



Jurisprudence Section – 2003

E22 Expert Testimony in Medical Malpractice Cases - New Hazards

Linda B. Kenney, JD, The Galleria, Atrium Building 5, 2 Bridge Avenue, Red Bank, NJ; Andre A. Moenssens, JD, LL.M., University of Missouri at Kansas City, Kansas City, KS; Haskell M. Pitluck, JD, 573 Lake Avenue, Crystal Lake, IL; Cyril H. Wecht, MD, JD, 542 Fourth Avenue, Pittsburgh, PA; and Joseph J. Maltese, JD, MJS, New York Supreme Court, 355 Front Street, Staten Island, NY*

Upon completion of this presentation, attendees will be informed about recent medical malpractice lawsuits in which medical experts were subjected to significant professional disciplinary actions subsequent to trial. Specific suggestions will be given as to how to avoid such serious consequences.

In July 2002, the North Carolina Medical Board revoked the license of Gary Lustgarten, MD, a Florida neurosurgeon who had testified for a plaintiff in a medical malpractice case in North Carolina. The Board ruled that Dr. L. had engaged in "unprofessional conduct" by misstating facts about the case and the appropriate standard of care for a neurosurgeon in North Carolina.

The American Association of Neurological Surgeons (AANS) had previously suspended Dr. L's membership in that organization on two occasions following testimony he had given as an expert witness in other malpractice lawsuits.

In 2001, the AANS had suspended another neurosurgeon's membership following his testimony in a malpractice case in Illinois. The Seventh U.S. Circuit Court of Appeals upheld the AANS' right to discipline a member in a very strong and highly critical opinion written by Judge Richard Posner.

These actions might be considered simply as "blips" on the legal scene and casually ignored. However, in light of the growing fear, frustration, and intense resentment expressed by physicians and organized medical groups throughout the country vis-à-vis malpractice lawsuits, coupled with increasing efforts at the state and federal levels to adopt new legislative measures for so-called "tort reform," it is highly likely that various medical societies, specialty organizations, and state medical boards may decide to become increasingly aggressive and undertake actions for a variety of reasons against physicians who testify as expert witnesses for plaintiffs in medical malpractice lawsuits.

Whatever the ultimate answer may prove to be regarding medical malpractice lawsuits and spiraling malpractice insurance costs, one thing is certain, namely, resolution of this problem cannot be justified by attempting to prevent physicians from testifying as experts for plaintiffs. This would be an egregious assault on the most basic and important features of the civil justice system in America.

These cases will be thoroughly analyzed and legally dissected in order to determine whether they are logical, fair, and just; or whether they are unacceptable intrusions into the justice system by overly anxious, embittered groups of physicians who would be willing to do anything they can to indirectly pressure their colleagues into refusing to serve as expert witnesses in malpractice cases.

Medical Malpractice, Medical Expert Testimony, Professional Disciplinary Actions