

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ALINA BOYDEN and  
SHANNON ANDREWS,

Plaintiffs,

Case No. 17-cv-264

v.

STATE OF WISCONSIN DEPARTMENT  
OF EMPLOYEE TRUST FUNDS, et al.,

Defendants.

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**PLAINTIFFS' RESPONSE TO DEFENDANTS'  
NARRATIVE STATEMENT OF EXPERT WITNESS QUALIFICATIONS**

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Plaintiffs, Alina Boyden and Shannon Andrews (collectively "Plaintiffs"), through their undersigned attorneys, hereby respond to Defendants' proposed narrative statement of their expert witnesses' qualifications.

**1. David V. Williams**

Plaintiffs object to Defendants' description of Mr. Williams' employment as a Senior Healthcare Consultant at Milliman, Inc. on the basis that it is vague, ambiguous, and misleading to the jury. Defendants state that Mr. Williams was subjected to a "rigorous evaluation process" to become "qualified" for his current position. However, Defendants do not articulate the process or criteria through which Mr. Williams was evaluated. Defendants should explain the process and allow the jurors to determine for themselves whether or not it can reasonably be considered "rigorous".

Further, Plaintiffs object to Defendants' description of Mr. Williams' role at Milliman to the extent that it obscures the fact that Mr. Williams is not an actuary. (Dkt. # 184, p. 2). Defendants note that Milliman is an "actuarial consulting firm" that employs actuaries, but does not specify that Mr. Williams is one of the "other professionals" employed by Milliman. This distinction is material because actuaries must pass multiple professional licensing requirements and are subject to disclosure requirements and professional standards of practice. Mr. Williams, who is not an actuary, is not subject to any of these requirements. (Dkt. # 111, Williams Dep. at p. 68:22-23). Plaintiffs propose the following language to avoid the possibility that the jury will misunderstand Mr. Williams' qualifications, and erroneously believe that he has undergone the same rigorous examinations and licensing requirements of an actuary or that he is bound by actuarial standards:

*Mr. Williams was qualified as a Senior Healthcare Consultant through an internal evaluation process that Milliman relies upon to designate a consultant as an approved professional. Mr. Williams is not an actuary, but works with actuaries on a regular basis. He is not bound by the licensing requirements, standards of practice, or disclosure requirements of an actuary.*

Plaintiffs also object to the description of Mr. Williams' professional responsibilities on the grounds that it is misleading to the jury. Defendants assert that "Mr. Williams' professional responsibilities as a Senior Healthcare Consultant include provider contracting, pricing, insurance premium rate-setting, . . . [and] forecasting and budgeting of health plans . . . . As a result of his technical experience in medical economics, benefit pricing, and data analysis, Mr. Williams has developed an understanding of benefit pricing techniques and approaches used in the healthcare

industry.” The jury is likely to understand that Mr. Williams assumes primary responsibility for the described tasks and analysis without the assistance of licensed actuaries. However, Mr. Williams relies on licensed actuaries to collect and review preliminary data related to benefit pricing and to review reports drafted for clients. (Dkt. # 111, Williams Dep. at pp. 56-57:23; 62:7-20; 64:17-65:5). Because Mr. Williams does not himself collect and review data on pricing benefits, nor does he assume sole responsibility for his reports, Plaintiffs propose inserting the following phrase to the beginning of the paragraph describing Mr. Williams’ professional responsibilities to avoid confusing the jury as to the scope of Mr. Williams professional responsibilities:

*With the assistance of actuaries and other medical professionals, Mr. Williams’ professional responsibilities as a Senior Healthcare Consultant include [...].*

## **2. Dr. Lawrence Mayer**

Plaintiffs object to the first sentence of the proposed narrative on the grounds that referring to Dr. Lawrence Mayer as a “physician” is misleading to the jury. The term “physician” is generally understood to refer to a person licensed to practice medicine and who does, in fact, practice medicine. *See, e.g., Physician Definition*, MERRIAM-WEBSTER.COM - <https://www.merriam-webster.com/dictionary/physician> (“a person skilled in the art of healing; specifically: one educated, *clinically experienced, and licensed to practice medicine* as usually distinguished from surgery.”) (emphasis added); *Physician Definition* - DICTIONARY.COM, <https://www.dictionary.com/browse/physician> (“(1) a person who is *legally qualified to practice medicine*; doctor of medicine. (2) a person engaged in *general medical practice*, as distinguished from one specializing in surgery.”) (emphasis added).

