Advice for Identifying, Recruiting and Training Medical Expert Witnesses in Quality of Care Cases

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The numerous medical boards in the United States, its territories and the District of Columbia have different laws, rules, policies and procedures related to utilizing standard-of-care medical expert witnesses in investigations and prosecutions. With that understanding, the objective of this article is to suggest a set of common best practices to consider when identifying, recruiting and training medical expert witnesses in quality-of-care cases. The suggestions provided here have been used successfully by the North Carolina Medical Board. The article's focus is limited to those practices when obtaining an initial medical-record review and report embodying the expert's opinions of the care rendered.

In most cases, an expert selected to assist in the investigation of a quality-of-care case should be the same expert used if the case results in a public disciplinary proceeding. Using the same expert usually provides for a more streamlined, consistent and focused presentation at hearing. While one can certainly prosecute a credible disciplinary case with new experts acquired after a board has decided to institute disciplinary charges, this approach has the potential to be disjointed, inconsistent and duplicate work that has already been completed.

Identifying Experts

Several steps can help ensure success in identifying qualified medical quality-of-care experts, ranging from maintaining a database to creating an ongoing program of targeting potential candidates. These include:

The Expert Witness Database and Renewal Question Recruiting

State boards can save a great deal of time by creating a database of experts that they (a) identify and may want to work with in the future and (b) have worked with in the past who they would like to work with again, i.e., the ones who respond to emails, return phone calls, review all the medical records and author meaningful reports that thoroughly summarize the care at issue and justify their opinions in detail. Doing this will prevent having to look for an expert every time a board has a new quality-of-care case. The North Carolina Medical Board has expanded its database by including a question on the annual license renewal that asks North Carolina licensees if they are interested in serving as an expert witness. If they are interested, their qualifications are reviewed by the Board's medical and legal staff and added to its database if accepted. It is not unusual, however, for the Board to sort through numerous offers in order to identify the best candidates.

We suggest that boards be open to adding to their database any time they come across a suitable medical expert and that they include the following information for each expert:

1. Name
2. Name of last known employer
3. Year first employed in active practice
4. Home, work and electronic mail addresses
5. Phone number
6. Specialty and subspecialty
7. Any personal and professional information relevant to the expert such as "only call on cell phone, wants paper copies of medical records and limits radiology practice to mammograms only."

The database should be audited routinely to remove people who have retired, no longer have active medical licenses or may no longer be suitable as an expert for other reasons. For example, when many physicians move into administrative, executive and leadership positions, they may no longer spend enough time in the clinical setting to serve as a credible expert witness.

What Kind of Physicians Are Being Sought, Generally?

The North Carolina Medical Board *Expert Reviewer Manual* provides the following guidance:

Physician reviewers should have a full and unrestricted state license, current ABMS or AOA board certification, no recent Board actions or investigations and have been engaged in clinical practice in the same area of practice as the physician being investigated for the two years prior to reviewing the case.

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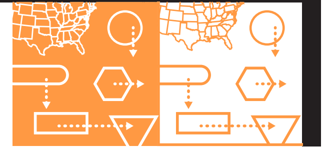

Those are generally the minimum qualifications that medical experts should have. In an ideal world, it is beneficial to have an expert who is certified by the same specialty board, has authored peer-reviewed articles and textbooks on the issue in the case and has been practicing in the same specialty or sub-specialty as the licensee in question for the last five to 10 years. The last component is important when a board is reviewing care going back that far. It is not uncommon for a board to find an expert who falls somewhere in the middle of those two standards.

Where Can Medical Experts Be Found?

The answer to the question "where can medical experts be found?" is: everywhere and anywhere. Always be on the lookout for those who would make suitable medical experts. North Carolina Medical Board staff members make presentations to various physician groups on a regular basis, believing that the Board should always be recruiting and should routinely deliver a short statement about the importance of licensees serving as expert reviewers. During these presentations, the Board explains that the success or failure of self-regulation depends in part on their cooperation in this regard.

When a board staff member meets a physician who might make a good expert, the staff member should ask for a business card or other contact information.

