

## **USE OF EXPERT WITNESSES TO SUPPORT YOUR CASE**

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### **Why Expert Testimony is So Important**

- Burden of Proof
- Establish Standard of Care
- Doctors
- Nurses and hospitals
- *Methodist Hospitals, Inc., v. Johnson*, 856 N.E. 2d 718 (Ind. App. 2006)
- Educate Jury
- Causation and Damages

### **Why Expert Testimony is So Important**

- Common knowledge exception/*Res Ipsa Loquitur*
- So obviously substandard medical expertise not necessary. *Methodist Hospital v. Johnson, supra*.
- Shifting of burden of proof – *Cox v. Paul*, 828 N.E.2d 907 (Ind. 2005)
- Retained sponge – *Ho v. Frye*, 880 N.E.2d 1192 (Ind. 2008)

### **Guidelines for Determining the Qualifications of the Experts You Need**

- Ind. Evidence Rule 702(a): Knowledge, skill, experience, training, education
- Rule 702 (b): Reliability
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
- Causation
- Differential diagnosis

### **Guidelines for Determining the Qualifications of the Experts You Need**

- Different Specialties
- Trial Court's Discretion
- Credibility

### **The Best Techniques for Finding Experts**

- Medical Review Panel
- Opinion Admissible
- Standard of Care/Factor in resultant damages
- Physician's specialty
- Nurses eligible
- *Harlett v. St. Vincent Hospital*, 748 N.E.2d 921 (Ind. App. 2001)
- Administrators not eligible
- I.C. 34-18-10-5

### **The Best Techniques for Finding Experts**

- Websites
- Background
- Malpractice History
- Panel history
- Networking

### **How Winning Attorneys**

#### **Use Experts**

- Establish claim or defense
- Explain/educate jury
- Contradict opposing expert opinions
- Assist in preparing cross-examination of opposing expert

### **How Winning Attorneys**

#### **Use Experts**

- Materials relied on
- Ind. Evidence Rule 703
- Reasonably relied on by experts in field
- Includes inadmissible evidence
- Discovery of experts
- Presentation of expert testimony