How to Neutralize and Unmask Hostile Medical Expert Witnesses and Their Testimony

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Best way to address an expert who provides false testimony
• “Unmask” them during a deposition or trial and make certain that they can never testify again as an expert

Unmasking the “expert”
• Review certification
• Review training
• Speak with “experts” colleagues
• Review caseloads
• Review old depositions

Board Certification
• Expert stated that he simply had not gotten around to recertifying.
• He actually had not recertified in over ten years
• No longer a credible expert

Board Certification
• Expert stated he was board certified in vascular surgery
• He was not
• Jury returned a no cause verdict in 10 minutes
Review Training

- Expert never finished his vascular training
- Expert training consisted of a 3 month rotation on vascular surgery

Speak with colleagues

- Expert alleged he had privileges to operate at a well known university hospital.
- He, in fact, had lost those privileges
- Was charged with perjury

In July of 2013

- Turned in his Missouri License
- Fined $100,000
- Turned himself in to the Boone County Jail and was freed on $50,000 Bond

Caseload

- Expert stated he performed a “couple hundred” CABGs between 1995 and 2002.
- In fact, he had performed none

Caseload

- Loss of license
- Jail time

- Depositions and trial testimony (in general) are public record and not privileged materials
Depositions

• Review experts old depositions for medical inconsistencies

“Gray Testimony”

It is negligent to injure the hypoglossal nerve during a carotid endarterectomy.

False testimony

1. It is malpractice for a patient to develop a bowel obstruction following an open AAA repair.
2. If a patient has post-operative bleeding from an anastomosis malpractice must have occurred, otherwise this complication does not occur.

False testimony

• “The most common reason for a graft to occlude is the individual dies.”
• The success rate of a popliteal to posterior tibial artery bypass in a diabetic in preventing an amputation “in my hands would be virtually 100%”.

Components of malpractice suit

• Physician-Patient Relationship
• Breach of the Standard of Care
• Proximate Cause
• Damages

Eliminate the Expert

Eliminate the Lawsuit
What can we do?

• Letter to Ethics and Professional Conduct Committee of appropriate Society
• Letter to American College of Surgeons
• “Name names” with specific testimony

Results in vascular cases

• “Expert” and false testimony was “unmasked” on a slide at a national meeting.
• The expert who was showing up regularly as a plaintiff’s expert suddenly was no longer providing false testimony.

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.

Conclusion for experts who lie

An expert should be willing to stand by their testimony and not be afraid to see it on a slide at a national meeting.