The other most common places the Board looks for medical experts are:

1. **The internet.** It is often a good idea to start by searching medical school, hospital and medical society websites. Consider asking medical society staff to assist in reaching out to their specialty group members on a board's behalf to gauge interest in being a medical expert.
2. **Literature searches.** A relevant literature search will increase board knowledge of the medicine involved in the case; authors can be contacted and asked if they are interested in assisting as a medical expert. An initial outreach call might involve an introduction such as "I read your excellent peer-reviewed medical journal article on necrotizing fasciitis and wanted to talk to you about a case I am working on that involves that issue. Do you have a few minutes to talk?" Such a call will usually receive a positive response. Authors who are not interested should be asked if they know of anyone who might be — and the board should then follow-up with that person.
3. **Colleagues and friends.** Never underestimate the power of asking people, usually in the health care industry, if they know of any good physicians in a particular field.

Before reaching out to a prospective physician-expert, two other steps should be taken. Boards should look up the expert using their internal database and review the physician's board history. Next they should research the physician as if they were an opposing expert that will be cross-examined. The latter inquiry usually means an internet and social media search using resources such as Google, Twitter, Facebook, Instagram and Snapchat.

If the physician has a concerning board-history or compromising information is found on the internet or social media — information that would make the physician vulnerable to cross-examination — the board should consider removing that name from its database and looking for another expert.

Recruiting Experts

Match the Expert to the Case

To effectively identify and recruit medical experts, boards should do more than make sure that the potential experts are in active clinical practice in the same specialty, have impressive credentials and do not have any concerning professional or personal history. They also have to match the expert to the case. A board cannot ensure that it will select an appropriate medical expert for a case unless it understands the medicine involved, knows the issues of concern and finds an expert that is a match.

An effective way to explain and understand this concept is through the use of case examples:

Match the Expert to the Case — Example 1

The facts and the concern: A physician licensee of a board has had three patient complaints made

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against him in the last year for missed appendicitis. The physician completed an emergency medicine residency 10 years ago, was board certified in emergency medicine in 2015 and has been practicing full-time emergency medicine at a hospital emergency department for 10 years. The board's medical staff has obtained five medical charts regarding care that the physician provided in the emergency room during 2018. Four of the medical charts involve appendicitis diagnosis and three of the charts are the patient complaint cases.

What type of medical expert should be sought?

An ideal expert would be a physician in emergency medicine practice who has been:

1. Board certified in emergency medicine for at least 10 years.
2. Engaged in full-time emergency medicine clinical practice for at least 15 years.
3. Routinely treating cases involving appendicitis diagnosis for the last 15 years.
4. #1–#3 above are essential. Bonus qualifications include lecturing and authoring peer-reviewed articles and textbook chapters on diagnosing appendicitis in the emergency room.

Match the Expert to the Case — Example 2

The facts and the concern: A physician licensee of a board has a complaint made against her by another physician claiming that she is overutilizing intravascular ultrasounds (IVUS) during cardiac catheterization procedures. The physician completed a cardiology residency 10 years ago, was board certified in cardiology and received interventional cardiology subspecialty certification in 2015 and has been practicing full-time interventional cardiology for 10 years. The board has obtained eight medical charts by the physician under investigation involving cardiac catheterizations with IVUS she performed in 2018.

What type of medical expert should be sought?

An ideal expert would be a physician with an interventional cardiology practice who has been:

1. Board certified in cardiology with interventional cardiology subspecialty certification for at least 10 years.
2. Engaged in full-time interventional cardiology clinical practice for at least 15 years.
3. Routinely utilizing IVUS during cardiac catheterization procedures for the last 15 years.
4. #1-#3 above are essential. Bonus qualifications include lecturing and authoring peer-reviewed articles and textbook chapters on IVUS and when to use it appropriately.

Match the Expert to the Case — Example 3

The facts and the concern: A physician licensee of a board has a complaint made against him by a pharmacist that he is running a "pill mill" and engaging in unsafe prescribing. The physician completed one year of postgraduate training in internal medicine in 2009. The physician has not completed a residency and is not board certified in any medical specialty. The physician has been an internal medicine solo practitioner for the last 10 years. The physician's practice was 25% chronic pain and 75% internal medicine for the first five years, but that changed to 75% chronic pain and 25% internal medicine in the last five years. The physician treats most of his chronic pain patients as an internist as well. The physician advertises that he specializes in chronic pain management and internal medicine. Eight medical charts are obtained by the board's medical staff and reveal very concerning chronic pain management deficiencies and less concerning internal medicine deficiencies. The eight medical charts cover care rendered during the time frame of January 2014 to March 2019.

