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## **TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF**

**New York has not been known – to put it gently – to be physician friendly when it comes to matters involving litigation. It is therefore somewhat surprising that we are the ONLY state which permits a party to withhold the identity of the expert being called to testify in a medical, dental or podiatric malpractice suit.**

**The rationale given for the identity protection is that the expert in question might be intimidated or discouraged by colleagues from giving testimony.**

**With the advent of technology and the internet it has become easier to identify who the witness might be as certain information must be provided to the other side such as the name of the schools attended by the expert; residency and internship backgrounds; dates of graduation and board certifications etc etc which could narrow the search for identity if one pursued these avenues of information.**

**In an effort to cloak the identity of the reluctant expert, litigators have attempted to circumvent the rules regarding proof of expertise by contending that the prospective expert might be subjected to intimidation or threats if the information demanded could easily lead to the actual identity of the person. How, then, to protect the witness and to justify the person as being qualified to be an “expert”?**

**Courts in various judicial districts in New York have adopted differing approaches. The Departments encompassing Buffalo and environs would allow the withholding of educational, residency fellowships etc of the witness to totally shield the identity of the person. This stands in contrast to the Department covering the Greater New York area (including Long Island) as well as the Albany Department which have determined that the educational and professional background of the expert witness must be disclosed unless the expert can meet the burden of establishing that there is a risk of the witness being subjected to threats and harassment if testifying. Without disclosing these grounds of expertise there would be no criteria to determine if the expert – was – an expert.**

*Respectfully submitted,*

*Schaum Law Offices*