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DOCTORS FOR SALE

You can hire a medical expert who will testify to almost anything

URBAN PULSE

BY CHRIS LYDGATE

clydgate@wweek.com

The day before his two-week vacation, Joe Gallardo, a technician at Fujitsu Microelectronic's in Gresham, threw out his back lifting a 150-pound heat exchanger.

It was the sort of injury dreaded by everyone who works with his hands. Gallardo, 56, had to lie down for 90 minutes before he could finish his shift. The next day, he and his wife set off in their new motor home down to Bakersfield, Calif., hoping the pain would subside.

The journey should have taken 17 hours; instead it took three days. The pain in his lower back was so insistent that Gallardo couldn't drive more than 50 miles at a stretch.

In the next three weeks, Gallardo's troubles worsened. He began to have recurrent pain in his legs. When he returned from Bakersfield, he saw a doctor who suspected a slipped disk, a diagnosis confirmed by an MRI scan. Two months later Gallardo underwent back surgery at Mount Hood Medical Center.

At first, the operation seemed to be a success, and Gallardo returned to work. But his symptoms came back, including the leg pain. "The accident put me on kind of a downward spiral," Gallardo says, "because I can't do my job to my full potential."

Gallardo's ongoing medical woes are a cakewalk compared to the legal fallout from his injury. The accident occurred three years ago, yet his case is still grinding through the courts, because Fujitsu says his injury, isn't work-related.

In Oregon, workplace injuries are insured through the workers-compensation system. After his injury, Gallardo filed a claim for his lost wages and medical expenses--all standard practice. But Fujitsu wanted a second opinion--also standard practice. They asked him--to see an "independent" neurologist by the name of Dr. Jacob Wilson.

Wilson examined Gallardo and concluded that his pain had nothing to do with the "alleged injury;" as Wilson put it in his report. Rather, after 30 years of labor, Gallardo's spine was showing signs of wear

and tear: He had backaches from time to time, occasional arthritis. According to Wilson, Gallardo's pain was not the product of any accident. It was just a matter of an older man's back wearing out. The legal consequence of Wilson's theory: Fujitsu didn't owe Gallardo a red cent.

Confused? You are about to descend into the netherworld of injury litigation, a treacherous no-man's-land between medicine and law, where every victim is a suspect, every twinge has a price tag and every the theory, however fantastic, can flourish if only it is fertilized by money.

Injury litigation has evolved into fantastic complexity. Disputes involving auto injuries, accidents, negligence and malpractice are all fought in the civil courts. Workplace injuries are litigated in the workers-compensation system. Dockyard and railway accidents have their own separate system, and product-liability suits such as breast-implant cases are often fought in federal court.

Each venue is a world unto itself, a legal ecosystem with its own courts and judges, its own rules and procedures--even its own sub-species of lawyers. But in these proceedings, the basic conflict is the same: the injured party (the plaintiff) is trying to get money from the party it says is responsible (the defendant and its insurance company).

Workers-comp claims have dropped steadily ever since the so-called reforms of 1990, which made claims tougher to prove. In 1994, there were 31,000 disabling claims statewide, down from 39,000 in 1989. (A disabling claim involves a claim of temporary or permanent disability stemming from a workplace accident.)

This equation has spawned a multimillion-dollar business. In Multnomah County alone, millions of dollars were paid out last year in court contest, fueling an army of lawyers, paralegals, researchers, claims adjustors and assorted paper shufflers.

Perhaps the most intriguing denizens of the injury business are the doctors who provide expert medical opinions for use in the courtroom. In Portland, half a dozen firms have sprung up in the last decade specializing- in what are known as "independent medical exams," or IMEs.

These exams are supposed to provide an impartial second opinion, a way to inject a dose of medical reality into the realm of legal blather.

Many doctors do IMEs from time to time and occasionally wind up testifying in court. For some, it's an interesting sideline, an intellectual challenge.

For other doctors, however, it becomes more than a sideline.

In 1986, Wilson performed an MRI on a patient in a workers-comp case, concluding that the symptoms were psychological and there was no brain damage. The case concerned a notoriously complex and controversial inner-ear disorder known as perilymph fistula. In a devastating videotaped cross-examination, plaintiffs' attorney Gerry Dobie handed Wilson a model of the inner ear and asked him to identify parts of it. Holding the various bits of the model before him like a boy with a defective Lego set, Wilson was unable to do so.

