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INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

[Fraud Unmasked in MMR/Autism Litigation](#)

January 6, 2011 by [Hall Marston](#)

From the late 1990's, a wave of litigation and controversy has washed over the public health debate concerning the alleged connection between the then widely-used childhood MMR (measles, mumps and rubella) vaccine and autism. Beyond the scores of lawsuits, including class actions, the whirlwind drove down the vaccination rate (because concerned parents' reservations about vaccine safety), which in turn increased the rate of disease and corresponding bumps in the morbidity and mortality tables.

The genesis of this maelstrom was a February, 1998 article in the prestigious medical journal *Lancet*, by Dr. Andrew Wakefield, M.D. Unknown to the journal's editors, Dr. Wakefield had been on retainer for a British solicitor, Richard Barr, for two years prior to the article's publication, and ultimately Mr. Barr paid Dr. Wakefield well over half a million dollars, plus expenses. Their apparent objective was to establish a temporal association between vaccination and the onset of autism, to foment litigation against the MMR industry. Beyond the public disgrace, this gambit cost Dr. Wakefield his medical license, forced the *Lancet* to withdraw and repudiate the article, and tarnished the reputations of other researchers associated with the article.

Medical Records Falsified

On January 5, 2011, the journal *BMJ* published a scathing article by Brian Deer, entitled "Secrets of the MRR scare: How the case against the MMR vaccine was fixed." (See attached.) Mr. Deer details his investigation of how Dr. Wakefield literally falsified the medical records of the twelve cases reported in the *Lancet* article in order to conjure up the purported association. It also demonstrated that the parents of some of the children studied had been channeled to Dr. Wakefield by an anti-vaccine campaign, called JABS. Dr. Wakefield even admitted that before he even examined some of the children, he had sent the parents literature setting out his theories and plans, presumably to recruit the children for the research and inclusion in the litigation, and possibly influence the parents' reports of symptoms and onset.

Review panels that have investigated the *Lancet* article concluded that it was conducted in violation of multiple ethical guidelines governing research of cases involving children, including that the research was *contrary* to the child's clinical interests. Indeed, the drive to find cases and evidence of the temporal associate led to medical procedures, such as colonoscopies and lumbar punctures, that were not clinically indicated.

The Takeaway

Ever since the Supreme Court 1993 decision in *Daubert*, the challenge of admitting only reliable expert testimony has been in the forefront of nearly all U.S. toxic exposure products liability litigation, of which the MMR cases are part. *Daubert's* core premise was that courts and juries can rely on objective scientific research for purposes of determining esoteric technical matters, and thereby be protected from junk science created for



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litigation purposes. The Wakefield incident shows that defendants should pursue discovery that goes behind the publication and the peer-review, to ferret out whether interested lawyers provide the core motivation for the research, or whether truly disinterested scientific curiosity prompted the work.