



Two Lives: Clinical Surgeon and Medical Expert Witness

As a forensic orthopedic and spine surgeon, Dr. James Barlow has seen it all, but one case sticks out in memory.

It fell to Barlow one day a few years ago to review the records of a patient who was suffering from what she described as “full-body, excruciating pain” after what seemed to be a minor auto accident, with little damage done even to the vehicles involved, and less to the people.

“In three months since the accident,” Barlow says, “she had accrued something like 65 office visits with different providers—orthopedists, pain specialists, every specialty known to man. She had every conceivable test, and her records, tests, and radiology showed no plausible explanation for the level of pain she reported.”

“My job was to go through her records and see what might explain the extreme symptoms she reported. It turned out that her records showed that she had been reporting extreme pain to doctors, even before the accident, seemingly with no cause. When it came time for my report, I had to report that ‘No one’s going to find anything because there’s nothing to find.’ On the stand, in front of the jury, I testified that ‘I’m afraid she doesn’t need another medical specialist; she needs a psychiatrist.’” The defense prevailed.

Dr. Barlow is real, but his name is not. Since he usually testifies for defense attorneys in accident cases, he has had to sit in court more than once as plaintiffs’ attorneys accuse him of always favoring the defense. This is not even remotely true, he asserts. It is his practice to provide objective reports to attorneys, which are not always favorable to one side or the other. If his name were to appear in the NCADA News, he would undoubtedly be questioned about his remarks by a plaintiff’s lawyer. Therefore, he thought it best to cloak his identity. An editor at NCADA verified his background and credentials as a practicing surgeon and witness with more than 20 years’ experience.

A Home at IMS Legal Strategies | Juris Medicus

Barlow does want it to be known that he is one of the more than 450 physicians associated with the consulting firm IMS | Juris Medicus that supplies medical experts for litigation in Texas, Florida, Georgia, South Carolina, and, as of a few months ago, North Carolina, with occasional forays into other states.

In other medical specialties, there may be a range of legal complaints that land on an expert witness/doctor's desk, but in Barlow's specialty, virtually every case stems from an auto accident or a slip and fall. When the case comes to him, his first step, he says, is to secure every conceivable medical record of the litigating patient, and that includes securing his or her medical records from both after and before the accident.

"The thing I'm most interested in is accurate, robust, and complete medical records, and for an obvious reason," Barlow says. "I have to see whether what the patient is describing regarding pain or disability might be a pre-existing condition, or more likely to be caused by the accident itself. The attorneys on the plaintiff's side may be reluctant to part with records that fully answer that question, but I'm either going to review them or report to the court that they would not disclose this vital medical information," he added.

One strategy that he learned over his 20 years of consulting is never to accept another physician's written report or description of an MRI scan or X-ray in isolation. "That report is only an opinion," he says. "I want to see the film or MRI itself and form my own opinion of what it shows. That's what I'm being hired to do—come to my own conclusion, not dutifully accept another doctor's." And he notes, they do not always see eye-to-eye.

On occasion, he sees doctors for the other "team" surrender the full medical account only reluctantly. "They like to slow-play some of the records," Barlow says. "I'll wait for them for a time if needed, but if they're not delivered at all, I'll testify to that in court. That does not look good for the other side."

When he reviews records, Barlow always has an eye out for mentions of doctors a patient may have seen in the past.

That provides another source for background on the patient's medical history and can be key to understanding what happened to the patient, and when.



Keeping an eye out for mentions of doctors a patient may have seen in the past can be key to understanding what happened to the patient, and when.

Witness Work? Only After Hours

Like other IMS | Juris Medicus consultants, Barlow is anything but a full-time witness; in fact, he only works on forensic cases after his regular office hours. He is a full-time, hospital-based surgeon, and he is passionate about his job. "I love working with patients in my practice, and helping solve their issues," he says. The two parts of his work world are a universe apart, he notes. "With my patients, I get to ask them all the questions that will get us to a solution: 'Tell me about the accident or fall. Where does it hurt? Does anything you've done relieve the pain?' In forensic work, it is not like that. I never see the patient, just their records, from which I must come to my own conclusions and advice. However, I am still providing a valuable service seeing to it that blameless defendants are not held responsible for medical issues they did not cause, and conversely, informing defense attorneys when claims are legitimate, and litigants should be compensated.

