

A patient from State A sued a doctor from State B in federal court for medical malpractice, seeking \$100,000 in damages. During trial, the doctor's attorney presented a substantial amount of evidence that clearly demonstrated the doctor was not negligent, while the patient presented little evidence that showed the doctor was at fault.

Neither party filed any motions before the case was submitted to the jury. The jury returned a verdict in favor of the patient and awarded her \$70,000 after deliberating for an hour, and the judge entered final judgment consistent with the jury's verdict that same day.

The doctor's attorney believes that the verdict was not supported by the clear weight of evidence and seeks to challenge the verdict before filing a notice of appeal.

What action should the doctor's attorney take?

- A. Move for a new trial.
- B. Move for a renewed judgment as a matter of law.
- C. Move for summary judgment.
- D. Move to dismiss for lack of subject-matter jurisdiction.

## **Explanation:**

### **Posttrial relief**

<b>Relief</b>	<b>Grounds</b>	<b>Timing</b>
<b>Attorney's fees</b>	<ul style="list-style-type: none"><li>• Statute or rule allows recovery</li></ul>	≤ 14 days after entry of final judgment
<b>Judgment as matter of law</b>	<ul style="list-style-type: none"><li>• Evidence legally insufficient to find for nonmovant</li></ul>	≤ 28 days after entry of final judgment
<b>New trial</b>	<ul style="list-style-type: none"><li>• Prejudicial trial error</li><li>• Prejudicial misconduct by judge, attorney, party, juror</li><li>• Verdict not supported by clear weight of evidence</li><li>• Verdict based on false/nonexistent evidence</li><li>• Excessive or inadequate damages</li><li>• Newly discovered evidence</li></ul>	
<b>Alter/amend judgment</b>	<ul style="list-style-type: none"><li>• Manifest error of law or fact is basis for judgment</li><li>• Intervening change in controlling law</li><li>• Newly discovered evidence</li></ul>	
<b>Correction of mistake</b>	<ul style="list-style-type: none"><li>• Clerical mistake</li><li>• Mistake arising from oversight or omission</li></ul>	Freely OR with appellate court's leave if docketed
<b>Extraordinary relief</b>	<ul style="list-style-type: none"><li>• Mistake, inadvertence, surprise, excusable neglect</li><li>• Newly discovered evidence</li><li>• Fraud, misrepresentation, misconduct by opposing party</li><li>• Void judgment</li><li>• Judgment satisfied, released, discharged</li><li>• Other reason justifying relief</li></ul>	≤ 1 year after entry of final judgment  Within reasonable time

Within 28 days after entry of a final judgment, a party can move for a **new trial** on several grounds, including when the **jury's verdict is not supported by the clear weight of evidence**. Here, the doctor's attorney presented substantial evidence that showed the doctor did not commit malpractice, while the patient presented little evidence that the doctor was at fault. Since the jury's verdict in favor of the patient went against the clear weight of this evidence, the doctor's attorney should move for a new trial.

**(Choice B)** A judgment as a matter of law (JMOL) is a judgment entered in favor of the movant because the evidence is legally insufficient for a reasonable jury to find in the nonmovant's favor. But once the jury has returned its verdict, a party can only move for a **renewed JMOL** if that party had moved for JMOL before the case was submitted to the jury (not seen here).

**(Choice C)** A motion for summary judgment must be filed no later than 30 days after the close of discovery—not after the trial has concluded.

**(Choice D)** The court has **subject-matter jurisdiction** through diversity jurisdiction because (1) the patient and doctor are citizens of different states and (2) the amount in controversy—ie, the amount demanded in the patient's complaint—exceeds \$75,000.

**Educational objective:**

A party can move for a new trial within 28 days after entry of a final judgment on several grounds, such as when the jury's verdict is not supported by the clear weight of evidence.

**References**

- Fed. R. Civ. P. 59 (motion for a new trial).