
MEDICAL EXPERT EXAMINATION

Find the Right Expert

- Determine whether you want to use a treating, or non-treating expert.
- Ensure that the expert you utilize is qualified to testify about the material facts.

Prepare Yourself

- Create a binder (or data file) containing the expert's credentials, expert report, key medical records, and any pertinent research or articles.
- Review applicable medical terminology.
- Discuss the case at length with your expert.

Know What You Want, Get What You Need

- Create an outline of information you need to get from your expert.
- Have a plan for eliciting that information from your expert.
- Lead the opposing expert on cross-examination.
- Ask the opposing expert specific questions about how each of the facts of the case influenced the medical opinion.
- Ameliorate your own expert's weaknesses during direct examination, i.e. how much the expert is being paid, or whether the expert does more plaintiff or defense work.

Basic Examination Areas

- **Background and qualifications.** Highlight accomplishments by slowly getting the credentials from your expert. Ask specific questions about the meaning of awards, certifications, and publications to help the jury understand the prestige and meaning of your expert's qualifications. If the physician is not Board Certified in the area in which testimony is being offered, it may be useful to ask the expert about the Board Certification process, whether the expert went through the process, and whether the expert passed.
- **Treating physician.** This physician is both a fact witness and expert witness. When examining a treating physician, ask about the expert's first contact with the patient, the patient's statements to the expert, the patient's representation of his or her medical history, the diagnostic procedures, diagnosis, opinion regarding causation of injuries, treatment, and prognosis. Ask whether it is medically advisable for the patient to engage in certain daily activities, employment, travel, etc.
- **Expert only physician.** You may point out that the physician is providing a medical opinion without examining the patient. You may also point out that the physician is there – not to provide an opinion about the patient – but to teach the jury.
- **Information reviewed.** Ask the expert questions about the information reviewed. What records were available to the expert? What records were unavailable? How would 'x' information (in records not reviewed by the expert) affect the expert's opinion?

Make the Information Accessible to a Jury

- **Simplify complicated medical terminology for the jury.** If an expert states that the patient presented in the emergency room hypertensive but afebrile, ask the expert something like, “Does that mean that the plaintiff came to the emergency room with high blood pressure but without a fever?”
- **Refer to evidence; use demonstratives.** Have important information prepared as potential exhibits and enlarge key pieces of evidence for the jury to view.

Evidentiary Rules Directly Applicable to Expert Testimony

- **OEC 702. Testimony by Experts.** If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.
- **OEC 703. Basis of Opinion Testimony by Experts.** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.
- **OEC 704. Opinion on Ultimate Issue.** Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
- **OEC 705. Disclosure of Fact or Data Underlying Expert Opinion.** An expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.
- **OEC 706. Impeachment of Expert Witness by Learned Treatise.** Upon cross-examination, an expert witness may be questioned concerning statements contained in a published treatise, periodical or pamphlet on a subject of history, medicine or other science or art if the treatise, periodical or pamphlet is established as a reliable authority. A treatise, periodical or pamphlet may be established as a reliable authority by the testimony or admission of the witness, by other expert testimony or by judicial notice. Statements contained in a treatise, periodical or pamphlet established as a reliable authority may be used for purposes of impeachment but may not be introduced as substantive evidence.