

MOCK TRIAL COMMENTARY

DIRECT & CROSS-EXAMINATION OF THE PLAINTIFF'S EXPERT

The legal standard for expert opinion testimony is “to a reasonable degree of medical certainty.” An expert witness has to say how a defendant deviated from the standard of care and also what actions would have brought that defendant’s treatment within the standard of care. Ultimately, the role of the expert witness is to educate the jury and judge.

The Defense raised an objection based on the collateral source rule. This is a rule of evidence that states compensation to the victim from a source other than the damages sought in the lawsuit is not admissible as evidence.

Dr. Greene, Plaintiff’s expert witness, established that risk actually increased while Mr. Clark was in Brook Hospital. He also gave an opinion as to where Dr. Stover failed to meet the standard of care (as well as on causation). Her failures included:

- **Evaluation:** past treatment records not obtained, infrequent assessment (saw 3x), no information from staff; no education of family (regarding suicide, guns)
- **Treatment:** inappropriate discharge, no appeal of health insurer denial, Effexor dose should have been increased, medication was not given enough time to work, Mr. Clark discharged without insight; no appointments were set up
- **Monitoring:** progress notes not read, no daily treatment team meeting, no effort to address worsening symptoms, no discharge meeting, no inpatient AA.

Plaintiff’s expert witness testimony can be the hardest part for a psychiatrist defendant. Another psychiatrist will run through a litany of things the treater did wrong. It can feel like a stab in the back. Here, a stressed Dr. Stover finally reached her boiling point and had to be admonished by the Judge for her commentary. Having to be admonished by a judge usually does not play well to a jury.

Attorney Hammer mounted a standard hired gun cross – questioning whether Dr. Greene saw patients and how much he was paid for his testimony. He continued to build on Dr. Stover’s exercise of clinical judgment. He also narrowed deficiencies to the second hospitalization, building a foundation for appeal. (Dr. Stover exercised the same clinical judgment at the first discharge as she did at the second, yet only the second is criticized.) He elicited an explanation of the documentation issue – what Dr. Stover wasn’t aware of because it wasn’t documented by staff. The question “Did she do anything right?” takes much of the thunder away from the witness’ testimony.