



MED3432

Plastic Surgeon as an Additional Medical Witness

Things counsel should keep in mind.

Importantly for a plaintiff's presentation, plastic surgeons normally take an excellent set of "before and after" pictures for their file on the patient. If you introduce the surgeon's pictures as glossy 8 x 10's, the photo of a scar becomes a strong argument in the jury room. Many plaintiff's counsel do not realize the photos normally exist. Defense counsel should not unnecessarily seek photos which plaintiff's counsel may not know exist.

Consider the prevalence of cosmetic surgery today: There were more than 10.2 million cosmetic plastic surgery procedures done in the United States in 2005, an increase of 11 percent from 2004, according to the American Academy of Plastic Surgeons (ASPS). The top five surgical cosmetic procedures in 2005 were: liposuction (324,000); nose reshaping (298,000); breast augmentation (291,000); eyelid surgery (231,000); and tummy tuck (135,000). Minimally invasive cosmetic procedures increased by 13 percent to nearly 8.5 million in 2005. True reconstructive surgery for scars was a small number (181,000). So when you have a scar to discuss at trial (or settlement) keep in mind that the universe of jurors (and claims managers) thinks scar revision means scar removal. Both counsel should keep in mind that the average layperson thinks of plastic surgery as miracle producing - eliminating any visible scar or injury sequelae. Consider all the ads, television dramas, and the results the average juror may have seen on friends who have had elective aesthetic surgery, (the brow lifts, the nose job, the eyelid surgery, and so on.) On the defense you can use the mind set of jurors and judges in which they know what plastic surgery can do.

Reconstructing a scar to produce a more pleasing result is not like the nose reshaping and other elective aesthetic surgery. The surgeon's choices in aesthetic surgery allow her to tuck the necessary surgical incisions into the natural skin fold lines of the face, or in a hair line, and to make only short and thin incisions. The problem which the surgeon has with accident injury wound scars is that the cuts producing them are typically

neither short and thin, and not in natural skin fold lines. The plastic surgeon is starting with a "bad result", and he/she can only minimize the appearance. The procedures to reduce the appearance of the accident scar employ techniques to reduce the thickness of the scar (e.g., excision of the thick scar to leave a thinner scar) or to change the direction or placement of the scar (W-plasty, VY-plasty, broken line technique, regional flaps, Z-plasty, rhomboid flaps, free grafts), or to smooth the entire scar area (dermabrasion, injection of steroids or other materials in the scar and surrounding tissue). If scar revision is at issue in the case, educate yourself and find out what your expert medical witness has to say about the applicability of these types of surgical procedures, and the expected result from them.

Using the form for Additional Direct Testimony: Plastic Surgeon

Our LawyerTrialForms deposition and testimony outlines use a "building block" approach. You can bring two or more deposition checklists together as appropriate to your particular situation. You start with the appropriate base outline. We sell the four basic deposition outlines that can be used in the examination of any medical specialty. When preparing to examine a plastic surgeon, first chose and place in your trial notebook the appropriate one of the four basic deposition question outlines.

Plaintiff's direct-examination of treating doctor.

Defense cross-examination of plaintiff's treating doctor.

Defense direct-examination of a defense doctor.

Plaintiff's cross-examination of defense doctor's testimony.

Anytime you examine a doctor, you pick which one of those foundational building blocks is the appropriate one. The following form is a building block you can add to one of those basic, foundational, "building block" doctor's testimony checklist. If you have a plastic surgeon to examine directly or on cross, put both the appropriate foundational testimony checklists and also the following one into your trial notebook. The "Outline of Additional Testimony: Plastic Surgeon" is just that, an additional block of ideas and possible questions you can consider using in examination of that specialist.

This form does not repeat the details found in the four basic checklists for examination of any medical doctor. However, to show where the additional questions fit, sometimes in this checklist there is a minor repeat of a specific part of one of the basic checklists.

Note: use your word processor to change "John" to the name of your client. Change "auto crash" to the type of incident involved.


ADDITIONAL DIRECT TESTIMONY: PLASTIC SURGEON


QUALIFICATIONS (ADDITIONAL SUGGESTED QUESTIONS)

Doctor, I see in your list of qualifications that you are a member of the [Association]. I'm going to read some statements that I think are the qualifications you have to have to even be considered for membership in that professional association. [Read good parts of membership qualifications.] Doctor, is that correct, you had those qualifications to be a member, and were accepted into membership?