Although Dr. Mayer has a British Bachelor of Medicine degree, he is not and has never been licensed to practice medicine in the United States. (Dkt. # 112, Mayer Dep. at p. 7:5-6). Indeed, Dr. Mayer has affirmed that he “would never hold [him]self out as an expert in clinical [ . . . ] medicine” and has “never practiced medicine.” (Dkt. # 112, Mayer Dep. at pp. 7:6; 9:23-10:1). To avoid confusing the jury as to the scope of Dr. Mayer’s expertise, Plaintiffs propose the following language to replace the first sentence:

*Dr. Lawrence Mayer is an epidemiologist and biostatistician, with training in clinical epidemiology and a M.S. and Ph.D. in Mathematics and Statistics.*

Plaintiffs similarly propose the elimination of the word “physician” when it appears elsewhere in Defendants’ proposed narrative.

Plaintiffs additionally object to the phrase “developing and applying” in the second sentence of the proposed narrative, as it is vague, ambiguous, and potentially misleading to the jury. In describing Dr. Mayer as “developing, applying . . . statistical evidence contained in research studies,” the jury will likely understand Dr. Mayer to design and implement studies or otherwise create research. Dr. Mayer has testified that he is not qualified to run a study: “I can’t run a study. I’m not a clinician.” (Dkt. # 90, 130:21-131:2). Plaintiffs propose that the phrase “developing and applying” be removed and this sentence be replaced with:

*As a biostatistician and epidemiologist, Dr. Mayer has devoted the last 50 years of his career to evaluating the degree of statistical evidence contained in research studies conducted in medicine and public health.*

Further, Plaintiffs object to the phrase “[f]or 30 years, his teaching in medical schools has focused on clinical epidemiology” because it is inaccurate. Dr. Mayer only

taught at the Johns Hopkins Medical School for 27 years (from 1989 to 2016). Dr. Mayer does not currently teach at any medical school.

Finally, Plaintiffs object to Defendants' description of Dr. Mayer's research focus and their definition of epidemiology, which suggest that Dr. Mayer is involved in "clinical decision making" or "decision-making at the bedside." On the contrary, Dr. Mayer is not licensed to practice medicine and has never treated patients (other than as a student approximately 50 years ago). (Dkt. # 112, Mayer Dep. at p. 7:5-6). The Centers for Disease Control and Prevention define epidemiology as "the study of the distribution and determinants of health-related states and events in specified populations" or "the application of this study to the control of health problems." *See* CENTERS FOR DISEASE CONTROL AND PREVENTION, PRINCIPLES OF EPIDEMIOLOGY IN PUBLIC HEALTH PRACTICE: AN INTRODUCTION TO APPLIED EPIDEMIOLOGY AND BIOSTATISTICS 1-2 (3rd ed. 2011). Because Dr. Mayer is not involved in "clinical decision making" or "decision-making at the bedside," Plaintiffs propose the following language to avoid confusing the jury:

*As an epidemiologist, Dr. Mayer focuses on the evaluation of studies which are complex medically and biologically, interdisciplinary or multi-specialty in the realm of public health.*

Plaintiffs also propose the following language:

*Dr. Mayer's teaching in medical schools has focused on clinical epidemiology, which is the study of the distribution and determinants of health-related states and events in specified populations, including the application of this study to the control of health problems.*

Dated this 14th day of September, 2018.

**HAWKS QUINDEL, S.C.**

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