

Expert Medical Consultants, Inc.

Peer reviewed expert medical witness testimony

“An idea whose time has come”

Our medical and legal journals are regularly presenting articles dealing with the “malpractice crisis”. Assertions of “frivolous lawsuits” and “cover-up” of physicians guilty of malpractice abound. Over the past few years, there has been increasing discussion regarding methods of review and sanction procedures for medical specialty experts for alleged improper testimony as to the standards of care for their particular specialty.^{1,2} There have been proposals for medical courts where special judges review and decide the issues of malpractice, after hearing plaintiff and defendant expert testimony. This process eliminates jury participation since proponents of this approach believe that juries selected from the usual jury pool are not appropriately educated to be able to discern the nuances of medical issues related to medical malpractice. There is also criticism of “runaway jury” excessive monetary awards although there are no peer-reviewed studies that confirm any truth to this assertion. In the trial court circumstance, the judge selects and relies upon expert physicians to provide the medical standards education. Such “court appointed” experts are selected according to their access to the courts and are not evaluated as to any bias for plaintiff or defendant positions. Representatives from the plaintiff’s bar often profess reliance on jury trials and selection of their own experts for malpractice cases rather than these appointees, suggesting a belief that a bias against the plaintiff exists in such circumstances and that judges are less likely to appoint expert medical witnesses who have a history of review and support of plaintiff issues. Similarly there have been aggressive attempts by some specialty organizations to discipline members for supposed erroneous misrepresentation of the standards of care in malpractice cases.¹ The Journal of American College of Legal Medicine includes many recent articles dealing with various facets of this issue.^{1,2}

Expert Medical Consultants, Inc. was formed as a non-profit entity with the specific objective of developing a retrospective peer review mechanism for expert medical witnesses for all medical specialties that provided protection against litigation as a result of the review process, and that provides a documented fair way to evaluate expert medical testimony by the most qualified peers of that expert. The company structure also provides a mechanism to assure fairness in evaluating plaintiff and defendant experts in all specialties, overcoming any perceived bias of medical specialty organizations or others. The company utilizes specific review committees for each specialty, an advisory panel consisting of a Board of Governors that includes representatives across the entire spectrum of interested parties in this process, including representatives of the medical specialty organizations, liability insurance companies, and national plaintiff and defense legal organizations. The judiciary, state medical boards and federal entities would also be represented at the Board of Governor level. Though no organization would be an outside controlling force over EMC, this advisory board was created and is welcome to observe the operation of this non-profit company to encourage fairness and balance as to plaintiff and defendant issues and the interests of the all parties in the pursuit of appropriate expert medical witness testimony.

The concept of Expert Medical Consultants, Inc. as a non-profit, voluntary, national peer review organization has been received very positively from many well-respected physicians of national stature and officers of medical organizations who see this as a concept that should grow to encompass a majority of expert medical witnesses. Expert consultants who decline to join this voluntary

organization and to subject their expert opinions to retrospective review will, over time, lose credibility. Organizations, plaintiff's attorneys, trial courts and institutions will quickly begin to place greater credibility in the expert for plaintiff or defendant who is potentially willing to defend his position at a panel of his peers on the basis of the standards and training of his specialty, rather than some narrow, self determined opinion not supported by other experts in his specialty. This does not stifle the expert in free expression of his opinions, that are NOT subject to review in this standards evaluation. It is only the standard of care used as the basis for the opinions that is being verified. EMC recognizes that two experts, both correctly defining a standard of care can come to opposite conclusions as to the application of that standard in a specific clinical circumstance. The result of greater scrutiny of the standards upon which our experts are basing their opinions is expected to suppress the filing of frivolous malpractice actions, and to increase the simplified settlement of malpractice actions where liability of the physician or entity due to breach of the standards of care is clear. As a result, EMC expects a significant effect on decreasing the workload of the trial courts in these matters. Decreased filings and simplified settlements without long delays will decrease malpractice costs for all concerned parties, organizations, governmental institutions and the courts. The educational and research activities are expected to increase awareness, procedural and documentation issues of physicians with the expected result of reduction in reduction of beaches of the standards of care and resultant decreases in medical malpractice exposure.

Bibliography

1. Nijm, Lisa M.D., J.D., Pitfalls of Peer Review, The Limited Protections of State and Federal Peer Review Law for Physicians, The Journal of Legal Medicine 24:541-556, 2003
2. Cohen, Fred L. M.D., J.D. The Expert Medical Witness in Legal Perspective, The Journal of Legal Medicine, 25:185-209, 2004
3. AANS, AANS Rules & Regulations, VII Expert Witness Testimony, www.aans.org
4. Fortado, Lindsay, In some cases, Judges need their own experts, The National Law Journal, 01-242005, www.nlj.com
5. Hawkins, Asher, Judge orders New Liability in Fen-Phen Cases, The Legal Intelligencer, www.law.com, 2005
6. American College of Legal Medicine, Guidelines on the Ethical Conduct of the Expert Witness, aclm.com, 2005
7. American College of Obstetricians and Gynecologists, Qualifications for the Physician Expert Witness, Acog.com, 2003