

**Cross-Examining Opposing Medical and Scientific Witnesses:
*Having the door slammed in your face, versus getting desired admissions.***

You know that dose is an important element of causation, whether the claim involves a chemical or mold or mycotoxins. When deposing an opposing expert, you want him/her to acknowledge that scientifically indisputable fact.

Has this ever happened to you?

Q. Is dose or amount of exposure an important element in determining whether or not a person was injured by an exposure?

Only to receive the following answer:

A. That depends upon the person; everyone is different.

And thus ends the questioning. The expert just slammed the door in your face. Having been on the receiving end of well-phrased depositions and having reviewed thousands of others, I have found more effective ways to ask the same questions. Continuing with the dose example and assuming an evasive expert:

Q. If I drank one drop of scotch, would I get drunk?

A. Probably not.

Q. What about one fifth?

A. Probably, unless you are a chronic alcoholic.

Q. If I took one aspirin tablet, would I develop aspirin poisoning?

A. No.

Q. What if I ate a whole bottle?

A. Yes.

Q. If I smoked one cigarette in my life, would that produce a measurable increase in my risk of developing lung cancer?

A. No.

- Q. What if I smoked three packs a day for thirty years?
- A. Yes.
- Q. If I ate one teaspoon of peanut butter with the FDA's permissible level of aflatoxin, contained in it, would that give me liver cancer?
- A. No
- Q. But if I were a peanut farmer harvesting bushels of peanuts year after year, I would have an increased risk of developing that disease from the aflatoxin wouldn't I?
- A. Yes
- Q. Are these examples of high versus low dose and the relevancy of that to toxicity?
- A. Yes.
- Q. Therefore, there is a relationship between dose and toxicity?

This Socratic form of questioning leaves the witness with the only logical answer being the true one and the one for which you happen to be looking. The first direct form permitted a wrong and misleading answer which was not helpful to your case or your client. Further, it was not helpful to any Daubert or similar motion which you might want to file.

The same cross-examination issues apply for all questions relevant to causation in toxic tort (or mold tort) matters). Issues such as:

The importance of temporal relationships

The importance of knowing scientifically that an agent causes the disease in question (General causation).

The manner by which science arrives at general causation conclusions. In other words, the underpinnings of scientific knowledge.

The difference between differential diagnosis and causation analysis.

Why symptoms alone cannot be used to pinpoint in time or place, or to diagnose a disease.

Why alternate causation must be considered and ruled out before causal conclusions can be reached.

Asking the following won't work:

Q. Did you consider and rule out other causes?

A. Yes.

Effective questioning of medical/scientific or any other adverse witness, requires finesse, indirect questions, a logical progression and affirmative acknowledgments from the doponent which inevitably and logically lead to the correct answer—the answer you are seeking.

If you have any questions about this, you may direct them to me at regots@ictm.com.

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