

ABSTRACT:

## **Expert Liability in the USA**

### ***Speaker:***

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Medical doctors/surgeons and other specialists (hereinafter collectively referred to as Physicians) undertake various professional opportunities outside of the traditional practice of medicine.

What frightens physicians and looks over their shoulders constantly is the law, most particularly, tort liability law in the USA. They cope with this by purchasing professional liability insurance.

However, there are two important areas of physicians' work where they may incur different liability based on the state where they live: where they work as Independent Medical Examiners (IMEs) and where they offer their expert opinions in legal actions.

There has been a great deal written about the regulation of physician expert testimony, but little or no attention has been focused on physician liability as an expert witness or IME. More specifically, no resource has analyzed if physician liability insurance provides coverage for physicians as expert witnesses and IMEs when they are subject to a legal actions.

Before discussing the legal implications of a physician as an expert witness and IME, it is important to understand what they do. Expert witnesses thoroughly review the patient's medical records, review the latest literature on the subject at hand, and formulate an objective diagnosis.

IMEs' responsibilities are very similar to those of other physicians: they evaluate the patient's health objectively, report their diagnosis to the patient or a third party, and may make a referral or a recommendation to the patient or a third party.

The courts in all jurisdictions have held that Physician expert witnesses and IMEs are necessary to the smooth functioning of insurance companies, worker's compensation systems, employers, and legal actions involving physical and psychological injury, as medical evidence is a critical component of their decisions. The physician experts and IMEs provide the foundation for these decisions which set the standards for society's definition of health and illness and the legal implications that flow from that standard.

Expert witnesses and IMEs embrace the important task of assessing a person's health to determine their legal rights, which may profoundly impact their financial security. Physicians will make mistakes in performing these tasks, as will any person performing a task of importance. Physician expert witness and IME mistakes can lead to allegations of serious financial, physical, or psychological injury to patients, and when those injuries occur, physicians may be sued. Traditionally, US legal system has given greater immunity to physician expert witness with regard to liability but this has eroded considerably in the last decade by various court decisions. This presentation would discuss the most recent decisions and the current status of the physician expert witness liability in the USA.