[Likewise, board certifications are impressive to the jury. They allow you to ask questions like the following.]

Doctor, I see that you are certified by the Board of _____. Does that certification include having a peer-review committee review 100 operations you have done? Does that certification process also include the fact that you also must pass an 8-hour written and oral examination given by other doctors in the specialty?

 **TIP.** You can check and copy the requirements for medical specialty memberships and certification easily by using the Internet. The requirements for the various plastic surgery boards and associations vary. Those Boards that do not require review of extensive numbers of operations tend to have more extensive training requirements (e.g., The American Board of Plastic Surgery, requires an MD degree and then at least five years of additional training as a resident surgeon in all areas of surgery, including at least two years devoted entirely to plastic surgery).

 **TIP.** On the defense, you can take some steam out of the qualifications of the doctor if she does not belong to the American Board of Plastic Surgery. The ABPS is the only plastic surgery board which certifies the speciality for the full spectrum of the plastic surgery of the entire body. That is, plastic and reconstructive surgery of the head and neck, trunk and extremities. Check on any other boards which may have certified the doctor in question. You may find they did not certify her for the part of the body involved. (e.g., The American Board of Cosmetic Surgery, the largest plastic surgery organization in membership size, will certify a doctor whose training is only in dermatology, who passes a written test composed of questions distributed in the topics of "Breast 10-14%; Body Contour 4-8%; Liposuction 10-14%; Facial 31-35% ; Dermatology 15-18% ; Advanced Cardiovascular Life Support 8-12%; and Surgical Principles 8-12%. Those subjects are not exactly in point with a bad leg scar.)

EXAMINATION (ADDITIONAL SUGGESTED QUESTIONS)

How did John get referred to you for examination or treatment?

What history did you obtain:

From John?
From other sources?

Did John complain of pain?

Nature of complaints?
Do you have an opinion you can state with reasonable medical probability whether those complaints are real or simulated?

Measurement and location of all scars, lacerations, or deformities caused by accident.

DISFIGUREMENT BEFORE TREATMENT (ADDITIONAL SUGGESTED QUESTIONS)

In general, what scars, disfigurement or deformity [herein “scars”] did John have?

Is it all right with you if today we refer to all those items you have described as “the scars”?

What was the appearance and color of the scars on first examination?


Conspicuous?
Were the scars unsightly or disfiguring?

Were photographs made before you started treatment?
Were the photos made by you or under your direction?
Exhibits are copies of your photos
Do these photos fairly show the condition of John as you observed him?
What are the dates the photos were taken
Please explain to us what these photos show.

To a reasonable degree of medical certainty, do you have an opinion whether John was conscious of the scars?

To a reasonable degree of medical certainty, do you have an opinion if scars affected John mentally or emotionally in any way?
Explain?

DIAGNOSIS (ADDITIONAL SUGGESTED QUESTIONS)

 **TIP.** The plastic surgeon will not ordinarily do a full examination such as a family doctor or orthopedic surgeon would do. Consequently, their records may not show complaints or injuries in areas outside the body area or function of their medical concern. As a result, on the defense, you can suggest to the finder of fact that other injuries were not of much concern. (e.g., “Doctor, in your entire medical record there is

absolutely nothing that says on the days John saw you he was complaining of any problem with his back, was there?” or “Doctor, you did not note anything wrong with the way John walked or sat or stood or used his hands or feet, did you?”) As a result, for the claimant, you should take care to defuse that tactic.

Doctor, were you directly concerned with diagnosing or treating John’s problems outside your speciality?

There was no reason why for your treatment, you had to make notes or a diagnosis about [] was there?

In regard to the items for which you were examining John for possible treatment by you, to a reasonable medical probability, can you state your diagnosis, of those items, based upon your examination and history?

[If however, you know the medical records of this doctor do have information you want to convey to the jury, you can use this type of question.] Doctor, although you were not directly concerned with diagnosing or treating problems outside your speciality, did the history, medical examination or other parts of your records mention other injuries of John?

TREATMENT (ADDITIONAL SUGGESTED QUESTIONS)

What treatment given or recommended?

