

## Physicians testified for tobacco companies against plaintiffs with cancer, study finds

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Despite scientific evidence to the contrary, a small group of otolaryngologists have repeatedly testified, on behalf of the tobacco industry, that heavy smoking did not cause the cancer in cases of dying patients suing for damages, according to a study by a Stanford University School of Medicine researcher.

"I was shocked by the degree to which these physicians were willing to testify, in my opinion in an unscientific way, to deny a dying plaintiff—suffering the aftermath of a lifetime of smoking—of a fair trial," said Robert Jackler, MD, professor and chair of otolaryngology-head and neck surgery, referring to the physicians cited in the study as a "pool of experts willing to say over and over again that smoking didn't cause cancer."

The study will be published online July 17 in *Laryngoscope*.

Jackler, who holds the Edward C. and Amy H. Sewall Professorship in Otorhinolaryngology, conducted a year and a half of research, which included reading through thousands of pages of publicly available, expert-witness depositions and trial testimony. He then reviewed the scientific literature to see if testimony by expert witnesses for the [tobacco industry](#) was supported by evidence. Jackler said that a physician serving as expert has an ethical obligation to interpret the scientific data in a fair and balanced manner. The literature, he found, repeatedly repudiated the testimony. "The study found they used scientifically invalid methods to support their testimony," he said.

## Salted fish, mouthwash—but not tobacco?

The study reports that six board-certified otolaryngologists were paid by one or more of the tobacco companies R.J. Reynolds, Phillip Morris and Lorillard to serve as [expert witnesses](#). These physicians gave testimony that indicated a multiplicity of environmental factors, ranging from exposure to cleaning solvents to the consumption of salted fish to the use of mouthwash, were more likely to have caused the plaintiff's head and neck cancers than years of heavy smoking. The cases occurred between 2009 and 2014. One physician said he was paid \$100,000 to testify in a single case. Another admitted that her opinion was written by tobacco company lawyers and then approved by her. Still another rejected reports from the Surgeon General as authoritative sources.

Together, the six otolaryngologists in this study helped to defend the tobacco industry in more than 50 cases.

"Evidence shows that this testimony, which was remarkably similar across cases, was part of a defense strategy shaped by tobacco's law firms," the study said. "By highlighting an exhaustive list of potential risk factors, such as alcohol, diesel fumes, machinery fluid, salted fish, reflux of stomach acid, mouthwash and even urban living, they created doubt in the minds of the jurors as to the role of smoking in the plaintiff's cancer."

The study said the physicians were "well-coached" by tobacco lawyers, and their testimony was "faithful to the tactical narrative that there are many, many causes of head and [neck cancer](#)—and that factors other than smoking must have caused the plaintiff's disease."

## 'Obvious fallacy'

The study said: "An obvious fallacy of this argument lies in the fact that literally billions of nonsmoking people are exposed regularly to gasoline fumes, use cleaning solvents, eat salted fish or live in urban environments. Were these causative factors for [head and neck cancer](#), with even a minute fraction of the potency of tobacco, the rate of head and neck cancer among nonsmokers would be much greater than what has been observed."

Jackler has for years conducted scholarly research focusing on the tobacco industry's influence on public health. He has published multiple studies on the impact of the tobacco industry's advertising, marketing and promotion.

In this study, he reviewed nine cases that resulted from a 1999 Florida class-action suit (*Engle v. Liggett*) in which an award of \$145 billion was reversed on appeal. The Florida Supreme Court decision in 2006 that upheld the *Engle* jury decision of widespread wrongdoing on the part of the tobacco industry enabled individual cases to proceed.

"The addictiveness of nicotine, the dangers of tobacco and the track record of industry deception and misconduct are considered factual in subsequent trials," the study said. "This has resulted in thousands of individual *Engle* progeny cases. Because the cases primarily focused on whether tobacco caused the plaintiff's diseases, expert testimony was crucial."

## **Plaintiffs' cancers**

For the study, Jackler examined the small fraction of these progeny cases that involved head and neck cancer. Patients in these cases had cancer in sites such as the larynx, the mouth and the esophagus. All of the plaintiffs in these cases were long-term, heavy smokers—more than a pack a day for many years. The key issue in these lawsuits was whether

it was more likely than not that smoking caused the individual plaintiff's cancer (greater than 50 percent probable is the legal standard). Although since the 1990s tobacco companies have admitted that their products cause cancer, in litigation they vigorously argue that smoking did not cause an individual plaintiff's cancer.

"Otolaryngologists in this study routinely expressed the opinion that, more likely than not, tobacco did not cause the smoker's head and neck cancer," the study said. "It is not credible that even a lengthy list of these causes come even remotely close to approaching the greater than 50 percent cause."

In contrast, the scientific literature demonstrates that tobacco directly contributes to head and neck cancers at a greater than 50 percent likelihood, Jackler said.

"The [tobacco](#) industry identifies the best experts that money can buy, trains them in their well-honed narrative to manufacture doubt in the minds of the jury and makes use of them over and over in case after case," the study said. Given the ethical traditions of medicine, it seems likely that these physicians believe their well-compensated testimony on behalf of [tobacco companies](#) occurs in the shadows, out of view of their families, friends and professional colleagues, Jackler said.

Provided by Stanford University Medical Center

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