IME's can be more profitable than seeing patients. Doctors typically charge around \$150 an hour to do the exam. But that's just the beginning: Besides the exam, they may spend several hours reviewing the medical records, writing the report or testifying in court. A single case can be worth up to \$2,000.

Doing legal work can be so lucrative that some doctors do it full-time. "It's easy money," says one doctor who refused to be identified. "Let's face it. No calls in the middle of the night. You don't have lives in your hands. You get away from the hassles of medicine."

In an era where doctors face falling incomes, rising malpractice insurance costs and the tedious paperwork of managed care, such an option has become even more tempting, especially for older physicians looking for a way to "slow down."

But there's a disturbing corollary. As doctors come to depend on IMEs for their income, they may confront an old adage: He who pays the piper calls the tune.

"I have no problem with these doctors making as much money as they can," Gallardo's attorney, Doug Swanson, says. "It's when they insist that they are impartial that gets my hackles up. I don't care who you are--that amount of money is bound to influence your opinion."

Lawyers for insurance companies point out that the hypocrisy abounds on both sides of the bar. "In any given case, you've got a Dr. Yes and a Dr. No," one lawyer says. "It's just soundbite medicine."

There's nothing particularly new about doctors testifying in the courtroom. What's new is the emergence of a *professional* caste of expert-witness physicians. What's remarkable about this business is that so few people know it exists. Its effectiveness depends somewhat on keeping its nuts and bolts out of sight, like the man behind the curtain in *The Wizard of Oz*. Doctors are convincing only when they're perceived as scientists or healers-not businessmen.

Dr. Wilson, 58, doesn't see many patients these days. But that doesn't mean he's not busy.

Wilson declined to be interviewed by *WW*, but during a 1993 cross-examination he estimated his income from IMEs at between \$150,000 and \$200,000. By his own estimate, he performs roughly 500 IMEs and testifies 20-30 times each year, besides doing numerous record reviews.

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Wilson graduated from the University of Oregon medical school in 1964. He joined the Air Force, then completed his residency in neurology at Legacy Good Samaritan Hospital. In 1971 he joined the well-respected Neurologic Clinic, where he practiced until 1990, when he took up consulting work full-time. For several years, he ran a muscular dystrophy clinic two mornings a month, but gave it up in July 1994.

It's an impressive resume. What it doesn't show is that ever since he began testifying more than 10 years ago, Wilson has done the vast bulk of his consulting work--98 percent by his own account-for insurance companies and employers.

Wilson is a prime example of what happens to doctors who get into this line of work. They tend to be cast either as Champions of the Afflicted or, as in Wilson's case, Defenders of the Faith. In other words, they develop reputations as patient-oriented or defense-oriented.

Among plaintiffs' lawyers, Wilson is legendary. He can usually be relied on, they say, to testify that illness is probably caused by pre-existing conditions or that the patient's symptoms are exaggerated.

The public still holds medical doctors in high esteem, according to the Gallup Poll, which tracks popular perceptions of professions. Fifty-four percent of Americans give doctors high marks for honesty and integrity, ranking them above engineers and below clergy. At the other end of the scale, only 16 percent of Americans trust lawyers, putting them below newspaper reporters (20 percent) but above congressmen (10 percent).

It's no surprise that a doctor like Wilson would infuriate plaintiffs' lawyers. But employers and insurance companies like Wilson, and he has plenty of work. At the same time, some judges have been less than impressed with Wilson's testimony.

The referee in the Gallardo case, William Schultz, said: "Dr. Wilson's testimony and written reports are the product of an expert witness whose mind is made up well in advance of learning the facts and who after learning the facts, nonetheless disputes them."

In December 1993, Wilson testified in another case, involving Martin Kennedy, a longshoreman who injured his lower back while lugging on a wrench. Wilson was hired by the defense--the Port of Portland--to review Kennedy's medical records and issue an opinion.

The Port claimed that Kennedy's pain was actually the result of a long history of of back trouble and was not related to the accident. This was spelled out in a statement given to Wilson when he reviewed the records.

