

## Guidelines for the Physician Expert Witness

American College of Physicians\*

*Editorial Note: The Clinical Practice Subcommittee of the College's Health and Public Policy Committee undertook development of "Guidelines for the Physician Expert Witness" in order to encourage broad physician participation in providing this much-needed assistance to the legal system. The College believes that more physicians should serve as experts as a component of their professional activities in order to meet the need for medical testimony rather than a few physicians with little current involvement in patient care spending disproportionate amounts of time testifying. The guidelines, adapted from the "Statement on Qualifications and Guidelines for the Physician Expert Witness" by the Council of Medical Specialty Societies (20 March 1989), recommend qualifications for experts and give general guidance.*

Physicians, as members of society and as professionals, have a duty to testify in court as expert witnesses. The American College of Physicians strongly encourages this participation by its members and other physicians in the administration of justice. Small numbers of physicians should not spend disproportionate amounts of time testifying; rather, more physicians should try to be available to serve as experts as a component of their professional activities.

Medical expert testimony must be readily available and objective. The adversary legal system allows each side of a lawsuit to present the opinions of expert witnesses. A physician should agree to participate as an expert only in cases that he or she feels have strong merit, whether in support of the plaintiff or the defendant. Nonpartisan and scientifically valid expert testimony not only assists the deliberations in a particular case, but also can establish for the record applicable standards of care. The ethical guidelines set forth below are offered for physicians who serve as expert witnesses in medical malpractice, products liability, personal injury, workers' compensation, toxic tort, or other cases requiring medical testimony. These guidelines do not all apply to the treating physician who is called on to testify in that capacity.

\* This statement was authored by Lois Snyder, JD; and was developed for the Health and Public Policy Committee by the Clinical Practice Subcommittee: Richard G. Farmer, MD, *Chair*; Clifton R. Cleveland, MD; Sandra Adamson Fryhofer, MD; Douglas L. Gordon, MD; Woodrow A. Myers, Jr., MD; and Edward C. Rosenow, III, MD. Members of the Health and Public Policy Committee for 1989-1990 were: Paul F. Griner, MD, *Chair*; Thomas P. Almy, MD; F. Daniel Duffy, MD; Richard G. Farmer, MD; Donald I. Feinstein, MD; Lockhart B. McGuire, MD; H. Denman Scott, MD; Lynn B. Tepley, MD; Quentin D. Young, MD; John M. Eisenberg, MD; and Steven A. Schroeder, MD. The statement was approved by the Board of Regents on 23 April 1990.

### I. Recommended Qualifications

- a. The physician expert witness must have a current, valid, and unrestricted license to practice medicine in the state in which he or she practices.
- b. The physician expert witness should be certified by an appropriate American Board (recognized by the American Board of Medical Specialties) or fully trained in a specialty or subspecialty, and should be qualified by experience or demonstrated competence and evidence of continuing medical education in the subject of the case. The specialty or subspecialty of the physician expert should be appropriate to the subject matter in the case.
- c. The physician expert witness should be familiar with the clinical practice of the specialty or the subject matter of the case at the time of the alleged occurrence giving rise to the claim, and should be actively involved in the clinical practice of the specialty or the subject matter of the case for 3 of the previous 5 years at the time of the testimony.

### II. General Guidelines

- a. The physician expert witness should testify honestly, fully, and impartially to his or her qualifications.
- b. The physician expert witness should testify honestly, fully, and impartially regarding the medical information involved in the case.
- c. The physician expert witness should review standards of practice prevailing at the time of the alleged occurrence.
- d. The physician expert witness should be prepared to state whether the testimony presented is based on personal experience, specific clinical references, or generally accepted opinion in the specialty or subspecialty field.
- e. Compensation of the physician expert witness should be reasonable and commensurate with the time and effort given to preparation for depositions and court appearances. It is unethical for a physician expert witness to establish a fee arrangement contingent on the outcome of the case.
- f. The physician expert witness should be aware that transcripts of depositions and courtroom testimony are public records, subject to independent peer review.

*Requests for Reprints:* Lois Snyder, JD, Manager, Health and Medical-Legal Policy Development, Department of Scientific Policy, American College of Physicians, Independence Mall West, Sixth Street at Race, Philadelphia, PA 19106-1572.