

Qualifications and Guidelines for the Physician Expert Witness

Preamble

Neurologists may be called upon to serve as expert witnesses in various legal proceedings. In this role, they can serve the public interest by providing testimony that is competent, objective, and respectful of law and the legal process. The American Academy of Neurology, as the largest professional society of neurologists in the United States, has undertaken to formulate a Code of Professional Conduct for its members. The purpose of the following provisions is to inform members of the Academy as to what constitutes ethical expert testimony. A neurologist who violates these provisions is subject to disciplinary action under the By-Laws and Disciplinary Action Policy of the Academy if the violation occurs while the neurologist is a member of the Academy.

I. Elements of Medical Expert Testimony

- A. The purpose of medical expert witness testimony is to assist a court or other lawful forum to understand medical evidence or to determine medical facts at issue
- B. Where testimony relates to an allegation of medical malpractice, the medical expert may be asked to provide an opinion that—
 1. Describes relevant standards of care, specifies any violations of these standards, and indicates whether any such violations caused harm to a claimant
 2. Describes the current clinical status and prognosis of a claimant who alleges malpractice as the cause of his or her injury
- C. Medical expert testimony encompasses the following:
 1. Medical evaluation of a party to a legal proceeding, including personal interview and examination and/or review of medical records or other pertinent data (including laboratory tests and imaging studies)
 2. Formulating an expert opinion based on such evaluation
 3. Communicating such an opinion to attorneys, courts, licensing boards, peer review bodies or other lawful agencies, whether in the form of testimony in court, deposition, answers to interrogatories, or affidavit

II. Qualifications of a Medical Expert

- A. Licensure. A medical expert must have a valid and unrestricted license to practice medicine
- B. Training and Certification. Physician expert witnesses should be fully trained in a specialty and a diplomate of a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association or by a board with equivalent standards, and qualified by experience or demonstrated competence in the subject of the case. The specialty of physician expert witnesses should be appropriate to the subject matter of the case.
- C. Practice and Teaching Experience. If a medical expert is not in active clinical practice when offering an expert opinion, the expert should be prepared to demonstrate competence to provide such an opinion. Evidence of competence may include active clinical practice, relevant publications in medical or scientific journals, and/or active teaching or supervision of medical students, residents or fellows in an area relevant to the expert opinion during 3 of the 5 years that immediately precede the date on which the opinion is offered.

Qualifications and Guidelines for the Physician Expert Witness (Continued)

D. Medico-legal Activities. If a medical expert spends more than twenty percent (20%) of his or her professional time in medico-legal activities (including testimony in court or by deposition or interrogatory, reviewing medical records at the behest of lawyers, performing independent medical examinations, furnishing opinion letters or affidavits to lawyers), the expert should be prepared to demonstrate competence to provide an opinion that is objective, relevant, and not biased by financial considerations.

III. Guidelines for the Conduct of the Medical Expert

- A. A medical expert should strive to provide testimony that is accurate, impartial and relevant with respect to disputed medical facts or issues. The expert should avoid the role of advocate for the party on whose behalf the expert is providing testimony.
- B. A medical expert should carefully and thoroughly review relevant medical and scientific data before offering an opinion. If an expert believes that information that has been provided is incomplete or inaccurate, the expert should request additional information or clarification from attorneys or other relevant parties before agreeing to render an opinion.
- C. Physician expert witnesses should respect the privacy and confidentiality of all patients, physicians, nurses, and other persons identified in the medical records and depositions they review in their role as expert witness. Physician expert witnesses must not discuss the case with colleagues, other attorneys, or any other third party unless given permission to do so by the attorney or law firm who retained the physician expert witness.
- D. Where standard of care is at issue, the expert should become familiar with the relevant standards of practice at the time and practice setting of the occurrence and be prepared to provide detailed, informed and accurate testimony as to whether a defendant has violated these standards. In formulating an opinion, the expert should appreciate the difference between a negligent violation of the relevant standard of care and an adverse event unrelated to substandard care. The expert should also be prepared to state whether an opinion is based on personal clinical experience, published information, practice guidelines, or prevailing expert opinion. The expert witness should acknowledge when more than one diagnostic or therapeutic approach may fall within the standard of care. Where the expert's opinion represents a minority view with respect to the relevant standard of care, the expert should volunteer this information.
- E. Where medical causation is at issue, the expert witness should be prepared to testify as to mechanisms of injury and whether the opinion is based on personal clinical experience, published information or prevailing expert opinion. Where the expert's opinion represents a minority view as to mechanisms of injury, the expert should volunteer this information.
- F. Compensation of a medical expert should be reasonable in relation to time and effort expended. It is unethical for a medical expert to tie the level of compensation in a particular case to the outcome of that case.
- G. A medical expert should be aware that testimony in legal proceedings generates a public record that is subject to peer review and may be the basis for disciplinary action by courts, licensing agencies, or professional organizations. In providing testimony, the medical expert should not allow disrespect for law, the legal process or legal professionals to influence the nature or accuracy of an expert opinion.

Approved by the Grievance Committee on February 4, 2005

Approved by Ethics, Law and Humanities Committee on February 5, 2005

Submitted to the membership at the annual meeting on April 12, 2005

Approved by the Board of Directors on June 25, 2005