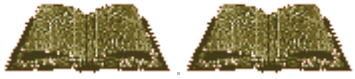
ANIL AGGRAWAL'S
Internet Journal of
Forensic Medicine and Toxicology
The world's first online journal devoted entirely to forensic medicine and toxicology · Published 1 January and 1 July

VOL. 3, NO. 2
Downloaded from www.anilaggrawal.com · ISSN 0972-8074 (Online) · https://www.anilaggrawal.com/ij/vol_003_no_002/reviews/tb/page017.html

Book Reviews: Technical Books Section



OTHER REVIEWS IN THIS ISSUE
[Technical Books Section] Pages: |1| 2| 3| 4| 5| 6| 7| 8| 9| 10| 11| 12| 13| 14| 15| 16| 17| 18| 19| 20|
[Popular Books Section] Pages: |1| 2| 3| 4| 5| 6|

[Books on CD/Audio Tapes] Pages: |1|

[Software/Multimedia] Pages: |1|

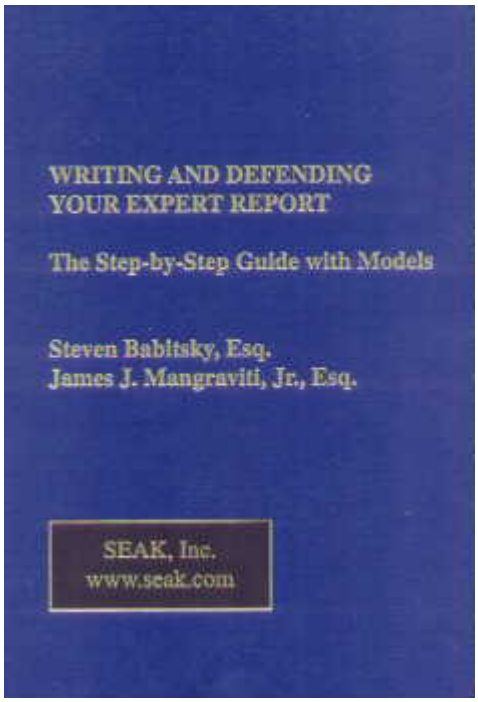
[Online Courses] Pages: |1|

REVIEWS IN THE PREVIOUS ISSUE | NEXT ISSUE

AN EXCELLENT GUIDE FOR MEDICOLEGAL PROFESSIONALS

Writing and Defending Your Expert Report - The Step by Step Guide with Models, 1st Edition, *by* Steven Babitsky, Esq and James J. Mangraviti, Jr. Esq. Hard Bound, 7" x 10".
Seak Inc., Legal and Medical Information Systems, P.O. Box 729, Falmouth, MA 02541. ; . Publication Date 2002. xvi + 404 pages, ISBN 1-892904-21-7. Price $99.95

Click Cover to buy from Amazon



As a forensic pathologist, I know the value of writing a good and defensible expert report. Day in and day out, we are asked to opine on legal matters - mostly deaths occurring in suspicious circumstances. We have to undertake all kinds of death investigations - suicides, homicides, dowry deaths, automobile accidents, jail deaths, police custody deaths, death during operative procedures, deaths during police interrogation, death during riot control exercises and so on. And all these investigations end in an "expert report" - our opinion on how that death occurred, who was responsible, whether the death could have been avoided, should any compensation be given and so on. This expert report has to later defended in a court of law. And there is a full battery of hostile lawyers to tear your "expert opinion" apart. It is at this time that you realize how valuable and useful can a good "expert report" be. A good report can save us a lot of unnecessary embarrassment in courts.

Steven Babitsky, JD



Steven Babitsky, JD, is the President of SEAK, Inc. He was a personal injury trial attorney for twenty years and is the former managing partner of the firm Kistin, Babitsky, Latimer & Beitman. Mr. Babitsky is the co-author of the texts *How to Excel During Cross-Examination:*

Techniques for Experts That Work, and *How to Excel During Depositions: Techniques for Experts That Work*. Attorney Babitsky is the co-developer and trainer for the "*How to Be an Effective Medical Witness*" seminar, the seminar leader for the National Expert Witness and Litigation Seminar, and the scriptwriter for the videos "*How to Be an Effective Medical Witness*" and "*The Expert Medical Deposition: How to Be an Effective and Ethical Witness*."

