What To Do When Physician Expert Witnesses Provide False Testimony Against You

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Standard of Care

Definition:
What the ordinary physician based upon training and experience would do under like or similar circumstances

Standard of Care is NOT

• What the average physician would do
• The best possible care
• What the expert would do

Disclosures

No Financial Disclosures
**Who can testify as an “expert”**

Generally, a witness can be qualified by

1. Knowledge
2. Skill
3. Experience
4. Training or education

**Qualification of Expert**

- Same specialty (Court may consider cardiac surgery, cardiology, and vascular surgery as same specialty)
- Same board certification

**It can be difficult to prove that an expert is lying and therefore many dishonest experts escape being charged with perjury**

**VA Cardiac Case in 2003**

- Dr. Zakharia was an expert for plaintiff in case involving CABG
- Dr. Zakharia stated he performed a “couple hundred” CABGs between 1995 and 2002
- In fact, he had performed none

**Dr. Zakharia Charged with:**

- Mail Fraud
- Wire Fraud
- False Declaration

**However, there is a light at the end of the tunnel**
• Pled guilty to contempt of court
• Agreed to stop practicing medicine
• Agreed to write a letter for publication in a medical journal stating that he had given false testimony

However:
• He reportedly changed his mind about the plea bargain
• He continued to practice medicine

Dr. Zakharia was sentenced to:
• 30 days in a South Florida halfway house
• One year probation
• $100,000 fine

Austin vs. American Association of Neurological Surgeons
• “More policing of expert witness testimony is necessary, not less”
• Professional societies not only have the right but the responsibility to police expert witness testimony
• Austin was suspended from the Society

In July of 2013
• Dr. MWF alleged he had privileges to operate at Washington University
• He reportedly had lost those privileges
• Was charged with perjury

• Turned in his Missouri License
• Fined $100,000
• Turned himself in to the Boone County Jail and was freed on $50,000 Bond
What Can We Do?

Save “expert” depositions and trial testimony

• Use for impeachment
• People who testify falsely have a difficult time remembering the last lie they told

Communicate

• If such testimony is found, and the individual is a member of a professional society, refer the individual to the Society for review

Conclusions

• Thoroughly research the testimony of experts
• If false testimony is found, aggressively pursue any and all remedies including expulsion from professional societies and reporting physician to state medical board

Holding an expert accountable for false testimony is difficult, but clearly not impossible