

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

SELECTING EXPERTS

To assist juries in understanding the requisite standard of care, whether the defendant physician met that standard of care, and if not, whether the defendant physician's actions or inactions caused a plaintiff's damages, expert witnesses are retained by each side. If your attorney is not able to find an expert who is supportive of your care, he or she will be unable to successfully defend your care.

In order to ensure that those testifying as experts are appropriately qualified, each state will have its own specific requirements as to who may testify as an expert witness. Generally speaking, however, an expert in a medical malpractice case will be a licensed physician with the same specialty as the defendant physician, who is actively engaged in the practice of medicine. The trial court judge will make the ultimate determination as to whether a witness is qualified to testify as an expert. The expert's opinion must be based on a reasonable medical certainty; there must be a sound basis for the opinion(s).

PRMS and our panel counsel have decades of experience working with numerous well-qualified experts who may be contacted to assist with the defense of your case. You may also suggest experts to your defense attorney.

FREQUENTLY ASKED QUESTIONS

I received a copy of a letter sent by my attorney to a potential expert witness, and I was surprised to find that my attorney did not provide much detail and I'm concerned that he will not have a clear understanding of what occurred. Can I call the expert and explain what happened?

Your anxiety is understandable. After all, the expert witness is a critical element of your defense and you want him to have an understanding of all the details of your case before he renders an opinion. Yet, the letter you received does not appear to convey any detail at all. Rest assured, your attorney has provided the potential expert with all the information needed to evaluate the case. Depending upon rules of discovery and evidence in your jurisdiction, your attorney's communications with the expert – particularly if the expert is not ultimately retained in your defense – may be discoverable by the Plaintiff. Thus, your attorney made a conscious decision not to communicate the details of the case in writing.

I received a report of the expert witness's findings and I completely disagree with the expert's conclusions. Can I call the expert and discuss the findings?

In a word, no. Your discussions with your attorney are protected by an evidentiary privilege, and your attorney's communications with consulting experts may be similarly privileged. However, as a party to the litigation, your direct statements to others, including expert witnesses, are subject to discovery.

While your concerns about the expert's findings should be raised immediately, the appropriate course of action is to call your attorney, who will be happy to discuss the issues with you and follow up with the expert as necessary.

