

# Contents

<b>Preface</b> .....	xi
<b>Acknowledgments</b> .....	xix
<b>Introduction</b> .....	xxiii
<b>PART 1: “Doctor, Know Thyself”—Analysis of Physician’s Errors</b> .....	1
1. How Doctors Think . . . Why Physicians Make Mistakes—Many Harmless, Some Devastating .....	7
Section 1. Identifying Mistakes in Delayed, Missed, and Mis-Diagnoses .....	7
Section 2. Identifying Errors in Clinical and Medical Thinking Processes .....	32
Section 3. Identifying Inappropriate Medical Treatment Decisions .....	52
2. Mistakes Physicians Make in Differential Diagnosis, Empathy, and the “Bedside Manner” .....	67
3. Mistakes Physicians Make in Applying Published Guidelines to Medical Decision Making .....	95
4. Medical Dishonesty .....	109
<b>PART 2: Attorney Strategy &amp; Tactics in Malpractice Litigation</b> .....	133
5. Courtroom’s Stage Roles, Personae, and “Multiple Personality” Syndromes .....	137
6. Strategies and Tactics to Trick the Expert .....	155
7. Strategies and Tactics Designed to Trap the Expert .....	185

8. Questions to Make the Medical Expert Look “Biased,” Incompetent, Embarrassed, and/or All of the Above .....	207
9. Courtroom Strategies against the Medical Journal Author and University Medical Expert Witness .....	225
10. Direct Examination of the Medical Expert and Defendant Physician	257
11. The Cross-Examination Experience .....	265
12. General Strategies Used in Cross-Examination .....	283
13. Strategies and Tactics Used in Direct, Cross, Re-Direct, and Re-Cross Examinations .....	297
14. Medical Expert Counter Strategies to Cross-Examination Maneuvers .....	311
15. How Attorneys Make the Case for Hindsight Bias of the Medical Expert Witness .....	321
16. Attorney Use of “Ambiguous” Questions as a Tool to Change the Medical Expert’s Opinion .....	329
17. How Attorneys Use Cross-Examination Mishaps, Errors, and Testimony Control for Impeachment of the Medical Expert Witness .....	335
18. How Attorneys Use AMA and Medical Society Ethical Guidelines to Impeach the Medical Expert .....	359
<b>PART 3: Testimony Strategies and Tactics Used by the Medical Expert .....</b>	<b>365</b>
19. The Medical Expert Witness and Juror Should Know these Rules, which Every Attorney Knows—or Should Know .....	367
20. What Every Attorney and Medical Expert Must Know about Clinical Practice Guidelines (CPGs) and Randomized Controlled Trials (RCTs) <i>Prior</i> to Trial .....	385
21. Learn from These Attorney and My Medical Expert Courtroom Mistakes:.....	427
Section 1: Cases “A to E” .....	427
Case A: Defending “If It Isn’t Recorded, It Isn’t Done” and the Lack of a Contemporaneous Progress Notes why a Physician did not order a necessary screening test .....	434

Case B: The Danger of Hypothetical Questions and “Red Flag” Words; The Advantages of the Re-direct Examination .....	443
Case C: The Mistakes of Forming an Expert Medical Opinion Without Having All the Records and the Mistake of Using “Red Flag” Words .....	459
Case D: A Deposition and “The Rule 26 Mistake” .....	466
Case E: The Mistake of Volunteering Too Much Information .....	482
Section 2: Analysis and Critique by Experienced Litigator and Law Professor on Attorney and Medical Expert Direct and Cross-examination Tactics, Questions, and Answers .....	492
22. Learn These Experienced Medical Expert Answers to More than 300 Attorney Questions .....	531
<b>PART 4: Future Role of the Medical Expert Witness .....</b>	<b>559</b>
23. What Role for Medical Experts in the Apology Movement? .....	561
24. Use of the Medical Expert in <i>Qui Tam</i> Lawsuits and Physician Misconduct/Sanction Proceedings? .....	581
Section 1: Qui Tam and Physician Misconduct/Sanction Proceedings .....	581
Section 2: The Potential for Punitive Damages .....	597
25. Role for the Medical Expert in Managed Care Litigation .....	605
26. Potential Medical Malpractice Risks in Value Based Medical Quality Programs .....	617
Section 1. Capsule Summary of Quality Guideline/Measurements in Value Based Medical Quality Programs .....	617
Section 2. Background of Pay for Performance (P4P,PFP) Programs .....	628
Section 3. Risks of Physician Rankings and Report Cards in Medical Malpractice Litigation Compiled By Medical Insurance Carriers .....	635
Section 4. Medical Malpractice Litigation Against the Hapless Doctor at the Wrong End of the P4P Quintile- Found Through Discovery .....	643