Wilson's testimony the next day was eerily similar to the Ports statement. The parallel was so striking that administrative law Judge Steven Halpern wrote: "It seems to be that Dr. Wilson's testimony in this case should be viewed principally as a forensic exercise designed to defeat a claim, rather than as a reasoned medical judgement." Halpern ruled in favor of the longshoreman.

Wilson is by no means the only local doctor who has forged a career doing IMEs or a reputation for being friendly to the insurance industry. Their ranks include:

David Glass, psychiatrist. Psychiatrists are often called to testify in injury cases to determine if the claimant's perceived pain or disability is "all in his head." According to court transcripts, Glass spends 80 percent of his time doing IMEs, the "overwhelming majority" for insurance companies. He charges \$150 an hour to write reports, which take him anywhere from 10-20 hours, and writes roughly 15 reports a month. He grossed \$300,000 in 1994. WW was not able to contact Glass, but in depositions, he has rejected suggestions that he's not objective, stating: "The insurance companies never tell me what I'm supposed to say."

Laurence Binder, psychologist. A senior researcher at the Veterans Administration, Binder has developed a special technique, known as the Portland Digit Recognition Test, to root out malingering in head-injury cases. Whiplash victims are asked to memorize number sequences while the tester tries to distract them. Binder wouldn't talk to WW, but according to his published research, malingerers tend to do worse on the test than genuine cases. But even if you pass the test. Binder says, you could still be faking it. Either way, it makes for a comfortable income: According to court transcripts, Binder earns \$180,000 a year in consulting, almost entirely for insurance companies. (Psychologists aren't really doctors, but we thought we'd include him anyway.)

Stephen Fuller, orthopedic surgeon. Trained at Johns Hopkins, Fuller hasn't done surgery in almost 10 years, but he's got a good excuse--back and wrist problems prevent him from wielding the scalpel. His professional income now comes exclusively from consulting, 95 percent of it for insurance companies. According to court records, Fuller performs roughly 20-24 IMEs a week, charging \$400 each. He also owns Impartial Medical Opinions Inc. ("Body Shops"). Fuller didn't return *WW*'s calls.

Peter Nathan, hand surgeon. Nathan is by all accounts a good surgeon who has a significant private practice. But he's also a favorite of insurance lawyers because of his conservative view of carpal tunnel syndrome--he insists it is seldom, if ever, caused by repetitive motion in the workplace. Rather, Nathan believes that carpal tunnel has more to do with an inherited predisposition. *WW* was not able to contact him.

The fact that a doctor gets a lot of money from insurance companies doesn't *prove* anything, but it does suggest a certain bias--which is not lost on plaintiffs' lawyers.

Even defense lawyers given the guarantee of anonymity, admit there's nothing independent about an IME. "It's a real problem," one lawyer says. "This is an industry where people are totally into developing whatever sells best to a jury."
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To plaintiffs' attorneys, "insurance doctors" are a despicable breed. According to one plaintiffs' advocate, "Some of these people would say the Pope is a malinger-er." When one member of the plaintiffs' bar was informed by phone that *WW* was doing an article about medical witnesses who testify for insurance companies, he banged on the table with glee. "The whores!" he bellowed into the receiver. "You want to write about the whores!"

This indignation is a byproduct of the barbed-wire mentality of injury litigation. "It's a battle out there," one plaintiffs' lawyer says, "between the little guy--the injured worker, the accident victim--and the insurance companies."

It's also fueled by envy: In most cases, plaintiffs' lawyers do not choose their client's doctor, whereas the insurance company can select any doctor it likes for the IME.

Plaintiffs' attorneys do sometimes refer their clients to doctors for second opinions. In such cases, they tend to select doctors they hope will be sympathetic. They include:

Kip Kemple, rheumatologist. Kemple is one of a handful of doctors in Oregon who is convinced that breast implants can cause autoimmune disease. He often sees clients referred to him by breast-implant law firm Williams and Troutwine.

Robert Grimm, neurologist Grimm is an expert in "inner ear concussion syndrome." Most of his work is in private practice, but he does show up for plaintiffs more than many of his colleagues.

The emergence of a professional class of medical experts has pushed lawyers on the other side of the courtroom to find new ways to attack them. In fact, the bar maintains an intelligence network of sorts on expert witnesses, swapping depositions and sharing information. The Oregon Trial Lawyers Association keeps a database of expert depositions so their members can zero in on inconsistencies or embarrassing incidents. "It gets nasty," one expert witness says. "They try to paint you as an evil, money-grubbing hack. They'll find out every little thing you ever said--anything's fair game for

destroying your credibility."