James J. Mangraviti, Jr., JD



James J. Mangraviti, Jr., JD, has trained hundreds of expert witnesses across the United States and Canada. He is a former trial lawyer with experience in defense and plaintiff personal injury law and insurance law. He currently serves as Vice President and General Counsel of SEAK, Inc. Mr. Mangraviti received his BA degree in mathematics *summa cum laude* from Boston College and his JD degree cum laude from Boston College Law School. His publications include the texts *SEAK Law School for Physicians, Law School for the Safety and Health Professional, The Independent Medical Examination Report: A Step-by-Step Guide with Models, The Successful Physician Negotiator: How to Get What You Deserve, How to Excel During Cross-Examination: Techniques for Experts That Work*, and *How to Excel During Depositions: Techniques for Experts That Work*.

Quite frequently we have to opine upon a so-called "expert report", written by someone else. The usual circumstances are as follows: A death in suspicious circumstances has occurred. The relatives are well-connected, and know several "higher-ups". A board of three medical doctors is set up from three different medical institutions. A thorough enquiry/deliberations occur between the medical experts. A report is prepared. This report is found to have some real/imaginary loopholes. A hue and cry is made. And another medical board is set up to "review" the first report. Again we realize how valuable a good expert report can be. Had the first report been prepared with care, such a nasty situation could never have arisen.

View this book on Amazon

I for one, have long pined for a book which could explain us the secrets of writing a good and defensible expert report. That is why when this book came to me for review, I read it from cover to cover. I found it an extremely valuable book teeming with good advice.

The book has a practical relevance to all those who have to prepare expert reports and then face cross-examination from clever and hostile lawyers. It is a practical manual, and as one can expect from books of such nature, more than one third of it has been devoted to model reports. These model reports (included in Appendix B) cover as many as 141 pages. In a book, that comprises of 391 pages of actual reading material (excluding index etc), this amounts to almost 36% of the total space. There are twelve reports in all, ranging from such subjects as toxic tort, medical negligence and accident reconstruction to correctional facility safety evaluation, biomechanics and trade secret declaration! Almost every expert field, where one needs to make an "expert report" seems to have been covered.

I went through some of these reports and found that they were very systematic and exhaustive. Going through them tells us quite plainly and clearly how dramatically we can improve upon our own reports. Take for example the first one on toxic tort. The report is supposed to have been prepared by a medical expert Max Daley, (Clinical Professor of Medicine), at the request of William Klein, Attorney at Law. The brief facts are as follows: Terrance O. Marray deceased worked for 15 years at Acme Co. in close proximity to strong electron-producing machines used as printing presses. Due to this exposure to radiation, he developed a bone marrow disorder, myelodysplastic syndrome, which was followed by the development of acute myeloid leukemia. This resulted in his death. The attorney is trying to get compensation for him. To prove that the resulting bone marrow disorders did result from exposure to the X-rays, he hired Max Daley. Daley's report is given as the first model report in Appendix B.

The report - as all the rest of them are - is very exhaustive and systematically prepared. The expert doctor first writes a letter to Mr. Klein stating the circumstances under which the report has been prepared. He then introduces himself, in which he gives his qualifications. This includes references to his private practice, books written by him, lectures delivered by him in the relevant field and so on.

The doctor then goes on to catalogue all the materials reviewed and examined and Medical/Clinical history of Terrance Murray. Then the expert dwells on such subjects as "What is myelodysplastic syndrome or myelodysplasia", "what is acute myelogenous leukemia", "Source of radiation", "relationship between ionizing radiation and cancer" and so on. Even historical aspects of ionizing radiation, including X-rays, as a cause of cancer are examined in great detail! Anyone reading such a report would be completely informed about the relationship between the two. And in the end the doctor summarizes to say that the ionizing radiation was indeed responsible for the cancer.