Section 5. Current Medical Malpractice Attorney and LNC Inquiries to Medical Experts Like Me .....	664
Section 6. Defense of a Physician Defendant Who Has “Breached Published P4P Clinical Guidelines/Measures .....	668
27. A Review of Evidence-Based Medicine (EBM) Supporting Medical Opinion, in Standard of Medical Care Testimony .....	689
28. A Realistic Appraisal of EBM in the Courtroom. Does It Work Now? Will It Work in the Future? .....	711
29. The Future Role of the Court-Appointed Medical Expert-Will the Medical Expert Serve as a Health Court Judge? .....	733
<b>PART 5: Epilogue</b> .....	755
30. How to Avoid Sanctions .....	757
31. Applying Analogy and Theme to Effectively Communicate a Medical Opinion to a Jury .....	791
32. For Potential Judges & Jurors in Medical Malpractice Cases: What Attorneys, & Medical Expert Witnesses Won’t Necessarily Tell You .....	813
33. Final Advice: Becoming More Effective as a Malpractice Trial Participant is the Same as Becoming a More Competent Clinician .....	837
<b>Appendices</b> .....	863
A. Abbreviations and Terms Used in this Book .....	865
B. Standard of Medical Care Court Cases and Rulings .....	871
C. Key Court Decisions Affecting Medical Expert Testimony .....	873
D. On CD-ROM—Contents:	
1,000 Links to Sources, References, and Readings	
600 References and Links to the Use of Critical Reviews and Meta-Analyses in Testimony	
600 References on Managed Care and Medical Malpractice Liability	
988 References and Links on Medical Malpractice Liability	
Changing Clinical Practice Guidelines since Book I	

Clinical Decision-Making: Errors of Commission and Omission

Clinical Practice Guidelines and EBM

Conflicts of Interest: Academic Publishing and Drug Companies

Cyberchondria and Medical Web Sites: The Good, Bad, and Ugly

Daubert and Medical Expert Testimony

Disclosure and Apology: References and Readings

Expert Witness Testimony: An Update and 100 References and Links

Guidelines: Disease-Specific Sepsis

Managed Care Readings

Medical Errors, Prevention of Malpractice

Medical Literature Users Guide

Medical Resources: Toolkits Available from the Agency for Healthcare Research and Quality (AHRQ) to Help Physicians and Other Health Care Providers Reduce Medical Errors

Potential Medical Malpractice Impact of Changing Colonoscopy Guidelines

Practicing M.D.: Industry Relationships: The Carrot and the Stick

Prevention of Adverse Drug Events and Common Medical Errors

Problems with Randomized Controlled Trials (RCTs): False and Faked Data

The Expert Medical Witness in Legal Perspective

The Medical Expert Witness in the 21st Century

The Nurse and Other Medical and Dental Professionals as an Expert Witness

User's Guide to the Medical Literature on the Use of Evidence-Based Medicine

What the Attorney and Medical Expert Knows or Should Know about Biased Clinical Guidelines

What's Right and What's Wrong with Meta-Analysis Use in Medical Testimony