

# ***“I DO SOLEMNLY SWEAR”***

## **Being an Expert Witness**

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## **Matt Hellman, Esq, P.A**

### **Professional Profile**

- **Admitted: 1981, Florida; 1982, U.S. District Court, Southern District of Florida including Trial bar.**
- **Law School: Drake University, J.D., 1980**
- **College: Kean College, B.S. 1978**
- **Member: The Florida Bar, Claims Association**
- **25 years as trial lawyer**



## Key Points

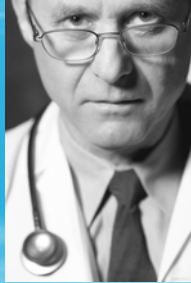
- Guidelines for testimony
- Reliance on others
- Cross examination
- Pitfalls

## Guidelines for Testimony

### Florida Evidence Code (West 2004)

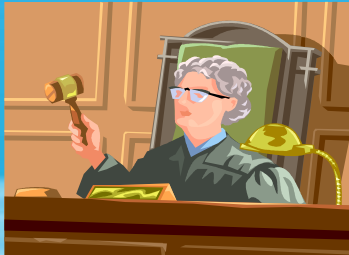
- 90.702
  - Testimony by experts
- 90.704
  - Basis of opinion testimony by experts
- 90.705
  - Disclosure of facts or data underlying expert opinion
- 90.706
  - Authoritativeness of literature for use in Cross-ex.

## Who is an Expert?



- Basically: A person with specialized knowledge, skill, experience, training or education in a certain subject.

## Preliminary Determinations



- 1) Whether the subject matter is proper for expert testimony
- 2) Whether witness is adequately qualified to express an opinion on the matter.

## Subjects of Expert Testimony

- May not be speculation
- Must be based on reliable scientific principles
- Must assist the trier of fact in understanding the evidence or in determining a fact of issue

## Reliance on Others

- Under section 90.704 an expert may rely on facts or data that have not been admitted, **when** those facts are of “a type reasonably relied upon by experts in subject to support the opinions expressed.

cont.....

## ....Continued

- May rely on hearsay in forming opinions if....

If that kind of hearsay is relied upon during the practice of the experts themselves when not in court.

- E.g., Opinions of nurses, technicians, other physicians, and hospital records

## CROSS EXAMINATION



- CHARACTER ASSASSINATION

- Qualifications can be inquired into.
- Reasoning process and theory employed in reaching the opinion expressed may be questioned.
- 90.706 (FL. Rule only) allows CX with statements of fact or opinion in a learned treatise if expert recognizes author or treatise as being authoritative.
- Past pattern of testifying for one side in litigation.
- Inconsistent prior statements.

## ELKINS V. SYKEN

- The following criteria are to be followed in seeking financial information from opposing medical experts:
- (1) the medical expert may be deposed either orally or by written deposition;
- (2) the expert may be asked as to the pending case, what he or she has been hired to do and what the compensation is to be;

- (3) the expert may be asked what expert work he or she generally does, such as whether the work is performed for the plaintiffs, defendants, or some percentage of each;
- (4) the expert may be asked to give an approximation of the portion of their professional time or work devoted to service as an expert.

## EXAMPLE

CASE NAME	DATE
ROBERT D. SIMON, M.D., P.A. (a/a/o Rosalie Madden) v. Progressive Express Insurance Company, Case No. 2003CC008913RC, Palm Beach County, Florida * (Deposition only)	July 13, 2004
BOUCHER CHIROPRACTIC P. A. (a/a/o Jered Farrar) v. Progressive Express Insurance Company	November 2, 2004
FIRST CARE CHIROPRACTIC CENTER, INC. (a/a/o Rita Padmore) v. Progressive Express Insurance Company	February 11, 2005
HEALTH CARE ASSOCIATES OF SOUTH FLORIDA (a/a/o H. Soong) v. Progressive Express Insurance Company	April 18, 2005

\* Retained as an Expert Witness or deposed by the law firm of Matt Hellman, P.A.