

**PREPARING, TAKING AND APPLYING MEDICAL TESTIMONY**  
**TO SUPPORT A PERSONAL INJURY CASE**

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- 1. THE MOST IMPORTANT ELEMENT IN ANY AUTOMOBILE ACCIDENT CASE FROM THE PLAINTIFF'S PERSPECTIVE IS CREDIBILITY OF THE PLAINTIFF. THE PLAINTIFF WILL BE JUDGED HEAVILY BY THE MEDICAL TESTIMONY.**

**INTRODUCTION:**

In today's climate, jurors are very suspicious of Plaintiffs. Insurance Companies have spent billions of dollars to persuade citizens that most Plaintiffs are out to get something for nothing.

Even cases of clear liability must be carefully prepared in today's climate because many jurors are looking for a reason to rule against the Plaintiff.

Present as much evidence as possible to support the Plaintiff's testimony and bolster his credibility. Producing unbiased medical testimony that supports the Plaintiff will help to bolster his credibility.

Diagnostic tests, such as MRIs, X-rays, CAT scans and PET scans are very helpful objective evidence to corroborate evidence of injury. You can support the Plaintiff by the use of medical illustrations or the films showing that there is a true injury. “The big eye don’t lie.”

Secure your corroborating witnesses on damages such as family members or other friends who are witnesses of the pain your client is in. Interview medical professionals such as physical therapists and doctors to learn what they think.

When I file suit I am usually ready to try the case. At that time, the defense lawyer should not be able to catch up or bully you. Always order the medicals and review to avoid surprises.

**2. PREPARE YOUR PLAINTIFF FROM DAY ONE SO HIS TESTIMONY IS SUPPORTED BY THE MEDICAL TESTIMONY OF THE DOCTOR.**

Spend an enormous amount of time preparing the Plaintiff. His testimony needs to be consistent with his doctor’s. Time spent preparing your Plaintiff who is a nice person can alleviate many of the tricks attempted by defense lawyers. Let him know that his demeanor is

extremely important to the jury. Go over the medical records with the Plaintiff. Explain the content of the records to them.

**3. KNOW THE LAW.**

**A. KNOW THE CAUSATION STANDARD**

The correct causation standard is the doctor's opinion within a “reasonable degree of medical probability.” Frequently defense counsel will attempt to convince you that the standard is within a reasonable degree of medical certainty when the standard is reasonable degree of medical probability. See *Harris v Russell Petroleum* which states “there are no magic words for the causation question” and *Weaver v. Shoals Pest Control* 659 So 2d 1. “Consider all evidence and factors”

**B. ANY LICENSED PRACTICING DOCTOR IS COMPETENT TO GIVE HIS OPINION OF CAUSATION CONCERNING HIS PATIENT.**

“A treating physician is competent to give an opinion concerning the cause of his patient's injuries”. *Knapp vs. Wilkins*, 786 So. 2d 457 (Ala. 2000), See also *Saint Louis and S.F.R.R. vs. Savage*, 50 So.113 (1909). The general rule is that a treating physician may offer an opinion as to causation and other issues even

if said physician does not have a specialty or board-certification in a particular field. There is no case in Alabama law that holds that a treating physician must have a specialty or board-certification with regard to each injury sustained by the Plaintiff in order to give causation testimony. In other words, a treating, family medicine doctor would not have to be board-certified in nephrology in order to offer opinions with regard to his patient's kidney function; Nor would an emergency room physician have to be board-certified in orthopedics in order to testify that his patient sustained a broken femur upon admission to the emergency room after an automobile accident. No case in the history of Alabama has ruled that a treating physician can testify only as to those injuries that are specifically within a designated certification they possess. While it might be that a nephrologist is better qualified to testify as to his patient's kidney problems, that does not mean that the treating physician is unqualified to testify about the patient's kidney problems.

**4. PREPARE YOUR DOCTOR - USE MEDICAL ILLUSTRATIONS IF POSSIBLE AND A VIDEO.**

A major advantage for the Plaintiff with today's HIPAA law is that you can go and consult with the treating physician. The defense lawyer does

not have that opportunity. Go! Even if he wants \$1,00.00 or \$1,500.00, pay the doctor and go and sit down and confer with him. If the doctor is not favorable, he will usually tell you what questions he will answer favorably and you can limit your questions to that. In some circumstances, you can develop a relationship with the doctor. Allow him to view the medical illustrations you intend to use and build a rapport that can be extremely advantageous to your client. You also may have the opportunity to provide the doctor with some of the records that the defense lawyer is attempting to use so that he can become familiar with the Plaintiff's history and diffuse any negative effect these records will have in his deposition. The \$1,000.00 to \$1,500.00 the doctor may charge is expensive, however it can be the best money you can spend in a case.

**5. DO NOT BE AFRAID TO GET A NEW DOCTOR**

Do not be afraid to send the Plaintiff to a new doctor if the treating doctor hates Plaintiffs.

**6. USE YOUR MEDICAL ILLUSTRATION AND XRAYS AT EVERY PART OF TRIAL. A PICTURE IS WORTH A THOUSAND WORDS.**

Build your entire case around the photographs or illustrations of the injuries. When you move to the damages section of your case it is important to use demonstrative evidence to show the Plaintiff's injuries. MRI films and medical illustrations are all great to show the injuries which supports the Plaintiff's credibility. You need the doctor to testify that the illustrations or photos of the injuries he is shown are anatomically correct and would benefit him in explaining the injury to the jury.

**7. CONCLUSION**

Try to use medical testimony to not only prove causation and damages, but to also bolster the credibility of the Plaintiff. Doctors are usually very well respected witnesses.