

Editorial

# Why I testify for some patients/plaintiffs, and against some doctors/defendants

Nancy E. Epstein<sup>1,2</sup>

<sup>1</sup>Professor of Clinical Neurosurgery, School of Medicine, State University of N.Y. at Stony Brook, New York, <sup>2</sup>Chief of Neurosurgical Spine and Education, NYU Winthrop Hospital, NYU Winthrop Neuro Science, Mineola, New York, USA

E-mail: \*Nancy E. Epstein - [nancy.epsteinmd@gmail.com](mailto:nancy.epsteinmd@gmail.com)

\*Corresponding author

Received: 28 October 18 Accepted: 29 October 18 Published: 18 December 18

**Key Words:** AANS Professional Conduct Committee, deter surgeon testimony, overly extensive surgery, plaintiff testimony, too many spine surgeons, unnecessary surgery

I learned a lot from my father, Dr. Joseph Epstein, a world-renowned and pioneer spinal neurosurgeon. This included that, in general, a neurosurgeon did not testify against another neurosurgeon in malpractice cases. For many years, I accepted the mores of my profession. However, for the last 10 years, I have testified in cases in which I believed the plaintiff was a victim of unnecessary, inappropriate, and/or negligent surgery.

I still believe that our current medicolegal system is inadequate. It inappropriately punishes many surgeons, and often compensates the wrong patients.<sup>[1]</sup> So you may ask, why cooperate with such a system? My answer for over 25 years was I should not.

However, I had become increasingly concerned about the number of patients harmed by spinal surgeons. In 2013, I documented that the majority of patients I saw who were told by a surgeon that they needed surgery, in my opinion, were offered the wrong operation (33.3%) or did not require any operation at all (60.7%).<sup>[2]</sup>

When I first started operating with my father in 1982, this was not the case. What has changed? There are a number of factors including relatively higher reimbursement rates for spine operations and the increased number of spinal surgeons. Nassau County on Long Island, NY today has many times the number of spinal surgeons it had in 1982. There is also the seductive lure of new techniques and instrumentation.

Whatever the cause, I have witnessed a huge increase in unnecessary or inappropriate spinal surgery. Because

of the autonomy doctors have, hospitals cannot do much about this. Thus, it is left to us, as fellow spinal surgeons, and our professional organizations to act. Unfortunately, this has not happened. In my opinion, the American Association of Neurological Surgeons' (AANS) Professional Conduct Committee (PCC) appears to me to spend more time trying to deter surgeons from testifying for the patient/plaintiff through their grievance procedures than it does in dealing with this problem. (More about this in future editorials.)

A decade ago, I reached my tipping point. I had seen too many patients permanently harmed by spinal surgeons, and I do not mean due to expected or routine complications.

This is an open access journal, and articles are distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 License, which allows others to remix, tweak, and build upon the work non-commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.

Access this article online	
<b>Quick Response Code:</b> 	<b>Website:</b> <a href="http://www.surgicalneurologyint.com">www.surgicalneurologyint.com</a>
	<b>DOI:</b> 10.4103/sni.sni_374_18

**How to cite this article:** Epstein NE. Why I testify for some patients/plaintiffs, and against some doctors/defendants. *Surg Neurol Int* 2018;9:256.  
<http://surgicalneurologyint.com/Why-I-testify-for-some-patients/plaintiffs,-and-against-some-doctors/defendants/>

Rather, I am referring to serious disabilities attributed to operations that should not have been done at all – or to surgery that was far too extensive, when a less extensive operation would have sufficed. Although I recognize the serious problems with our current medicolegal system, I intend to continue to testify on behalf of patients/plaintiffs who have been unnecessarily harmed.

What would my father say? I have no doubt, if he were alive, he would applaud my actions. Because, he believed, and taught me, that the patient's well-being ALWAYS comes first.

#### **Financial support and sponsorship**

Nil.

#### **Conflicts of interest**

There are no conflicts of interest.

#### **Disclaimer**

The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of the Journal or its management.

#### **REFERENCES**

1. Epstein NE. It is easier to confuse a jury than convince a judge: The crisis in medical malpractice. *Spine (Phila Pa 1976)* 2002;27:2425-30.
2. Epstein NE. Are recommended spine operations either unnecessary or too complex? Evidence from second opinions. *Surg Neurol Int* 2013;4(Suppl 5):S353-8.