

Editorial

Expert Medical Witness Is Appointed by the Court - Time to Change

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Expert medical witness appointment in Bahrain is not regulated by law which protects both parties, the claimant and the defendant. Normally, in Bahrain, the court is the major player in these disputes; the court sets the rule, it appoints and pays the medical expert witness, the disputing parties and their lawyers have no say in these procedures. Many of these so-called medical experts are not expert in that particular field. Occasionally, some are appointed without having clear ethical history themselves. Some may hold grudges against the defendant, some are fierce competitors in the same specialty, the court does not know that, yet they accept the appointment. Medical expert should be watched carefully and not to be allowed to invent statistics or theories, which are not based on research or other clinical studies.

Medical expert witnesses are assigned by the court in Bahrain and most of the time they assume that their role is to indict the doctor; as they are not briefed by the court to be fair and defend both parties, the claimant and the defendant. Many champion themselves as the protector of the patient's rights, whereas they are appointed to protect both, the patient and the doctor. Actually, it is contradictory to defend both views; therefore it is essential to appoint two teams of medical expert witnesses, one to represent the claimant and the other to represent the defendant; the witness should not be put in a difficult position where he has to wear a different hat for each situation.

In the American system, both sides recruit expert witnesses who are, in fact, paid for their services by the attorneys who hire them and not by the court, the defendant and the claimant have their say in the appointment. Many medical and surgical professional organizations, including the American Medical Association, have adopted programs that provide guidelines for members who serve as medical expert witnesses in professional liability cases.

In Bahrain; however, the patient and the doctor are not consulted or informed about the appointment of the so-called expert witness. Many times they take side, usually the patient side without taking into consideration that his claim might be malicious or he seeks financial gains. The defendant lawyer is not allowed to attend the so-called expert witness meetings or interrogation conducted by them, usually against the defendant.

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Expert medical witness needs to be defined. Who is an expert? Being a consultant in one specialty does not mean being an expert in all aspects of that specialty. An ENT consultant could be an expert in rhinology but not in otology or laryngology, depending on his interest and practice; a paediatrician could be expert only in a small field of paediatrics, such as, genetics, oncology, cardiology, respiratory diseases etc. The court does not know that. Expert medical witnesses must recognize their own professional limitations and expertise; they must not abuse what is entrusted to them. The expert must bear in mind that many diagnoses may be appropriately treated in different ways. A facial palsy, for example, could be treated by steroids, physiotherapy, wait and see or on occasion surgery; a stage one carcinoma of the vocal cords could be treated with radiotherapy or surgery with equal success rate.

Whoever appoints an expert medical witness for the medico-legal cases in Bahrain does not know or ignores the ethical history of those appointed; some of these so-called experts have violated the medical ethics several times, yet they have been appointed in the most controversial grey area of medical ethics, for example, a doctor who had been suspended for neglecting his patient while he was under his care abroad had been appointed as an expert medical witness in a case of medico-legal trial. Another physician who ten years ago claimed to do research and wasted BD 10,000 without publishing a single paper has been appointed as a medical witness. A third physician who was involved in inappropriate authorship in two published papers was appointed by the court as a medical witness. The physician who agrees to be the expert witness for the plaintiff in a medical malpractice trial must have ethical and moral responsibilities¹.

Grudge and jealousy among professionals is not uncommon; sometimes it reaches a very destructive stage; though, it is advised and maintained in the medical ethics that interactions with colleagues should be based on mutual respect and a desire to improve patient care. I need not to mention that a department in SMC ceased to function properly, which forced the minister to appoint a chairman, his specialization was completely unrelated to that department. In another department, the minister has to appoint a chairman from abroad to solve the grudge and jealousy among highly qualified consultants.

Expert medical witness sometimes is allowed to invent figures and statistics in the court, which are not based on studies or research and since the court is not qualified to examine what he claims scientifically, he gets away with it. Because of these claims, the judges and juries have a high opinion of these witnesses and as a result of that the defendant or the patient is treated unfairly.

The best example of inventing figures and statistics is the most celebrated physician, Professor Sir Roy Meadow, who became well-known in 1977 after publishing a paper in *The Lancet* on a condition he dubbed as Munchausen Syndrome by Proxy. Sir R Meadow became a chairman of paediatrics and child health in 1980 at St James's University Hospital, Leeds. He was a former president of British Paediatric Association and former president of the Royal College of Paediatrics and Child Health. He was Knighted in 1998 for services to child health²⁻⁶.