Nature and frequency of same?

Is John still under your care?

OPERATIONS (ADDITIONAL SUGGESTED QUESTIONS)

Nature and dates of surgery performed?

What was the reason for the surgery?

Description of the surgery?

Does an operation like that cause pain?

Description and reason for pain?

Drugs prescribed?

Treatment at home after the operation (e.g., keep bandages on and dry for a week; constant bandaging for six weeks, compression stocking, massage of surgical scar after six weeks)?

OTHER TREATMENT THAN SURGERY (ADDITIONAL SUGGESTED QUESTIONS)

Any other treatment required?

Nature, reason and frequency?

DISFIGUREMENT DURING TREATMENT (ADDITIONAL SUGGESTED QUESTIONS)

In general, what scars, disfigurement, deformity, medical appliances, or bandages [herein "scars"] did John have during the time of his treatment?

Was there a period of additional or different temporary disfigurement during your treatment - extent, length of time and nature?

Conspicuous?

Were photographs made of how John looked during your treatment?


Were the photos made by you or under your direction?

Exhibits are copies of your photos

Do these photos fairly show the condition of John as you observed him?

What are the dates the photos were taken

Please explain to us what these photos show.

 **TIP.** A question like the following one has an obvious answer. However, it is better for the doctor to talk of it than John seem like a complainer or unduly sensitive. Also, although the answer is obvious, it redirects the jury's attention back to the central question of the effect on John of the disfigurement.

Doctor, to a reasonable degree of medical certainty, do you have an opinion whether John was conscious of how he looked during that treatment?

IMPAIRMENT AND PAIN (ADDITIONAL SUGGESTED QUESTIONS)

Before any treatment:

John in pain from the scar, defect, or deformity?

Describe nature of same and frequency?

John have impairment in body function because of the scar, defect, or deformity before any treatment?

Describe nature of same and extent?

During the treatments:

John in pain from the scar, defect, or deformity?

Describe nature of same and frequency?

John have impairment in body function because of the scar, defect, or deformity before any treatment?

Describe nature of same and extent?

After the treatment:

John in pain from the scar, defect, or deformity?

Describe nature of same and frequency?

John have impairment in body function because of the scar, defect, or deformity before any treatment?

Describe nature of same and extent?

LAST EXAMINATION (ADDITIONAL SUGGESTED QUESTIONS)

Date the last time you examined John?

Findings?

What scars, disfigurement, or deformity [herein "scars"] did John have at the time of your last examination?

Were photographs made of John after your treatment?

Were the photos made by you or under your direction?

Exhibits are copies of your photos

Do these photos fairly show the condition of John as you observed him?

What are the dates the photos were taken

Please explain to us what these photos show.

PROGNOSIS: FUTURE TREATMENT (ADDITIONAL SUGGESTED QUESTIONS)

Do you have an opinion based upon reasonable medical probability whether any future treatment will be required for the items for which you were treating John?

Nature and frequency of same?

Do you have an opinion based upon reasonable medical probability as to what the probable necessary cost of that future treatment would be, using today's dollars and not adjusting for any future rise in medical costs?

PROGNOSIS: PERMANENT INJURY (ADDITIONAL SUGGESTED QUESTIONS)

Do you have an opinion based upon reasonable medical probability as to whether John has sustained permanent injuries?

Nature?

Any future pain?

Future disfigurement?

Do you have an opinion, based upon reasonable medical probability, of whether the scars will continue to exist after today.?

Are John's scars permanent?

ENDING (ADDITIONAL SUGGESTED QUESTIONS)

Doctor, is it fair to summarize by saying: "John's injury is going to look [__ e.g., like he does now____] for the rest of his life, and to take care of the problems we have talked about today, John is going to have about [\$____] in medical expense, even if the cost of medical treatment does not go up in future years".

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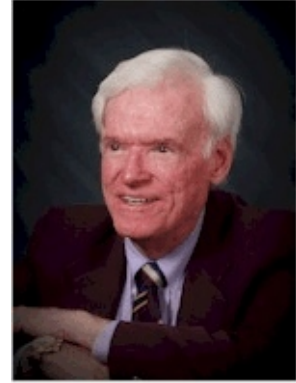
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This form by Leonard Bucklin,
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