

The Role of the Physical Therapist As Expert

By Paul J. Welk, PT, JD

When most people hear the term “expert” in the medico-legal context, they think of a well-educated professional on a courtroom witness stand trying to convince a jury that a health care practitioner either made, or did not make, the correct clinical decision in a given situation. While this scenario is one role that the “expert” physical therapist may serve, there are a number of other diverse opportunities in which a physical therapist may serve as an expert. For example, parties to a professional liability case or other dispute may seek an independent third party to assist in the dispute resolution process. In such a case, experts may be asked to serve as arbitrators or mediators and use their knowledge to help resolve the particular dispute. In another case, experts may participate in an administrative hearing to defend the actions of a licensed physical therapist appearing before a state licensing board. Finally, in the reimbursement setting, experts on payment can be an excellent resource to advocate for the private practitioner throughout the appeal or audit process. These examples are certainly not all-inclusive, but they illustrate the broad role in which a physical therapist can serve in an expert capacity. Regardless of the context in which physical therapist experts serve, a number of considerations will help to improve the service provided to the client.

Be an Expert on the Subject Matter

While it may seem readily apparent, it is essential that experts, in fact, be experts on the particular subject matter. Experts will need to substantiate expertise regarding the subject matter to establish the credibility of the opinion being expressed. Expertise is generally shown through education, training, and work experience. Most medico-legal experts serve as experts in addition to their full-time employment, thereby allowing the experts to maintain and continue to grow their expertise. When choosing to function as an expert, it is important to consider the proper balance of day-to-day work in one’s area of expertise with time spent serving in an expert capacity.

Be Prepared to Read

Generally, the role of experts is to analyze relevant information and form an opinion based on and supported by such information. The amount of information that needs to be reviewed to adequately form an opinion may be substantial. It is important for experts to review all information available to them so that they are prepared to support their position and to defend against any contrary opinion or questioning. In addition to reading the information provided, experts may also need to complete a significant review of the literature to support their opinion. However, depending on the nature of the particular case, experts should generally be well versed in the subject matter, and the amount of additional research and reading may be minimal.

Be Prepared to Write

Despite the sensationalized view of experts in the courtroom setting, most legal disputes do not reach this point. More commonly, after an initial discussion with the client, experts are asked to prepare a written document detailing their opinion and the supporting evidence. This written document typically is then reviewed by the client, may then be revised by the expert, and ultimately serves as the basis for the client’s position.

Know the Standards by Which the Client Is Being Judged

Before the expert reviews information or prepares a report, it is important to understand the standard by which the expert’s client is being judged. For example, in a professional liability lawsuit, the standard is generally whether the physical therapist breached the standard of care owed to a particular patient. In contrast, in a reimbursement matter, the standard may be whether the services provided were medically necessary. Experts can save significant time and effort by understanding the standard on which their opinion will be judged and the specific issue on which they have been asked to opine.

Prepare for and “Market” the Expertise

As a starting point, it is important to have an updated résumé. While this may seem obvious, experts generally have a significant amount of educational and work experience that may include research endeavors and publications. For this reason, it is best to take some time to develop a complete and thorough résumé, because there may not be time when an expert opportunity presents itself.

Next, it is important to determine how to market expert services. When it comes to this kind of marketing, there is a fine line between making potential clients aware of a willingness to serve in this capacity and being viewed as a “hired gun.” As a practical matter, many experts become known through informal referral networks or are contacted directly by those in need of experts to determine if they may be willing to serve in this capacity. Other experts may choose to be affiliated with a service that refers experts to those in need.

Finally, when preparing to serve as an expert, it is important for experts to contact their professional liability carrier and verify that their insurance covers the scope of their services as an expert witness.

Regardless of the setting in which experts choose to serve, the above considerations will better allow them to serve the needs of their clients. ■

Paul Welk, PT, JD, is a Private Practice Section member and a physical therapist attorney with Tucker Arensberg, P.C., where he frequently advises physical therapy private practices in the areas of corporate and health care law. Questions or comments can be directed to pwelk@tuckerlaw.com.