

Expert Witness Testimony

April 1992

After review of the general "Principles of Medical Ethics" of the American Medical Association and guidelines for expert witness testimony published by several other specialty societies, the Ethical Issues Subcommittee recommends the adoption of the following guidelines. These guidelines are based primarily on those adopted by the American Academy of Pediatrics with several modifications. Central to these guidelines is the concept that the expert witness functions in education of the court as a whole. It is not the function of the expert witness to be representing either of the parties involved, even though the expert witness may have been contracted by one party.

1. The physician should have current experience and ongoing knowledge about the areas of clinical medicine which he or she is testifying and familiarity with practices during the time and place of the episode being considered as well as the circumstances surrounding the occurrence. The physician should refuse to offer opinions on subjects which are beyond his/her area of expertise. The bounds of the expert's field of expertise should be clearly stated in testimony.
2. The physician's review of medical facts should be thorough, fair, and impartial and should not exclude any relevant information to create a view favoring either the plaintiff or the defendant. The ultimate test for accuracy and impartiality is a willingness to prepare testimony that could be presented unchanged for use by either the plaintiff or defendant.
3. The physician's testimony should reflect an evaluation of performance in light of generally accepted standards, neither condemning performance that clearly falls within generally accepted practice standards nor endorsing or condoning performance that clearly falls outside accepted practice standards. The physician should identify as such opinions which are personal and not necessarily held by other physicians. When equally acceptable approaches to a clinical problem exists, these should be detailed impartially in the testimony.
4. The physician should make a distinction between medical malpractice and medical maloccurrence when analyzing a case. The practice of medicine remains a mixture of art and science; the scientific component is a dynamic and changing one, based to a large extent on concepts of probability rather than of absolute certainty.
5. The physician should make every effort to assess the relationship of the alleged substandard practice to the patient's outcome, because deviation from a practice standard is not always causally related to a less-than-ideal outcome.
6. The physician should be willing to submit transcripts of depositions and/or courtroom testimony for peer review.
7. The physician expert should cooperate with any reasonable efforts undertaken by the courts or by plaintiffs' or defendants' carriers and attorneys to provide a better understanding of the expert witness issue.
8. It is unethical for a physician to accept compensation that is contingent upon the outcome of litigation.

Approved BOG 8/2012