The term “expert witnesses” is often used in conjunction with medical malpractice litigation. However, the use of these experts is often misunderstood. Expert witnesses are required to prove the essential elements of a medical malpractice case including liability/responsibility, causation and damages. Expert witnesses also serve to educate the jury regarding complicated medical issues that arise in a medical malpractice trial.

To understand how expert witnesses are used in medical malpractice cases, one must first understand the three elements involved in every medical malpractice lawsuit:

**Liability:** To prove that a doctor or healthcare provider is legally responsible for injuries sustained by a patient, they must have acted negligently in their care and treatment. Negligence in a medical malpractice lawsuit is defined as “a departure from good and accepted medical practice.” Generally a departure from good and accepted medical care arises when a doctor fails to adhere to the procedures, standards and protocols recognized by the medical community. The doctors are required, under law, to administer medical care in compliance with the care rendered by other physicians of like specialty within the community.

**Injuries and Damages:** In order for a patient/plaintiff to recover damages in a
medical malpractice lawsuit, it is required that that individual suffer serious permanent injuries and/or economic damages as a result of the negligent medical treatment.

**Proximate Cause:** Proximate cause acts as the bridge between liability and damages. After proving negligent medical care, it is essential that the plaintiff prove that the negligent care played a substantial factor in causing the patient’s permanent injury and subsequent economic loss. A doctor can treat a patient in a negligent manner and the patient may suffer a subsequent injury, but if the patient can’t prove that the doctor’s negligence was a substantial factor in causing the injury, the patient would not have a valid claim.

At the conclusion of the trial, the jury is always asked at least two questions that need to be answered in the affirmative to establish liability as against any doctor or health care provider. Firstly, the jury is asked whether the medical care and treatment rendered by the defendant health care provider departed from good and accepted medical practice. If the answer to that question is in the negative, the case ends with a verdict on behalf of the defendant. If the question is answered in the affirmative, the jury is then asked to consider whether the departure from good and accepted medical practice was a substantial factor in causing the plaintiff’s injury. If this question is answered in the negative, then once again the jury’s verdict is on behalf of the defendant. If both these questions are answered in the affirmative, then the jury goes on to consider questions relating to damages and decides the appropriate monetary compensation to award.

The role of expert witness in a medical malpractice case is to prove all of these elements. In most cases, we may call several different expert witnesses, with various medical specialties, to prove that a doctor acted negligently, that the patient/plaintiff sustained serious injury resulting from that negligence and further, that the patient/plaintiff’s injuries are significant enough to warrant monetary compensation.

The following is a hypothetical scenario in how a medical malpractice attorney might deploy expert witnesses to prove their case:

Let’s assume that a married 40 year old man with two children arrives at an emergency room complaining of chest pain. Let’s further assume that an emergency room physician examines this man and concludes, without performing any diagnostic testing that the man is simply suffering from muscular skeletal pain. Consequentially, the patient is released from the emergency room.
only to suffer a fatal heart attack the following day.

In the aforementioned scenario, our medical malpractice attorneys would retain medical experts in the field of both emergency room medicine and cardiology. The emergency room medical expert would proffer opinions that the emergency room doctor’s failure to administer an EKG and draw blood to determine whether cardiac enzymes were elevated was in fact a departure from good and accepted practice. The cardiology expert, in turn, would opine that the patient’s cause of death was myocardial infarction and that had it been diagnosed in the emergency room, the patient’s death could have and would have been avoided had the diagnosis been promptly made by the initial emergency room physician. The cardiologist may further opine that had the diagnosis been made, the patient would have immediately received aspirin and perhaps would undergo a catherization procedure whereby a coronary artery blockage would have been discussed to further opine as to the patient’s cause of death and further, to inform the jury that the patient was in otherwise good health and would have lived to a normal life expectancy had the coronary blockage been appropriately diagnosed and treated. The pathologist would also opine as to the pain and suffering sustained by the patient/plaintiff prior to his demise.

To prove economic loss, an economist would offer opinions to the jury regarding the economic loss sustained by the family as a result of the premature death of the patient/plaintiff. The economist would review records such as income tax returns, union contracts, work and life expectancy tables, literature regarding the value of household services, etc. to evaluate the actual financial loss that was incurred by the family. The economist would use the economic past to project the economic future to fully evaluate the total financial loss, including such economic factors as times of possible recession and inflation.

In cases in which we represent an individual who suffers serious permanent medical injury that would require permanent medical care, the economist will be called upon to project what those costs would be over the lifetime of the plaintiff.

All of the medical experts that we utilize in support of proving cases on behalf of our clients are Board Certified specialists with sterling backgrounds and credentials. All medical experts are physicians in good standing in their local community and affiliated with major well-regarded hospitals. The expert physicians are compensated for the time they spend reviewing records, discussing the cases with our attorneys and taking time away from their practice.
to appear in court.

The economic experts that we retain are generally professors of economics at major university centers. Life care planners who are utilized to assess the actual future medical care requirements and costs are always Board Certified physiatrists with a particular expertise in the prevailing costs of such medical services.

Perhaps the greatest aid to a jury in determining the merit of the case is, in fact, the expert witnesses that we retain on behalf of our clients. In addition to establishing and meeting the legal burden of prove mandated under the law, the expert witnesses must also be excellent communicators and teachers. Medical malpractice cases generally involve complex medical issues and complicated medical terminology. In order to prevail in our cases, it is essential that the jury understand what the appropriate standard of care is and how the defendant physician or health care provider deviated from that standard of care. In order to make such a determination, the jury must be fully educated and must understand the medical aspects of the case. The experts that are retained by our firm are particular at depth in simplifying the medical issues so that non medical individuals (which we refer to as lay people) fully understand the issues. We as lawyers are not physicians. Though our medical malpractice attorneys have vast experience in every field of medicine, our expert physicians educate us as well so that we can best present the issues to the jury.

You can be assured that when our firm represents a client in a medical malpractice case, the leading experts in the field are utilized to educate, inform and advise the jury as to all medical issues in the case regardless of its complexity.

The economic experts that we work with share that unique ability of being able to explain to lay people, in an easy manner, the true financial impact sustained by a family that is victimized by an act of medical malpractice.

**Categories:** Medical Malpractice
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Our firm was founded upon providing compassionate legal counsel. We are still centered on this today.

OUR LAWYERS

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We want you to feel comfortable when making the decision to retain our experienced team.

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