



# Legal Matters

## Should You Be An Expert Witness?



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If you were sued, wouldn't you want your best and brightest colleagues to rush to your defense? Good expert witnesses are vital to our justice system and the defense of your colleagues.

The quality of a legal defense is often intertwined with the quality of the expert testimony. Good experts are persuasive, credible, and have greater jury appeal than the "hired guns" that are far too common in medical malpractice lawsuits. You can help improve the quality of our justice system, and aid the defense of your colleagues, by occasionally serving as an expert witness.

As defense attorneys, we encourage you to occasionally testify on behalf of your colleagues, but there are limits on what you can and should do. Testifying as an expert witness can be a financially lucrative endeavor, but it may also present several potential pitfalls. Most notably, there is a substantial time commitment involved, from reviewing medical records to depositions and trial testimony. Although you are entitled to compensation for your time in all these activities, do not commit to a case unless you can devote the time required.

A physician can also damage his or her credibility by testifying too often. There are "hired gun" experts, well known to the defense bar, who have testified more than 200 times in more than a dozen states. Such experts have little jury appeal and, although extreme examples, they do illustrate the fact that testifying too often gives the impression that an expert will say anything for money. By accepting only one or two cases a year, you can avoid this problem and focus your energies on those cases in which you believe you can make a real difference.

Make sure you ask the right questions of any attorney soliciting your review. Determine your compensation up front, as well as how often you will be paid. Ask the attorney if there is a trial date, and how far the lawsuit has progressed. Discover not just the names of the parties and experts, but also the plaintiff's other treating physicians. This will allow you, and the attorney, to assess any potential conflicts that may arise.

Consult your academy's expert witness guidelines. In recent years, many academies and colleges have moved towards establishing guidelines for proper and ethical expert testimony by their members. For example, the American College of Obstetricians and Gynecologists has an "expert witness affirmation." The American College of Radiology has established a practice guideline on the expert witness in radiology. And the American Academy of Family Physicians is considering adopting guidelines entitled "Principles for a Medical Expert Witness." The guidelines vary from organization to organization, but it is important that you familiarize yourself with any applicable guidelines before you agree to testify. If you have not adhered to the relevant guidelines and principles, you are vulnerable to potentially devastating cross-examination, which will limit or eliminate your usefulness as an expert.

Your credibility as an expert witness is not the only thing at stake; you may also be subject to censure by your own organization. In December 2006, the American Academy of Orthopaedic Surgeons (AAOS) suspended two fellows for violating its official "Standards of Professionalism on Orthopaedic Expert Witness Testimony." These suspensions were even more remarkable because the two doctors were publicly censured and because the cases were the first two grievances to ever be heard by the AAOS board of directors. This action shows that the guidelines should be taken seriously, and you should undertake a review of your academy's expert witness guidelines before deciding to testify.

Should you be an expert witness? Yes, if after careful deliberation, you determine you can be effective. By choosing your cases carefully, you will have greater influence on our justice system and the defense of your colleagues.

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*This article is intended to be a general overview of issues relating to health law and should not be construed as legal advice regarding a specific issue, claim, or matter.*