

USE OF EXPERT WITNESSES TO SUPPORT YOUR CASE

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Expert Witnesses

- A learned fool is usually sillier than an ignorant one. – *Moliere*, *Les Femmes Savante*, 1672

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

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

The Best Techniques for Finding Experts

- Credibility
 - Ind. Pattern Jury Instruction No. 4.01 – Judge in same manner as any other witness
- Choosing an expert

How Winning Attorneys Use Experts

- Establish claim or defense
- Explain/educate jury
- Respond to 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
 - Wide open
 - Written Communications
- Presentation of expert testimony