



Legal Discussion: The Value and Art of...

Chairpersons:

Thomas H. Winters, MD,
FACOEM, FACPM

& Kenji Saito, MD, JD, FACOEM

Monday, March 27th, 2023

4:15-5:00pm



2023

Work Related Injuries
Workshop

Case Presentation

Thomas H. Winters, MD, FACOEM,
FACPM

Litigation – Insurer filed complaint to discontinue benefits

- On 5/21/2019, a 68 y/o RN in pediatric OR reached for diaper, shelf fell off onto head.
- Became confused, light sensitive.
- Saw PCP who did CT that was negative.
- Improved but continued with confusion and fear of driving.

- **One month later**, occasional dizziness, no vomiting.
- **Two months later**, no dizziness, but balance problem, MRI negative. Plan to go to PT.
- **Four months later**, stuttering and difficulty concentrating/reading.
- **Six months later**, saw neurologist, said symptoms are consistent with a TBI, recommended exercises.

- **Ten months later**, improved and stable speech when not nervous. PCP not comfortable caring for TBI symptoms.
- 2 plaintiff IME's done: One declaring TPD from all work; second stated PTSD, severe depression, and anxiety related to injury.
- **One year later**, neurologist saw her and only balance a problem.
- **7/28/20**, Neurology IME , recovered from TBI at 3-6 mos after injury. Reason for word finding problem is her stopping Adderall for ADHD. RTW , no restrictions.
- **Eighteen months later**, was told of IME results and job possibilities. Fearful of returning to work.
- **Twenty months later**, she contacted a lawyer.

- **3/23/21**, Neurology IME Dx: Minor concussion. Word finding problem due to lack of Adderall Rx for PTSD. RTW, no restrictions.
- **1/3/22**, Conference summary: Declined modification or discontinuance weekly compensation.
- **3/20/22**, Impartial summary: All cognitive functions normal. No neurologic deficit. Pressure speech due to anxiety. No neurologic disability and no restrictions to RTW.
- **6/24/22**, Summary Hearing: Judge opened medical records on complexity grounds. Plaintiff counsel filed 34 A and mental health grounds. Agreed to mediation.
- **2/3/23**, Mediation: No resolution.



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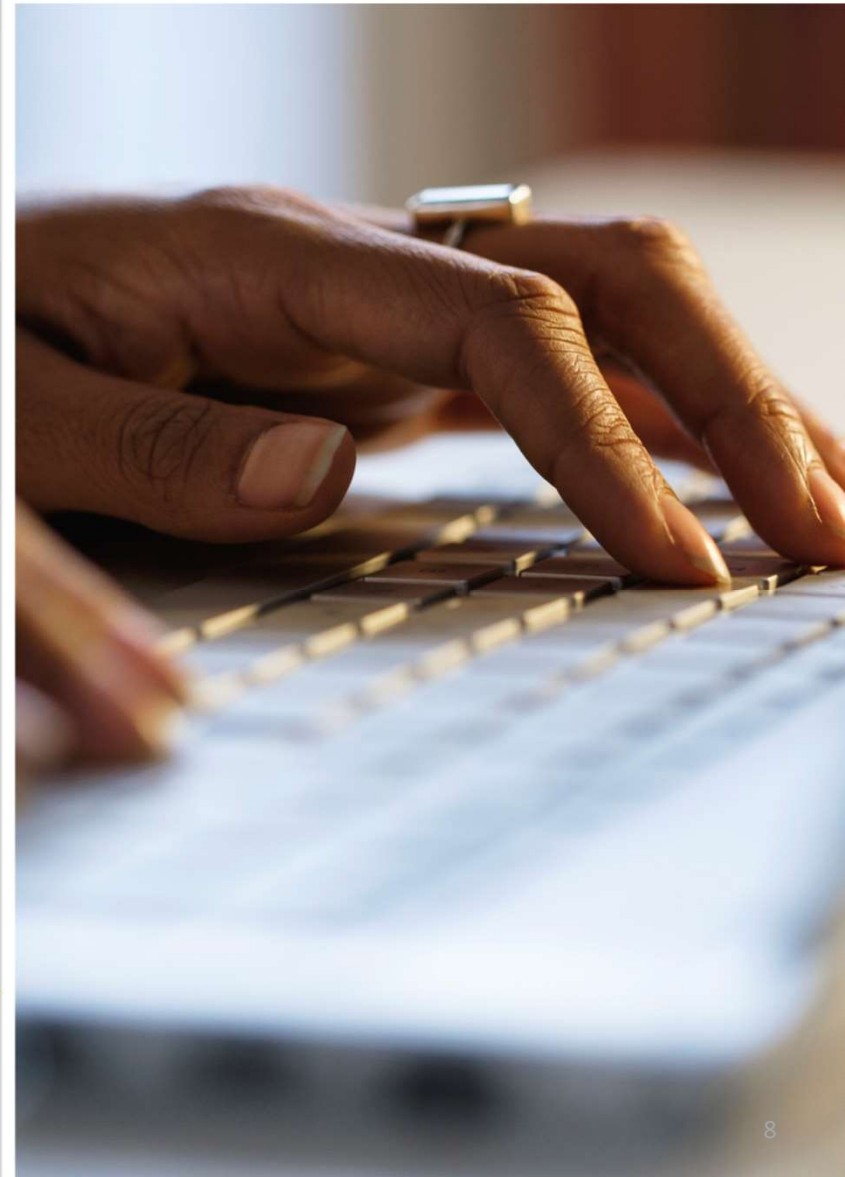
The Expert Witness Narrative Report

Deborah G. Kohl, Esq.

The Expert Witness/Narrative Report

Deborah G. Kohl, Esq.