The whole report is so convincingly prepared that any judge or jury reading it would hardly hesitate awarding compensation to the dependents of the deceased at once. I am sure medical practitioners would have a lot to learn from just this single report. Of course there are several more in this appendix.

At the beginning of each model report, the authors point out the reasons, why the report is notable; and also discuss the areas where a possible improvement could be made.

The main part of the book is divided into sixteen chapters. Each chapter deals with a particular aspect. Copious practical examples are given in each chapter. The technique which the authors

employ to illustrate their point is to first give portions of a defective report and then discuss the possible cross-examination that can generate from that report. And finally tell us how that report should have been prepared.

Let us take an example from Chapter 5 on Formatting. I am sure most of us would think that in an expert report, formatting would hardly be important. But the authors - quite convincingly - show us that this may not be the case. This is what they have to say on page 51.

Table of Contents

S.no.	Topics	Page no.
1	Introduction	1
2	Discoverability of Expert Reports and related material	11
3	Legal Requirements: Rule 26 Reports, reports used in summary motions, and magic words	19
4	Preparation of Reports and the assistance of counsel	31
5	Formatting	39
6	Properly disclosing precise documents reviewed	55
7	Stating the Expert's qualifications accurately and objectively	65
8	How to best express and document detailed and specific factual assumptions	73
9	The importance of staying within one's true area of expertise	89
10	Stating opinions and conclusions in a defensible manner	99
11	How to use citations to texts, guidelines, codes, articles, and other authority to bolster a report's credibility	117
12	Making your report powerful, persuasive, and understandable	129
13	Damaging superfluous language and information that should not be included in expert reports	167
14	Red-flag words to avoid	183
15	Proofreading for mistakes	199
16	Defeating Counsel's tactics	205
Appendix A	Advice from the Trenches	231
Appendix B	Model Reports	251

One must number the pages of a report. A good format to follow will list the page number and total number of pages (e.g., page 7 of 15). Failure to number the pages makes the report appear unprofessional and sloppy.

Example 5.71: Failure to number pages

The following cross-examination regarding page numbers is an example of the way an expert can needlessly lose credibility by preparing a sloppy report without page numbers.

Cross-examination:

Q. I am looking at what appears to be page six of your report. You didn't number the pages, sir?

A. Let me see, I guess not.

Q. Was that done intentionally?

A. No. My secretary probably forgot.

Q. Did you write your report or did your secretary?

A. I did.

Q. Did you read the report carefully before you signed it?

A. Of course.

Q. You didn't notice that there were no page numbers?

A. Is there a point to this?

Q. Did you carefully prepare and read over this report?

A. Page numbers were not and are not important. It's a little detail. My report is my report and I stand by it.

Q. What other little details that you didn't think were important did you omit from your report?

This last sentence comes as a stunning blow. I for one certainly could not think that such a trivial mistake could lead to such a vicious - and convincing - cross examination. The book is teeming with similar examples. Hundreds upon hundreds of them are there covering all aspects of report writing. Some of the areas covered are how to properly disclose the documents reviewed, how to state the expert's qualifications accurately and objectively, why the expert should stay within one's own area of expertise, how to make the report powerful, persuasive, and understandable.

This book is not only a must for all scientific and medical experts, but I would imagine even for lawyers. For this book very cleverly shows how lawyers can exploit mistakes made by experts. I would recommend this book to doctors, all kinds of scientific experts and lawyers. I certainly learnt a great deal from this book, and I am sure, everybody else will.

Order *Seak Inc.* Books by clicking here.
or via

Request a PDF file of this review by clicking here. (If your screen resolution can not be increased, or if printing this page is giving you problems like overlapping of graphics and/or tables etc, you can take a proper printout from a pdf file. You will need an Acrobat Reader though.)