What type of experts should be sought? In cases such as these, the North Carolina Medical Board would usually seek experts in two medical specialties:

Expert #1 — Pain Management Specialist. This expert will only give opinions on patient care as it relates to chronic pain management. One ideal expert would be a pain management physician with a chronic pain practice who has been:

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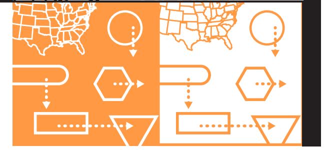

1. Board certified in anesthesiology with pain management subspecialty certification for at least 10 years.*
2. Engaged in full-time medical practice that includes at least 50% continuous chronic pain management for at least 15 years.
3. #1–#2 above are essential. Bonus qualifications include lecturing and authoring peer-reviewed articles and textbook chapters on chronic pain management, pharmacovigilance and the opioid crisis.

Expert #2 — Internal Medicine Specialist. This expert will give opinions on patient care as it relates to general internal medicine and chronic pain management. A second ideal expert would be an internal medicine physician who has been:

1. Board certified in internal medicine for at least 10 years.
2. Routinely treating patients for general internal medicine issues and chronic pain for the last 15 years. The chronic pain care should be for at least 5%–10% of the total patient population and can be an element of providing other comprehensive internal medicine care.
3. #1–#2 above are essential.Bonus qualifications include lecturing and authoring peer-reviewed articles and textbook chapters on general internal medicine topics and chronic pain management by internists.

Training Experts

Once Physician Experts are Found, How Should They be Trained for Case Review?

To answer this question, the use of a checklist is suggested. The North Carolina Medical Board usually prefers that its first contact with an expert be by phone to make possible a conversation about the case, allowing staff to talk about key topics related to the case and answer any questions the expert may have — all at one time. However, others prefer email communication and, with busy physicians often not available during business hours, an email may be the best initial contact. Either approach is suitable and boards should do what works best for them.

Here is the North Carolina Medical Board's checklist of what is initially discussed with potential medical experts:

1. It is important for boards to confirm that they have matched an expert to the case by telling the expert about the case and asking about their qualifications and experience. Boards need to be very specific about the treatment and procedures involved to verify that a potential reviewer actively performs and has sufficient experience in the subject matter.
2. Tell experts on the front end everything they might have to do so they understand what they are signing up for.
   a. Tell experts they *will* have to:
      - Review medical records and other relevant case materials. Specify how many pages of medical records the case involves. Reviewing two hundred pages of medical records is much different than two thousand pages. The North Carolina Board also lets its experts know they will receive a numbered, bookmarked PDF document with a hyperlinked table of contents for the reviewer's ease of navigation. If experts know in advance that the records will be indexed and that they will not have to spend time determining what records they received (and what records they did not but may need to form their opinions), this may be a favorable factor in accepting a case for review.
      - Author a report summarizing the care provided and render an opinion with regard to whether the physician met the appropriate standard of care.

   b. Tell experts they *might* have to:
      - Take several phone calls and meetings with the board attorney handling the case.
      - Testify at a deposition.
      - Testify at a hearing.

* The authors recognize that physicians with other specialty training can also be chronic pain management specialists. Utilizing a pain management physician with other specialty training can work equally as well.

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c. Tell experts that their name and written report might become part of the public record.

d. Tell experts what the medical board will pay for expert medical record review, report writing, preparation time and deposition and trial testimony.

