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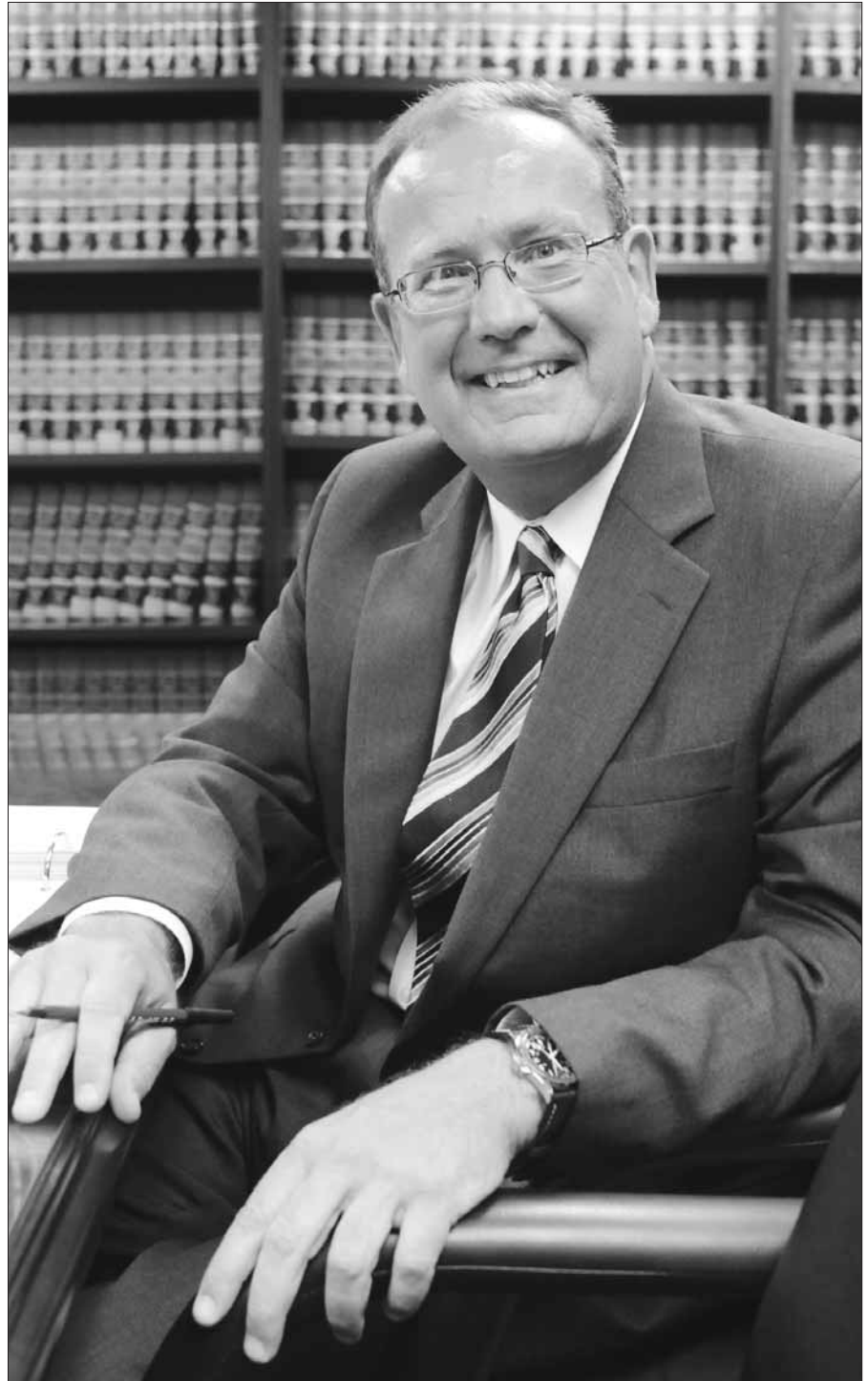
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# Can they get a witness?

## Attorneys face hurdles in finding qualified doctors to testify in court

By **BERNADETTE STARZEE**

Doctors of all specialties serve as expert witnesses at trials. Several directories list their bios and areas of expertise, such as Incisive Media's ALM Experts New York Directory, which features close to 100 doctors and medical practitioners who are willing to testify in court.



Frank Scahill's firm, Picciano & Scahill, uses medical experts on almost every case.

But finding an expert witness – particularly a qualified one – can pose a challenge, attorneys say.

As an insurance defense practice, Picciano & Scahill in Westbury uses medical experts on just about every case, said managing partner Frank Scahill.

“Most of the doctors willing to testify are looking to supplement their income or are in the waning stages of their careers, so there is an issue of quality,” he said. “It’s important to ensure that a medical witness is a qualified, practicing doctor, not someone who purely does expert testimony.”

The best witnesses are those who deal with related subject matter day in, day out, Scahill said. “When I need a radiologist to testify, I want a chief of a hospital radiology department who spends 85 percent of his time dealing with films and patients, with only a small portion devoted to legal/medical,” Scahill said.

A reputable doctor’s testimony is more believable to the jury, Scahill said. “A typical question on cross-examination is what annual income the doctor derives from expert testimony,” he said. “If he spends all his time testifying, the issue arises about how credible he is. He might come across as a hired gun.”

Expert witnesses are routinely researched by the opposing side. “A professional expert witness will have a body of past testimony, and some of it may be contrary to

the testimony he is giving,” said Roy Breitenbach, partner/director of Garfunkel, Wild & Travis in Great Neck.

“This is the only thing I can think of that the more you do it, the worse you appear to be,” said a Long Island physician who does expert testimony, but who requested anonymity because, he said, even quoted words in newspaper articles could be used to discredit an expert witness. “If I was going to have cardiovascular surgery, I would want to go to a doctor who performs similar surgeries several times a week. If I was going on a plane, I would want the pilot to be someone who flies thousands of miles each week.”

But for an expert witness, too much time in court can create the perception of a conflict of interest, he said. “People might think, ‘He’s earning too much money doing this type of work; maybe he’s afraid if he doesn’t agree with the attorney that hired him, he might earn less money,’” he said.

But doctors who are busy with patients often have trouble clearing their calendars to appear in court. “It’s very difficult to schedule a doctor in advance, because the court schedule is up to the trial judge,” Scahill said.

Another issue is the cost. “Medical experts charge about \$5,000 to \$7,000 for a half day,” Scahill said.

Plaintiff’s attorneys in medical malpractice cases face an addi-

tional hurdle when seeking out expert witnesses.

“It’s difficult to find doctors who are willing to testify against other doctors,” particularly within the state, said John Zervopoulos, managing attorney of the Woodbury office of the law firm Salenger, Sack, Schwartz & Kimmel. “It’s similar to the blue code of silence among police officers. Doctors don’t want to be perceived as sellouts. It forces plaintiff’s attorneys to look out of state for expert witnesses.”

This problem is confounded by the fact that medical malpractice cases can go on for years. Zervopoulos said his firm worked with one expert witness from out of state who, after moving to New York, became unavailable, because her new employer told her she had to give up her side job.

Besides having the right credentials, superior communication skills are at a premium. “The doctor has to be a teacher,” Breitenbach said. “The jury is looking to the doctor to teach them what they need to know. The doctor must be able to break down complicated subject matter into simple layman’s terms and give real-life examples.”

In addition, it’s important that the witness be likable. “Civil cases are about money,” said the aforementioned expert witness. “If you’re obnoxious, no one is going to want to award your side money, even if you’re right.” ■