- When does an employee hire an expert to provide a narrative report
- Why does an employee need an expert and/or a narrative report
- Purpose of the narrative report/expert opinion in a WC case



The Expert Witness/Narrative Report

When is an expert needed

- Generally retained to initiate litigation or during litigation
- Retained when insurance company IME disputes the treating physician or raises medical issues that treater cannot adequately address
- Retained when insurer raises new medical issues unaddressed by treaters



The Expert Witness/Narrative Report

Why is an expert witness necessary

- Medical experts are usually retained in cases where the issues involve extent of disability or causal relationship
- The expert is retained to address issues that treaters don't have the time to address or when they refuse to be involved in litigation
- Experts assist in rendering an opinion on the issues in the litigation and can be used proactively to address the legal issues or combat the opinion of the insurer's IME

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The Expert Witness/Narrative Report

Purpose of the Expert Witness/Narrative

- The expert can assist the lawyer in understanding the medical issues and help educate the Judge regarding unusual medical issues
- The Narrative provides a comprehensive overview of the employee's health, medical history and injury which is harder for the Judge to understand from treating medical records which are frequently repetitive and can run hundreds of pages in length
- The Narrative is used to combat the IME provided by the insurance company
- The Narrative provides an overview and medical opinion that treaters generally will not provide seeking to avoid the litigation/WC process primarily due to time constraints endemic in today's medical practice





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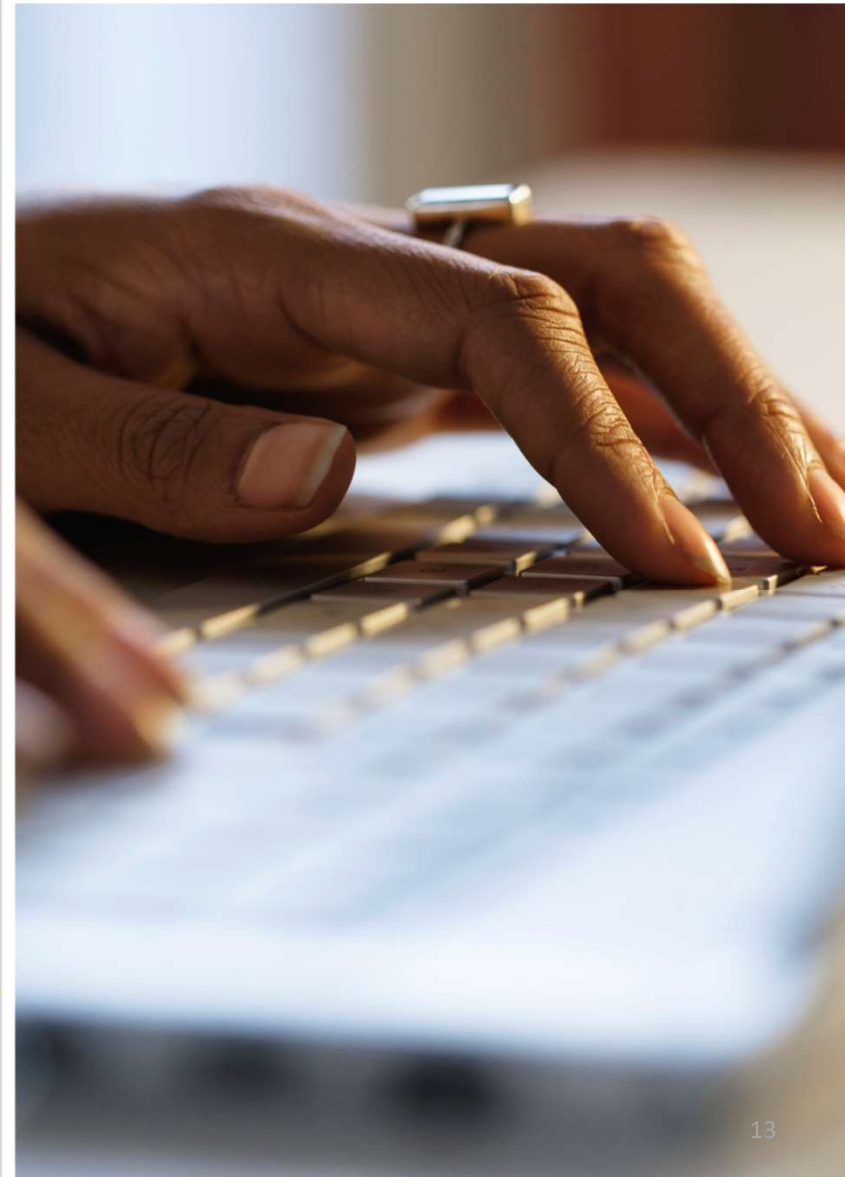
The Expert Witness The IME

Buzz Schneider, Esq.

The Expert Witness/ IME Report

Buzz Schneider, Esq.

- Select the proper IME expert (specialty, experience)
- Include all relevant medical records
- Request that the IME address specific issues
 - Causation issues (correct causation standard)
 - Extent of Disability
 - Treatment
 - Prognosis





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The Impartial

Buzz Schneider, Esq.
& Deborahl Kohl Esq.

The Impartial Report

- §11A Report (Prima Facie Evidence)
 - “Prima Facie Evidence”
 - Prima Facie Evidence, in the absence of contradictory evidence, requires a finding that the evidence is true. Anderson’s Case, 373 Mass. 813 (1977)
 - Requirements – Must Address:
 - Disability (Total/Partial, Permanent/Temporary)
 - Causation (§1(7A))
 - End Result
 - Permanent impairment / loss of function
 - Motion for Additional Medical Evidence
 - Complexity
 - Inadequacy of Impartial Report

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Case Discussion