



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Expert Witness Can't Testify in Zyprexa MDL: Judge

By **Morgan Bettex**

Law360, New York (May 13, 2009) -- The federal judge overseeing the multidistrict litigation over Eli Lilly and Co.'s Zyprexa has refused to admit the testimony of a medical expert in 13 cases involving 20 claimants, ruling that the expert has repeatedly stretched the truth to support findings of causality between the anti-psychotic drug and diabetes.

In an order signed Tuesday in the U.S. District Court for the Eastern District of New York, Senior Judge Jack B. Weinstein granted Eli Lilly's motion to disqualify Dr. Stephen J. Hamburger, M.D., as an expert proposed by the plaintiffs to prove the specific causal relationship between Zyprexa ingested by the plaintiffs and the onset or worsening of their diabetes.

Although Hamburger has the suitable educational and experiential qualifications, his testimony lacks scientific reliability because his opinions are not based on sufficient facts or data, and he has not reliably applied the scientific principles and methods to the facts of the individual cases, Judge Weinstein ruled.

"The record demonstrates that Dr. Hamburger's opinions rely on a subjective methodology, a fast and loose application of his scientific theories to the facts and conclusion-driven assessments on the issues of causation in the cases on which he proposes to testify," the order said.

The cases allege that Zyprexa can cause excessive weight gain that leads to health problems, most commonly diabetes, and that Eli Lilly failed to adequately warn about the drug's effects.

The plaintiffs sought to use Hamburger's testimony that Zyprexa has a direct adverse effect on cells essential to the body's production of insulin, but in cases in which there was no documented weight gain, the order said.

In addition, Hamburger has been “shockingly careless” about the scientific facts in these cases, including whether weight gain preceded or followed the plaintiffs' use of Zyprexa, and he has also shrugged off factual discrepancies in his analyses or shifted to new theories when questioned under oath, according to Judge Weinstein.

“The court cannot permit a major pharmaceutical litigation to become the subject of the kind of 'rubber-stamp' expert opinions that have so marred mass litigations such as those involving asbestos and breast implants,” the order said.

Marni Lemons, a spokeswoman for Eli Lilly, said the drug company was pleased with Judge Weinstein's ruling, which she said spoke for itself.

Counsel for the plaintiffs could not immediately be reached for comment Wednesday.

The MDL is a consolidation of dozens of suits brought by state attorneys general, unions, health insurers and individuals over Zyprexa, which was first prescribed to treat symptoms of various psychiatric conditions, such as schizophrenia and bipolar disorder.

The lawsuits began to pile up when patients discovered an alleged link between the drug and hyperglycemia, acute weight gain, diabetes, pancreatitis and other conditions.

The states have accused Lilly of making misleading and deceptive statements about Zyprexa to health care providers and have said they would not have funded Medicaid patients taking Zyprexa had they known about the dangers of the drug.

The Indianapolis-based drug company announced Oct. 7 that it resolved the allegations of 32 states for \$62 million and agreed not to promote Zyprexa for off-label uses.

Lilly said in October 2008 that it had also settled approximately 31,000 individual product liability lawsuits over Zyprexa.

Lilly is represented by Pepper Hamilton LLP.

The plaintiffs affected by this ruling in the MDL are represented by Phillips & Associates, Wagstaff & Cartmell LLP, the Law Offices of Bozich & Korn, the Ferraro Law Firm PA, Roberts & Durkee PA and Brian Cunha & Associates.

The case is In re: Zyprexa Products Liability Litigation, case number 04-md-01596, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Christine Caulfield, Tina Peng and Erin Marie Daly

All Content © 2003-2009, Portfolio Media, Inc.