I have been reviewing medical malpractice claims for approximately 25 years and have often been disturbed by the testimony of the plaintiffs’ expert witnesses. At times, these experts are retired and have not performed the treatment or surgical procedure described in the lawsuit that they are involved in and, if they are not retired, the expert witnesses who are still in active practice often do not provide the surgery or treatment that they claim to be an expert in! In addition, these experts stretch the truth or outright fib!

Most recently, I have been involved in two malpractice litigations in which the plaintiffs’ experts were pediatric ophthalmologists. In one case, the defendant was a pediatric ophthalmologist. In the other case, the defendants were a group of pediatricians. The experts for the defendants were pediatric ophthalmologists in both cases. In each case, the plaintiffs’ experts clearly confused fact from fiction. The facts were not clearly testified to and the fiction was stressed in both cases! Both cases went to the jury with verdicts for the defendant physicians. In each case, the jury responded speedily. After the cases, the juries were queried by the lawyers about the case and those who were responsive indicated that the plaintiffs’ experts were not at all believable.

With malpractice costs in excess of $100,000 in some subspecialities and in excess of $20,000 in ophthalmology in New York City, the crisis for physicians is mounting. What can be done? Primarily, legislative overhaul of the system is in order, but until that can occur perhaps we can make some inroads into this problem. Clearly, medical errors do occur, but when verdicts reach and exceed one million dollars, the cost of protection keeps escalating. With a small subspeciality such as pediatric ophthalmology and strabismus, we should be able to develop aids to help those who are to stand before the bar and defend themselves.

I propose that the names of the expert witnesses for both the plaintiff and the defendant in all cases in which adjudication has been completed (eg, when such information becomes public record) should be published in our subspecialty journals or on society web sites. This can be accompanied by a brief synopsis of the issues in the case. I think that our society has a responsibility to its members to allow them to review who is doing medical malpractice plaintiff work and medical malpractice defense work. It is clear that the majority of plaintiffs’ work is done by a few physicians and the defense work is done by a broader group, primarily pediatric ophthalmologists. This is not always the case in the plaintiffs’ bar. It would be nice if the society could censure those members who persistently testify in cases that have no merit, but that would be an ideal situation and one that I do not see occurring in the foreseeable future. But, perhaps seeing their names in print frequently could have an effect on any moral values that they have remaining! The system tries to protect the rights of the accused, but not strongly enough from the chronic testifier.

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