Asked if he is free to tell his client/attorneys the truth, as opposed to what they may want to hear, he replied "Absolutely. My commitment is to the truth, not to any particular 'telling' of the facts...I have advised attorneys I'm working with that they should pay or settle a case because the accident really did cause the problem." He adds that medical and legal ethics dictate that a testifying doctor's allegiance is to the truth, and he rigorously complies with that demand.



Medical and legal ethics dictate that a testifying doctor's allegiance is to the truth.

Asked what skills he learned to succeed as an expert witness in court, Barlow says he sometimes finds he needs to switch into "teacher mode," while being careful not to sound condescending. "I always remember to look at the jury and speak to them, not to the attorney asking the questions. I may have to use some medical jargon, but I try to speak plainly and slowly and to explain medical terms, just as I would with a patient in my office. It is my job to make sure that the answers I give are understandable to jurors of every background; they're not all college graduates."

And another tip: "I'm not there to give a medical lecture on orthopedics or spine surgery. I answer the question, and then...I stop talking," he adds with a laugh.

Of crucial importance is Barlow's insistence on not answering questions beyond his expertise. "A lawyer might ask me about the mechanics of a car crash and the dynamic forces impacting the car and its passengers. My answer in this scenario would be to acknowledge that the question posed is not a medical question. I'd redirect the lawyer to ask an accident investigator whose expertise lies in that arena. That's not my wheelhouse."

Doctors are often “at sea,” Barlow observes, when it comes to the first time they are called upon for testimony. “I’m sorry to say that medical education has absolutely nothing to say about testifying in court or dealing with the legal world at all. You get your first letter from a lawyer, asking for records for some kind of litigation, and you pretty much must work it out for yourself. Like most doctors who do expert testimony, I learned my forensic skills on the job—simply by doing it,” Barlow says. He adds, “It might be a good idea for medical schools to at least alert students that they may be required to provide legal testimony down the road, and to teach them the basics.”

What has changed about forensic medicine? Barlow is asked. A few things, he says. With each passing year, he observes attorneys on both sides of cases seem to be increasingly familiar with medical concepts and terminology. “It helps me do my job when a lawyer is already up-to-speed on the subject,” he says. “And I think more knowledgeable attorneys ultimately contribute to fairer dispositions.”

Reflecting on his many hours in depositions, court proceedings, and consultations with attorneys, there are a few other moments that stand out besides the chronic patient mentioned above. A radiologist, testifying for a plaintiff, referred to a minute 1.8-millimeter tear in a spinal disc as a “herniation.” A herniation is much more serious than a mere tear, and Barlow said such a small gap should not be called a herniation at all. “The report he wrote made it sound more serious than it could possibly be. The radiologist called the case ‘acute,’ and it simply wasn’t, and the MRI proved it,” Barlow says. “It’s always fun when you can scope out the truth and get to the heart of the matter.” Or more aptly, when you get to the backbone.

By Joshua M. Peck, a freelance writer and legal communications specialist based in Georgia.

This article was originally published by [NCADA](#).

IMS Legal Strategies is a professional services firm that partners with the most influential global law firms and corporations to elevate their legal strategies. Through every stage of dispute resolution, IMS provides the full suite of sophisticated advisory services lawyers need to prevail—world-class expert witness placement, specialized litigation consulting, cutting-edge visual advocacy, and flawless presentation delivery using state-of-the-art technology. Whether identifying expert witnesses from any industry and discipline, developing themes and demonstratives, preparing witnesses for depositions and hearings, conducting focus groups and mock trials, or guiding jury selection and voir dire, we work collaboratively with our law firm partners to strengthen their cases. IMS offers a fully integrated international team with decades of practical experience in more than 45,000 cases and 6,500 trials. Our trusted expertise is hard-earned. Together, we win. Visit imslegal.com for more.