



To a Reasonable Degree of Medical Certainty

Virtually every trial attorney at the close of their direct examination of a medical expert will ask their medical witness if their opinion was *to a reasonable degree of medical certainty*.

What does a reasonable degree of medical certainty mean?

It merely means *more likely than not*. That is the standard of proof in civil litigation.

What is the origin of the phrase “to a reasonable degree of medical certainty?”

In the early part of the 20th Century, Chicago attorneys began using the phrase “*to a reasonable degree of medical certainty*” in questioning their medical experts in order to establish proof of future medical damages. Irwin Goldstein, a law professor at Northwestern University Law School in 1935, wrote a popular trial advocacy book in which he used the Chicagoland phrase. This is why attorneys throughout the United States use the phrase in questioning their medical experts.

What is the medical meaning of the phrase “to a reasonable degree of medical certainty?”

There is no medical meaning to the phrase. The phrase means nothing to the medical expert. Nowhere in their education, training, or practice has the medical expert ever heard the phrase. Most medical experts have no clear understanding that the phrase simply means “*more likely than not*”. This is because the phrase is not a medical phrase but rather a legal phrase that only arose in jurisdictions outside of Chicago due to Irwin Goldstein’s trial advocacy book. Frankly, many attorneys do not know that the phrase merely means “*more likely than not*”. Most lawyers use the phrase because they have heard it use by other lawyers and assume it has a medical meaning.

How can the trial attorney use the information in this brief article?

The trial attorney cross examining the medical expert can simply ask the following line of questioning:

Doctor, you have just testified that your opinion in this matter is to a reasonable degree of medical certainty, correct?

The doctor will then likely answer “*correct*”.

Doctor, please define what is meant by the phrase “to a reasonable degree of medical certainty”.



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To a Reasonable Degree, cont.

The doctor may answer that the phrase means *more likely than not*. However, there is a good chance that the doctor will fumble and not have a clear answer to the question. This is because the doctor has never been asked that question before and does not know that the phrase means *more likely than not*.

The jury will see the doctor fumble after having answered the question favorably for the direct examining attorney without actually knowing what the question means. The jury will see

that the doctor answered “yes” without actually understanding the question only because he or she believed that the direct examining attorney wanted him or her to answer “yes”.

There is a good chance that this will destroy the credibility of the medical expert in the eyes of the jury. This has been the usual result when the author of this article has used this approach in his trial practice. Rarely has the doctor being cross examined given a clear answer to the question.

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