3. Make sure there are no conflicts. Does the expert know the physician being investigated or the patient personally or professionally? Are they a competitor? Has the expert treated the patient? Provide the name of the physician being investigated, practice name and hospital system as relevant facts.
4. Ask about any potential issues that would make an expert vulnerable to cross-examination or disqualification, such as pending civil or criminal matters currently unknown by the medical board or employment issues, such as termination by an employer that the board's database or the internet may show as their current employer.
5. Ask experts to provide a current curriculum vitae and all their published works relevant to the case.
6. Ensure confidentiality. Explain to experts that all information related to this case must be kept strictly confidential from their side. Explain that they can discuss general medical concepts with colleagues, but cannot discuss any of the specifics of the case. As noted in "Match the Expert to the Case — Example 2," it would be fine for an expert to ask other interventional cardiology colleagues what their criteria is generally for when they decide to do an IVUS, for example.
7. Limit contact. Tell experts not to contact anyone involved in the case except for relevant board staff. Do not contact board members, the patient or the physician under investigation.
8. Set deadlines. Ask experts how much time they will need to review the medical records and other documents and write a report. Get agreement on when the expert will complete the report.
9. Remind experts to rely on the standard of care in place at the time the care was rendered. For example, the expert cannot apply the 2019 standard of care to treatment rendered in 2016.
10. Clarify details of medical record review after remediation. If the medical board's case involves a follow-up chart review of an ongoing remediation case, make sure the timeframe of the expert opinion is restricted to post-remediation care and the expert understands that and only comments on post-remediation care.
11. Use the correct standard of care. The North Carolina Medical Board *Expert Reviewer Manual* explains that physicians should not evaluate a case on the basis of their personal standard of care, but rather on "what a reasonably prudent physician . . . would do under the same or similar circumstances." Boards should ascertain what the relevant standard of care is in their jurisdiction, then make sure the expert understands it and is applying it to the case under review.
12. Act as an umpire and stay in the appropriate lane. Explain these important details to experts:

a. They are not advocates for the physician or the medical board.

b. Their role is to review the materials provided and determine if there was a departure from the accepted standard of care.

c. Experts must review the case material and medical records with sufficient care and diligence to be able to confidently defend the expert opinions under oath in a deposition or at a public hearing.

d. The medical board is not looking for a specific result and they need to be informed if the care under review was within the standard.

e. Sending the case out for expert review does not necessarily suggest that the care was below the standard.

13. Establish expert report guidelines. Tell experts about what the board expects their reports to contain, generally. Never ask experts to insert specific opinions. The board should seek an expert's own specific opinions. Explain that the report should:

a. Contain a relevant date specific summary of the care at issue in the case.

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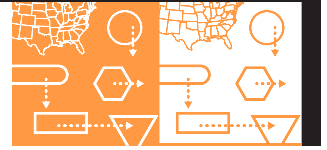

b. Explain what the standard of care was in the case at the time the care was provided.

c. Explain if the care was below or within the standard of care.

d. Apply the standard of care to the specifics of the care rendered. All referenced departures from the standard of care should be date specific and state what was done (or not done), why it was a departure and what should have been done (or not done) to meet the standard of care.

e. Be professional and not contain any unstated assumptions or inflammatory language.

14. Experts should be instructed to call the board after reviewing the case materials if:

    a. They identify an actual or apparent conflict of interest.

    b. They come to believe they are not an appropriate expert for the case.

    c. They need anything else to review. Ask an expert not to finalize the report if additional materials are needed to form an opinion.

What Information Should be Sent to Experts After They Agree to Review a Case?

The detailed answer to this question depends on the specifics of the case. Generally, the North Carolina Medical Board sends the following materials:

1. North Carolina *Expert Reviewer Manual*.
2. Medical Records. These include records of the licensee under investigation as well as relevant prior, concurrent and subsequent treating records from other health care providers. As indicated earlier, the records are in PDF format, numbered and bookmarked with a corresponding hyperlinked table of contents. Organizing the records this way makes future discussions with an expert much more efficient if page numbers can be referred to and documents accessed easily.
3. The complaint and physician response (if relevant).
4. Anything else that may be helpful to the expert, will not create bias and that the Board does not mind potentially being used in evidence or during cross-examination.

The Board does not usually send anything about a licensee's prior medical board history to the expert. It is usually not relevant to the expert's role in the case and could create a negative bias.

What Happens After the Expert Report is Received?

The best advice is: Read it. Then read it again. Make sure the report contains all the elements discussed in this article, that it makes sense and that the medical board would be comfortable using it in a public disciplinary proceeding. If not, call the expert and ask for an explanation or supplement to the report.

Never attempt to get the expert to say specific things in a report, but if the report has unanswered questions, ask the expert to provide a supplement. Using "Match the Expert to the Case — Example 3," for instance, assume in this case there was no mention of chronic pain management in the internal medicine expert's report. The medical board could call the expert and ask that the report be supplemented with an opinion as to whether the expert believes the chronic pain management was within the standard of care.

Conclusion

Identifying, recruiting and training medical expert witnesses in quality-of-care cases is an important activity for state medical boards. While the steps included here for managing this process have worked well for the North Carolina Medical Board, each medical board is different and should consider implementing them as appropriate in light of their own specific laws, rules, policies and procedures.

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