Because court testimony is all sworn, once a doctor says something on the stand, he cannot later take it back--to say two different things would be perjury. The longer a doctor has been in the business, the longer his paper trail grows and the easier he becomes to discredit. "Eventually, they get used up," plaintiffs' attorney Elden Rosenthal says.

In the Middle Ages, the Catholic church held trials to determine if new saints should be canonized. These hearings featured an attorney known as the Defender of the Faith, whose job was to poke holes in the saint's cue and make sure frauds weren't enshrined in the calendar.
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That's not to say every doctor who's a regular in the courtroom is a scoundrel. Many, even most, do their best to act with integrity. "I'm a doctor first," says psychiatrist Ron Turco, one of few testifying physicians who is highly regarded by lawyers on both sides of the bar. "Whoever hires me, that's their problem."

"Yes, there are some doctors who will always side with the defense," says insurance lawyer and state Rep. Kevin Mannix. "And there are others who will call it as they see it. But who's forcing them to do this? We are! We're enticing these folks with incredible fees. If there's any prostitution in the medical profession, the lawyers are the pimps! We dragged them into it--they've become a necessary evil in our litigious society."

When they allow themselves to become polarized and biased, doctors betray the dispassionate scientific principles they were schooled in and adopt the heat-seeking logic of the legal world, where conclusions come first and arguments are constructed later. All of which risks tarnishing the currency that sets them apart from the legal profession--the fact that the public still trusts them. *WW*

What happens when busy lawyers don't have time to track down busy doctors? Enter the middlemen. Portland has several consulting firms that, for a handsome fee, schedule independent medical exams (IMEs) for harried lawyers.

It works like this: If you get seriously hurt on the job or in a car crash, the insurance company will send you to one of these firms, where you will be examined by an "independent" doctor.

IME companies reject the notion that their doctors are in any way meretricious, and doctors, too, deny the charge. But a glance through their promotional literature could lead to some doubts. Here's a partial list of local IME shops:

Medical Consultants Northwest

Based in Seattle, MCN now has offices in Washington, Oregon, Minnesota and Illinois. Its local operation is on Southwest Greenburg Road in Tigard. MCN's glossy brochures emphasize accuracy and thoroughness, but internal documents suggest that service has crossed the line into servility. MCN publishes a quarterly newsletter for its consulting doctors, replete with tips for writing reports. In a recent issue, MCN advised: "When giving a diagnosis it helps if you indicate that the patient is medically stationary and that the condition is not related to a motor vehicle accident, etc."

Columbia Medical Consultants Inc

Headquartered near the Convention Center with satellite offices in Salem, Bend and Vancouver, Wash., CMC recently lured former SAIF top doc Robert Strukel to its ranks. Slick sales material boasts that CMC's doctors will always call the insurance company for consultation *before* dictating an IME report. Company representatives deny that this has anything to do with doctoring reports. "If we thought we had a physician who would not provide an independent exam, we would not use that doctor," administrative director James Higginbotham says. "Our physicians are going to make judgments based on objective findings. They aren't getting direction from the claims people."

Impartial Medical Opinions Inc

Located in Lake Oswego, this outfit is owned by orthopedist Stephen Fuller. According to court transcripts, the firm grossed \$850,000 in 1994. Plaintiffs' advocates scoff at the company's name.

Orthopaedic Consultants

Founded in 1974, this is one of the oldest IME shops in the area. Though numbers fluctuate, there are 60 doctors on the list, 25 to 30 of whom are used regularly. Company representatives declined to give out patient volumes or gross income. "It's a very competitive field," a receptionist said. "And for some doctors it can be lucrative. But it's very hard work."

Western Medical Consultants

WMC, whose offices are located at Southwest 10th Avenue and Columbia Street, offers a long list of consulting doctors. One of its brochures explains the purpose of IMEs to nervous patients. Considering that the vast majority of such exams are done with the express purpose of weeding out dubious claims, the pamphlet ends on a rather Orwellian note: "So relax. With your cooperation, we can do our part to help you." Thanks. Where's the IRS when you need it? --CL