

Daniel E. Rosner +◇*
Edward J. Tucker ◇
Tariq H. Chaudhri ◇

CHARLES I. COANT
CHRISTOPHER P. WEIDMAN *
JACQUELYN R. MATCHETT *

+ Certified Civil Trial Attorney
◇ Equity Shareholder
* Member Of NJ & PA Bar

TEL: (856) 692-6500
FAX: (856) 692-0959



ROSNER & TUCKER, P.C.
ATTORNEYS AT LAW
311 W. Landis Avenue
Vineland, NJ 08360
www.rosnerlaw.net

Theresa Gallo Rosner Δ‡
Shanna M. Geverd ‡

Δ CHIEF FINANCIAL OFFICER
‡ NEW JERSEY PARALEGAL STAFF

PENNSYLVANIA OFFICE
Law Office of Daniel E. Rosner, P.C.
2 Penn Center Plaza
1500 JFK Boulevard, Suite 900
Philadelphia, PA 19102

TEL: (215) 732-9996
FAX: (215) 732-2628

New Jersey Association for Justice Boardwalk Seminar 2017

LITIGATION AT SUNRISE

Cross Examination of the DME Expert: Pushing the Right Buttons

Presentation by Daniel E. Rosner, Esquire

Materials submitted by Jacquelyn Matchett and Daniel E. Rosner.

THE FIVE STEP PLAYBOOK TO A SUCCESSFUL CROSS EXAMINATION:

1. Voir Dire – Do not waste the opportunity – Goal – Grain of salt on the direct

Often attorneys glaze over the foundational testimony of the qualifications of the Defense Medical Doctors and often stipulate to their qualifications as an expert.

Do not waste this opportunity to challenge the DME before he gives any negative opinions about your client or their injuries. Bring out any weaknesses in their background, education or experience that may be relevant to the specifics of the types of injuries involved in your case.

2. Rules for Testifying – An offshoot of “Rules of the Road”- Goal is to get agreement on Fairness:

Try to get some agreement about Doctors who testify in legal cases whenever possible. Asking the defense doctor some general questions regarding bias and having them agree to some general propositions about testifying and being a medical professional will be useful for closing argument, especially if the “violate” the basic rules of fairness, objectivity or bias.

3. Hijack Before You Attack – Constructive, respectful positive identification of the ultimate issue for the trier of fact. Goal is to get agreement on as much as you can.

Finding agreement on the medical issues in the case may be easier than you may think. Try to narrow the disagreement as much as you can so the jury only has to decide the remaining issue. Usually it is causation, but it could be permanency, malingering, exaggeration, etc. Use the law to your advantage here. The specific tactics on how to get this information will be discussed at the Seminar.

4. Destructive Cross – Show the DME opinion to be less credible than the plaintiff’s medical expert if possible- Goal is to expose the deceptive nature of the DME opinions where appropriate or polarize or pulverize as the case may be.

This is where the questioning is for the purpose of discrediting the opinion of the doctor. Prior inconsistent testimony, impeachment on their reports written in the case, discord with medical literature, opinions completely different than many treating Doctors, etc. Basically, this is where you challenge the opinions of the Doctor, but not attack them personally. There are many fertile areas that can be examined, and more will be discussed at the seminar.

5. Financial Considerations and Bias- Show they are biased based on profit- Goal is to show that they make a huge amount of money doing defense work for a reason, and that reason is financial motivation.

Address how they get the volume of work, the companies they work with, the instructions they may have received, the number of defense exams they do a year and how many years they have been doing it. The amount of money they charge for all phases of the defense work including testimony and how many times they testify a year.

WARNING: Financial bias can back fire if the Doctor seemed reasonable during the testimony. Only when their opinions attack the plaintiff personally, or when their opinions border on the outrageous is this technique most effective.

Due to the time constraints of this presentation, only a small portion of this 5 step playbook will be revealed. We will be giving much more on the technique and delivery on June 17, 2017, at NJAJ’s Exposing Deceptive Defense Medicine Seminar which is restricted to regular members. We encourage everyone to attend.