

How to hold physicians who provide false or misleading testimony accountable

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Disclosures

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Better Response

- Perjury Charges
- Suspension or expulsion from societies
- Eliminate the ability of these physicians to testify in future cases

Who can testify as an "expert"

- Generally, a witness can be qualified by:
 1. Knowledge
 2. Skill
 3. Experience
 4. Training or education
 5. Same specialty
 6. Board certification

- It can be difficult to prove that an expert is lying and therefore many dishonest experts escape being charged with perjury.

“Gray Testimony”

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

False /Misleading Testimony:

- Patient with ileo-femoral atherosclerosis and a patent femoral popliteal graft was cleared for a total knee arthroplasty. Patient had no graft stenosis.
- Patient had palpable pedal pulses
- Patient developed knee infection post procedure and after treatment by orthopedics required AKA.

False/Misleading Testimony:

- Dr. Maseer Bade testified that the reason for the infection was “ischemia”.
- Dr. Bade testified that the TKA was “contraindicated” due to the presence of inadequate blood flow in this patient with palpable pedal pulses.

Dr. Maseer Bade

- At deposition he stated that the ethical guidelines provided by the American College of Surgeons for expert witness testimony did not apply to him since he was no longer a member of the college.

American College of Surgeons

- Be truthful
- Willing to present testimony to society for review

There is however a light at the end of the tunnel.

VA Cardiac Case in 2003

- Dr Zakharia was an expert for plaintiff in case involving CABG.
- Dr Zakharia stated he performed a “couple hundred” CABGs between 1995 and 2002.
- In fact, he had performed none.

Dr Zakharia Charged with:

- Mail Fraud
- Wire Fraud
- False Declaration

- Pled guilty to contempt of court
- Agreed to stop practicing medicine
- Agreed to write a letter for publication in a medical journal stating that he had given false testimony

However:

- He reportedly changed his mind about the plea bargain.
- He continued to practice medicine.

Dr. Zakharia was sentenced to:

- 30 days in a South Florida halfway house
- One year probation
- \$100,000 fine

Austin vs. American Association of Neurological Surgeons

- “More policing of expert witnessing is necessary, not less”
- Professional societies not only have the right but the responsibility to police expert witness testimony
- Austin was suspended from the Society

- Dr. Melvyn Flye claimed he was an active surgeon at Wash U.
- He reportedly had lost those privileges.
- Was charged with perjury
- **Plaintiff won the original case**

www.arkansasonline.com/news/2013/jul/22/Missouri

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

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What Can We Do?

Unmasking the "expert"

- Review certification
- Review training
- Speak with the alleged expert's colleagues
- Review caseloads
- Review old depositions (difficult to remember last lie told)

Sue plaintiff's expert for malpractice

- In some states giving expert testimony is considered practicing medicine.

Conclusions

Report all instances of false/misleading testimony to:

- Professional society
- State medical board
- Specialty certification board
- Report even if case is settled or lost

Holding experts liable for
purchased testimony is difficult



But not impossible

