



## ***EXPERT WITNESSES- STRATEGICAL CONCERNS, SELECTION, PREPARATION, AND PRESENTATION***

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### **Suggested preliminary “homework”:**

- ▶ Talk to your client first:
  - ▶ Where does the allegation fit in terms of the “spectrum”? How many experts would agree?
  - ▶ Research the “spectrum”- academic sources, position statements, controversies
  - ▶ What are the strength and weaknesses of the care per the client?
  - ▶ What may be the budget/costs of defense?  
Upfront costs versus SOAH

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## Know the agency's experts:

- ▶ Internal/staff experts versus contract experts
- ▶ Open Records requests:
  - ▶ Expert Policies and Procedures; Budget
  - ▶ Forms required; qualifications to serve
  - ▶ Listing of experts
  - ▶ How much has the expert made for reviews? Actively practicing?

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## EXPERTS- STRATEGICAL CONCERNS-

- ▶ When do you really need one?
  - High Risk v. Low Risk cases:
    - Adverse outcomes- major injuries, deaths, minors, elderly
    - Pending/anticipated malpractice claims
    - Aggressive complainants, other health care provider complaints
    - Peer review actions
    - New/controversial treatment modalities

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## When do you really need one?

- Cosmetics- subjective versus objective standards
- Pain management/orthopedics/ob/gyn
- Pharmaceutical/DEA
- Billing- False Claims/Medicare/Medicaid
- Temporary Suspension possibility

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## Strategical concerns as to NOT hiring an expert:

- ▶ Agency reviewers are not obligated to agree with a defense obtained opinion and may tend to think it is their duty to rebut a filed report and engage in patient advocacy of the allegations;
- ▶ Possibility the agency review process may not find any problems with the care- probable versus unlikely?

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## Title search: Expert Witnesses- Strategical Concerns, Selection, Preparation, and Presentation

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17<sup>th</sup> Annual Advanced Texas Administrative Law Seminar session  
"Tips and Strategies for Working with Expert Witnesses"