

07

7 BEST PRACTICES

WHEN WORKING WITH AN EXPERT WITNESS



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Best Practices.

I work with experts on medical malpractice and personal injury cases and would like to share with you some things to keep in mind before you present a potential case to an expert witness. When trying to determine if there were breaches from the accepted standards of care, or specific damages related to a personal injury, it is important to follow these seven best practices. The following steps are designed to help you properly investigate your case and minimize the costs accrued when determining whether your case is worth pursuing.

Guy R. Saponaro
Saponaro, Inc.

**CONTINUE TO THE 7 BEST PRACTICES WHEN WORKING
WITH AN EXPERT WITNESS**

EXPERT TIP:

Obtaining a complete set of records is becoming more and more challenging with the use of electronic medical records. It is important to understand the basic details of your case and what an expert will need to review so that you can make specific record requests. A complete and accurate analysis is achieved when all necessary documents are presented.

OBTAINING MEDICAL RECORDS

ORGANIZE YOUR RECORDS

Placing your records in chronological order is especially important when dealing with cases with voluminous documentation. Your client's case should read like a story with a well-ordered sequence of events. Once organized properly, both you and the expert witness can get a better understanding of the case. Your expert will spend less time reviewing and subsequently minimize your costs.

USE TAB SEPARATORS

The use of tabs to separate records will make the expert's job easier in locating specific records. Do not send the expert two-sided pages of records. You might think you are saving the environment by sending the records electronically, but a hard copy of the records is easier for most experts to review. This will save the expert time and you money.

CHRONOLOGY IS KEY

Especially if records are voluminous. You will get a better understanding of the case, and the expert can review the chronology before going through a voluminous set of records and charge you accordingly.

COLLECT THEM ALL

Obtain all pertinent radiological studies, not just reports. Photocopies of films are not sufficient. The expert will need to see a copy of the actual study. Films are acceptable on disc.

Why is this important?

I was involved in a case where an attorney was concerned with the performance of a surgery and the complications that occurred as a result. This led to the need for an additional surgical procedure and permanent problems. The attorney had two orthopedic foot and ankle surgeons review the records and only the postoperative radiological studies. Both surgeons felt that the surgery was performed within the applicable standards of care, and that the outcome was simply due to the complications and the risks related to the surgery.

When the attorney requested assistance from our services, and after screening the case with potential F&A orthopedic surgeons, it was recommended that the preoperative films be obtained. The films would enable us to get a clear and complete picture of the care in question. Our F&A expert looked at the preoperative films and concluded that the surgery performed was unnecessary. Although agreeing that the outcome of the surgery was a complication, he was able to provide an opinion that it was negligent to have performed the procedure in the first place. He was able to provide evidence to support the opinion that the patient did not meet the criteria for surgical intervention. The outcome was, therefore, due to negligent performance of the surgery.

This case highlights the importance of obtaining all available information before presenting the case to the expert, most importantly, when it involves cases that depend on radiographs.



EXPERT TIP:

Cases relating to a “failure to diagnose” require consideration on what would be the best way to initially approach the analysis. Know what you want to get accomplished when you organize a review by a medical expert. Most experts prefer not to go outside their specialty to address standard of care or causation opinions. They can, however, give you guidance in both.



DETERMINING THE TYPE OF EXPERT TO HIRE

STANDARD OF CARE

Did the treating physician or healthcare professional deviate from the accepted standards of care in the treatment of your client?

CAUSATION

What effect did the negligence have on the outcome of the case? What are the actual damages your client suffered as a result of the negligence? Understanding the injury to your client will help you select the correct expert.

EXPERT TIP:

If an expert is not straightforward in their response to any of your questions, this may be a sign that they have something to hide or are not the best person for the job. Know whom you are hiring! You are relying on this expert to guide you through your case.

SCREENING THE CASE WITH THE POTENTIAL EXPERT

WHO

Select the right expert. If you need an SOC expert, be sure to match their board-certification specialty. Make sure the expert performs the care and/or procedure in question.

HOW

Ask the Expert if they are willing to support their opinion through deposition and/or trial.

WHEN

Engage an expert as early as possible. Check for conflicts or time constraints.

WHAT

Obtain a CV, the expert's preferred contact information, (communication through email is most preferable), fee schedule, and a W-9.

WHY

Asking all the right questions upfront and staying in contact with the chosen expert, will help you develop a successful working relationship.

EXPERT TIP:

The more specific you are with the expert, the better your working relationship will be. You are paying the expert so make sure you get what you need. Not all experts work the same way. Set the parameters and your expectations upfront.

PRESENTING THE CASE TO THE EXPERT

SHARING RECORDS

Whether you are using hard copy, Dropbox, electronic files, disc or flash drive, be sure to clearly organize and label your records when sharing with experts. Do not rely on the hospital to provide you with organized records.

REVIEW THE CASE

Provide a brief summary of events with specific questions. If you are concerned that any information between you and the expert will be discoverable, make sure you set up a time to speak with the expert before he/she starts the review process.

SET TIME LIMITS

Be clear on how much time you want the expert to spend. For example, you can request that the expert keep their analysis within the retainer time frame and call you to discuss initial thoughts before proceeding.

CONFIRM THE METHOD OF REPORTING

Determine how the expert should report his analysis, either by a verbal or written report.

EXPERT TIP:

The Certificate of Merit, or Affidavit of Merit, should be prepared right away and sent to the expert via email. Once the expert has emailed you with the corrected copy, make sure the additions and/or corrections are appropriate. If so, ask the expert to print the document for signature and notarization. Waiting too long can increase the amount charged for the document.

WHEN THE EXPERT CALLS TO PROVIDE YOU WITH THEIR OPINION

QUESTIONS

Have a list of questions or concerns ready. Remember that there is no such thing as a dumb question.

RECORD

Take notes of your conversation or, if possible, record the call.

FOLLOW-UP

Contact the expert with an immediate email if you need clarification or to confirm the opinion received. This is best accomplished when the case is still fresh in the expert's mind.

INQUIRE

Ask the expert if the care of any other physicians involved in the treatment should be investigated and if so, why.

PREPARE

Organize the Certificate of Merit or Affidavit of Merit for the expert.

EXPERT TIP:

Do not leave your expert in limbo. You should update the expert on the status of the case keeping them properly invested. Out of sight, out of mind!

CONTINUED COMMUNICATION

SPECIFY

Be specific on the role you will need the expert to play.

UPDATE

Keep the expert up to date on case progression.

PROVIDE

Provide additional documents in a timely fashion.

SCHEDULE

Be courteous in the scheduling of Deposition and/or Trial.

PAY

Ask if they will need a check to hold a date and inquire about their refund policy.

EXPERT TIP:

Your expert is your biggest asset! Treat them with respect and meet the expert before deposition or trial. Help them be prepared for the task ahead of them. Let them know your expectations regarding their preparation, and let the expert know the best way to handle any adversity they may face. You must direct your expert beginning with the first introduction, and through the duration of your case.

DEPOSITION AND TRIAL PREPARATION

SPECIFY

Be specific on what you require of the expert at trial.

PREPARE

Prepare the expert for what they will be facing.

CLARIFY

Make sure the expert understands their role.

PROTECT

Protect the expert during Deposition and/or trial.

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Saponaro, Inc.

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We Connect Attorneys with Respected Expert Witnesses in All Areas of Litigation.

Saponaro, Inc. has a strong selection of premier expert witnesses, in all areas of litigation, as well as a no-obligation consultation to help you obtain the best expert for your case. A strong case starts with the right expert.

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