatomy, Lincoln was hired.

The first outcome was a continuance, on the grounds that Dr. Rogers was unwell. The next outcome was another continuance: Dr. Freese had moved to Cincinnati.

Lincoln then sought to uncover the more technical aspects of the case. Using chicken bones (yes, finally, the chicken-bone defense), Crothers described to Lincoln the chemistry of bone growth and the organic changes that take place in bone as it ages. Lincoln saved this lesson for his summation to the jury. Then, holding up two chicken-leg bones, one from an old chicken and another from a young one, he showed the jury the differences in their texture and resilience. He told the jurors that the bone from the older chicken “has all the starch taken out of it.”

This more than likely had the desired effect on the jurors, who had probably entered the courtroom predisposed to Fleming—and against the more affluent defendants. But the jurors failed to reach a verdict.

The defense requested a change of venue for the retrial. The retrial never happened, though. Both sides came to a settlement, the defendants agreeing to pay Fleming (probably less than a thousand dollars).

Best Lincoln quote from the case: when Fleming complained that his affected leg was shorter, necessitating a limp, Lincoln responded: “Well! What I would advise you to do is get down on your knees and thank your heavenly father, and also these doctors, that you have any legs to stand on at all.”



Sources: www.historynet.com; www.researchgate.net; and Siegel AD, Kavalier F, J Community Health, 2004 February 2004, February, pages 75-79.