

Taking the Deposition of the State's Doctor in a Child Sex Offense Case

Under Georgia law, defendants accused of a sex offense against a child have the right to request a pretrial deposition of the State's doctor. O.C.G.A. § 24-10-130(a)(2) provides that when a defendant is charged with child molestation, aggravated child molestation, or physical or sexual abuse of a child, the court where the case will be tried may grant a party's motion to take the deposition of "*any physician whose testimony is relevant to such charge.*" Additionally, the court may compel the production of any documents or other written or recorded materials the physician possesses that pertain to the allegations in the indictment.

The testimony of doctors, especially concerning an examination of an alleged child victim, is often the most critical evidence in a sex offense case. Evidence offered by doctors may be so crucial to a defendant's case that failure to properly challenge the State's medical evidence can result in an ineffective assistance of counsel claim. *See, Goldstein v. State*, 283 Ga. App. 1 (2006) (trial counsel provided ineffective assistance when he failed to present available medical and psychological evidence contrary to the testimony of the State's medical experts). Medical evidence, if not properly challenged by the defense, will be used by the State to bolster a circumstantial case which can then lead to a defendant being wrongfully convicted of child molestation or another serious sexual offense.

Surprisingly, this statute is often overlooked and many criminal defense attorneys in Georgia are unaware that defendants have the right to depose the State's physician prior to trial. We take full advantage of this opportunity in every case and file a request to take the physician's deposition as soon as the case is indicted.

Prior to the deposition, we will typically consult with an independent medical expert who will review the evidence in the case and assist with the preparation of the deposition topics and questions. On some occasions, we have been able to get the State's physician to agree with our expert's view of the evidence and concede that their initial conclusions about the case may have been flawed. In many

cases, the successful deposition can lead to a prosecutor dismissing the charges against our client.

Click [here](#) for a perfect example of how we used the deposition of a physician to lead to the dismissal of child molestation charges against a respected Gwinnett County teacher.