

Better definition needed for reasonable medical certainty in child abuse cases

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Physicians use different definitions of "reasonable medical certainty" when testifying as expert witnesses in child abuse cases. The variability is troubling because it could result in flawed rulings, according to

researchers at Penn State College of Medicine.

In court cases involving alleged child abuse, expert medical witnesses are asked to testify if abuse has occurred and when. Attorneys commonly ask [expert witnesses](#) to express their opinions in terms of reasonable medical certainty. However, there is no clear legal definition for the term.

In many cases, the threshold of probability that constitutes reasonable medical certainty is left to the discretion of the experts. And despite the court's reliance on this opinion in reaching a verdict, experts are seldom asked to share this probability with the court during their testimony.

To better understand how experts define reasonable medical certainty in the context of court cases, Mark S. Dias, professor of neurosurgery and pediatrics, along with investigators at Penn State Hershey Medical Center and Penn State Dickinson School of Law, surveyed medical specialists who testify in cases of suspected abusive head trauma.

The 294 respondents to the email survey included child abuse pediatricians, forensic pathologists, pediatric neurosurgeons, pediatric ophthalmologists and other specialists from across the country.

Although 95 percent of respondents had testified in court, only 37 percent of them said they were comfortable with their definition of reasonable medical certainty.

About half of the respondents defined it as a probability greater than or equal to 90 percent. However, almost a third of respondents defined reasonable medical certainty as at least 50 percent probability, while 2 percent of the experts used an even lower threshold. The researchers published their results in *Child Abuse and Neglect*.

"The majority of respondents clumped around a certain range of probability for their definition of reasonable medical certainty, but there was significant variability," Dias said. "On the one hand there were people who said they needed to be 99 percent sure that abuse had occurred, while people on the other end of the spectrum were comfortable with being 25 percent sure."

Most of the study participants—95 percent—said that child abuse had to be the most likely diagnosis to constitute reasonable medical certainty. However, 10 of the experts for whom the reasonable medical threshold was 70 percent or higher also said that child abuse did not have to be the most likely diagnosis to satisfy their threshold of reasonable medical certainty.

"They said, 'I need to be 70 percent sure that abuse has occurred,' and then they said that abuse could be the second or third—even fifth—most likely diagnosis," Dias said. "That doesn't really jive."

Some respondents also shifted their reasonable medical threshold depending on the setting or charges. A significant minority of [respondents](#)—27 percent—used a different interpretation of reasonable medical threshold for criminal court versus family court, and 9 percent reported using a different interpretation when the criminal charge was murder versus assault and battery.

This approach is inappropriate, according to the researchers.

"If you're testifying to a reasonable degree of medical certainty, it doesn't matter what court you're in or what the charges are," Dias said. "The [court](#) requires you to use the same standard, although it won't define it for you."

The variability in definitions for reasonable medical threshold means

that judges and jurors don't know with what degree of certainty a witness is testifying. When expert witnesses testify for opposing sides, their opinions may not be based on the same threshold of certainty.

"The juries think that everybody's testifying to the same degree of certainty, and that may not be true," said Dias.

The researchers suggest that expert medical witnesses should state their threshold of reasonable medical certainty when they testify.

"Jurors are listening to the expert witnesses and they're being told two different things by two different experts," Dias said. "The jury then has to decide which of these experts is more believable. Knowing that one expert defines their degree of certainty as 98 percent and the other defines it as 50 percent would help the jury."

Action from the legal community is also warranted, according to the researchers.

"If they're not going to better define this term, they open up potential for injustice on both sides," Dias said. "Guilty people may be let off and innocent people may go to jail. The stakes are too high for us to continue the way we've been doing it."

The researchers are now conducting a study to determine how judges and attorneys understand and apply reasonable medical threshold in cases of suspected [child abuse](#).

Provided by Pennsylvania State University

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