

## Evidence based medicine panel discussion – learn case utilization and critique studies

Moderator Debra Hatzialexiou will introduce topic and panel members (5 mins).

Moderator Jane Beyer will provide context and ground members in the use of evidence based medicine in health care related cases and litigation. (25-30mins).

Moderator Jane Beyer will describe scenario #1 (30 mins). The scenario will involve a clinical issue and the clinical evidence in a hypothetical case. Each panelist will provide a brief perspective (2 mins) and the moderator will engage panel discussion and audience questions.

Moderator Jane Beyer will describe scenario #2 (30 mins). The scenario will involve a clinical issue and the clinical evidence in a hypothetical case. Each panelist will provide a brief perspective (2 mins) and the moderator will engage panel discussion and audience questions.

## Description

This session provides an introduction to the concepts of evidence based medicine in the context of legal cases, and an intermediate level discussion of the role of evidence based medicine and techniques in using it in litigation of cases with clinical issues.

Panelists will present their view, through responses to scenarios and discussion:

- what the role of clinical studies is in legal claims involving medical issues
- when and how clinical studies are most relevant/useful
- how to analyze clinical studies to identify what the findings are, how it relates to the clinical issue in the case, and what the strengths and weakness of the studies are
- how to use clinical study findings in case arguments or with witnesses

Context: Evidence-based medicine came to prominence in the 1980s as the medical community began applying more consistent standards of evidence in reviewing clinical trials. Rather than the traditional methods of expert consensus and anecdote, evidence-based medicine is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients." David L. Sackett et. al., Evidence-Based Medicine: What It Is and What It Isn't, 312 *Brit. Med. J.* 71, 71 (1996). A clinician using evidence-based medicine integrates their clinical expertise with the best available medical evidence obtained from systematic research. Similarly, other decision makers (specialty societies, policy makers, judiciary) are weighing the strength of clinical evidence in making decisions.

Traditionally, experts have relied on experience as the basis for causation or clinical appropriateness. Such opinions are based on authority, tradition, and personal, but anecdotal, experience. An expert

using the traditional method typically relies on custom, most recent experience, lessons from medical school, or consensus experience from colleagues.

An expert offering an evidence-based opinion begins by examining data compiled with more rigorous scrutiny and review before drawing upon personal experience. This method shifts the focus from experience-based opinion to "a more stringent review and application of high-grade scientific evidence." Carter L. Williams, *Evidence-Based Medicine in the Law Beyond Clinical Practice Guidelines: What Effect Will EBM Have on the Standard of Care?* 61 *Wash. & Lee L. Rev.* 479 (2004). An evidence-based opinion should be reproducible by others familiar with the method employed.

As one commenter noted, "Today, the field has evolved so much that systematic reviews are the most highly regarded indicators in determining the strength of medical evidence. The hierarchy of indicators, from strongest to weakest, includes systematic reviews, randomized and controlled trials, observational studies, case series, and, squarely at the bottom, traditional expert opinion." Stephen Chris Pappas, *Curing the Daubert Disappointment: Evidence-Based Medicine and Expert Medical Testimony*, 46 *S. Texas. L. Rev.* 595 (2005).

In analyzing clinical evidence, the following areas should be considered:

- credibility (e.g. quality of study/studies)
- applicability (e.g. to the individual or issue)
- weight (e.g. among other types of evidence and/or other studies)

## Learning objectives

After participating in this program, participants should be able to:

1. Explain what evidence based medicine is in the context of legal/clinical issues
2. Analyze a clinical study to understand its strengths, weaknesses and application
3. How to use evidence based medicine in your cases; and how to critique studies introduced by opponents

## Faculty

Moderators: *Debra Hatzialexiou, Legal Services Program Manager, Dept. of Labor and Industries*  
*Jane Beyer, Attorney, Program Officer, OHSU Center for Evidence-based Policy and*  
*Milbank Memorial Fund*

Panel: *Lee S. Thomas, Attorney – Harpold, Thomas PC*  
*Natalee Fillinger, Attorney – Homes Weddle & Barcott*  
*Knowrasa Patrick, Assistant Chief Industrial Appeals Judge, BIIA*