Sir Roy Meadow was an expert medical witness in the following cases:

1. Sally Clark (lawyer): She was cleared after she had served three years after being wrongly convicted of killing her two sons⁷.
2. Angela Cannings: She was cleared after she had served 18 months after being wrongly convicted of killing her two sons⁸.
3. Donna Anthony: She was cleared after she had served six years after being wrongly convicted of killing her son and daughter⁸.
4. Trupti Patel (pharmacist): Cleared of killing three of her children^{9,10}.

During the trial of Sally Clark, Sir Roy told the juries that the chance of two children in such an affluent family dying of cot death was "one in 73 million" (One of his inventions). But his claim was disputed by the Royal Statistical Society, which wrote to the Lord Chancellor to say there was **"no statistical basis for the figure."**^{7,8}

Sir Roy Meadow invented as well what used to be called "Meadow's Law" which states that: "one sudden infant death is a tragedy, two is suspicious and three is murder, unless proven otherwise."^{11,12,13}

After clearing Sally Clark, the fourth case to be cleared where Sir Roy was a medical witness, The Crown Prosecution Service has promised that it will look at whether to review past cases involving certain medical experts, including Professor Sir Roy Meadow.

In 2005, the General Medical Council has struck off paediatrician Professor Sir Roy Meadow after his "misleading" evidence in the Sally Clark case. The GMC announced that Sir Roy had been found guilty of serious professional misconduct.

Professor Sir Alan Craft, President of the Royal College of Paediatrics and Child Health, said, "The role of expert witnesses had to be examined urgently so improvements can be made and confidence in the system could be re-established."

Strange statistics have not only been invented in the courts of Britain but it has been invented in Bahrain by a group of medical witnesses (amateur statisticians exactly as Sir Roy has been called by Royal Statistical Society). The court in Bahrain accepted the invented statistics and based their judgment against the defendant.

In USA, juries are being forced to decide cases based on the expert's credibility. This has created unease for doctors deciding to be an expert witness. In a recent, widely publicized press statement, the Association of Trial Lawyers of America (ATLA) complained that its members are finding it increasingly difficult to retain expert plaintiff witnesses. They assume this new obstruction can be traced to expanding activism by medical societies that seek disciplinary action against one of their members testifying against another member on behalf of a plaintiff.

Recently, the American Association of Neurological Surgeons (AANS) took disciplinary action against one of its members who not only frequently testified for the plaintiffs but who testified differently in almost identical cases.

In USA, medical societies established committees charged with identifying members whose testimony as a medical witness is questionable or to find unquestionable evidence of an abuse of their position, they filter any information from aggrieved

members for real proof, stripped of emotion or prejudice. Disciplinary action against the member who abused his position as medical witness is recommended¹⁴.

In USA, many medical societies and associations have developed a statement on qualifications and guidelines for the physician expert witness. In Bahrain, we have the choice either to develop our own qualifications and guidelines or to copy them from the medical societies in USA. The American Medical Association states that Medical experts should have recent and substantive experience in the area in which they testify and should limit testimony to their sphere of medical expertise. Medical witnesses should be adequately prepared and should testify honestly and truthfully to the best of their medical knowledge¹⁴.

Bahrain Medical Society needs to work hard on the issue of expert medical witness. Even an experienced consultant physician needs clear guidelines on the extent and form of expert opinions presented to courts of law; needless to stress the importance of thorough document study, correctly organizing the findings, and carefully weighing the various factors influencing an opinion.

The expert medical witness testimony is acknowledged as an important factor to serve justice in medico-legal cases. The expert medical witness must define a standard of care and find out whether the standard has been violated and whether any apparent harm was caused. It is recommended that the testimony must be objective, not subjective and that the witness should not assume preference; he/she should present the facts in a neutral way.

In Bahrain or anywhere else, if the expert medical witnesses misrepresent data, falsify their credentials and expertise, and offer false testimony, the legal process is violated and verdicts may be distorted.

CONCLUSION

If we have to continue with our present system in Bahrain, it should be reviewed and refined according to the points raised previously and a team of medical witness experts, some to represent the claimant and some to represent the defendant should be appointed. The lawyers of both parties should have an access to the interrogation conducted by the so-called expert medical witnesses. First and foremost the medical expert witness should be defined. Who is a medical expert witness? Bahrain medical society should assume an active role in this vital subject rather than to stay on the sideline as most of the time it does. It would not be an over-statement if we say that some of the judges and medical witnesses in Bahrain abuse their positions

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