

## ACC NEWS



In June of 1989 I received a letter from a practicing physician who was concerned about the lack of ethical standards for physicians who testify as "expert" medical witnesses in the United States. His concern was that the "right" medical opinion is now for hire at the "right" price and that testimony of "expert" medical witnesses is rarely reviewed by the medical profession for its accuracy, scientific validity or bias.

Subsequent to receiving this letter, I asked College staff to identify documents relating to guidelines for expert witness testimony for inclusion on the agenda of the College Ethics Committee Meeting on August 24, 1989. Members of the Committee, chaired by John Ross, MD, FACC, reviewed four documents and decided that the contents should be shared with members of the College. The Committee worked to condense what had been written on this important subject in a format suitable for publication in a President's Page. What follows summarizes most of the ideas expressed in these documents (1-4).

**Malpractice or maloccurrence?** It is obvious to clinicians that, as the care of our patients becomes more complex, involving sophisticated procedures and technology, not only the benefits but also the risks to our patients will increase.

All articles on the subject of "expert" witnesses make the point that physicians must understand the difference between a medical maloccurrence and medical malpractice. In simplest terms, medical maloccurrence can be considered as any undesirable outcome of a diagnostic or therapeutic strategy undertaken in the care of a patient. In contrast, medical malpractice is defined as substandard practice that harms the patient. Black's Law Dictionary (5) indicates that four conditions must exist to establish the occurrence of malpractice: 1) There must be a physician-patient relationship. 2) A standard of care must have been violated. 3) There must be an injury to the patient. 4) There must be a causal connection between the violation of the standard of care and the harm to the patient.

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## President's Page: Expert Witness Testimony

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**Guidelines for expert witnesses.** Perhaps the paradigm for all expert witnesses would be the understanding that any and all testimony could withstand the scrutiny of valid peer review. Such an approach would mandate that the "expert testimony" be medically accurate, scientifically valid and balanced in perspective without bias or slant. To achieve this goal the following principles should apply:

1. It is unethical to testify as an expert witness if one cannot be truly objective.
2. The expert should be licensed to practice medicine.
3. For testimony in the field of cardiovascular medicine, the expert should be certified by the American Board of Internal Medicine in the specialty of Cardiovascular Disease or its equivalent in Pediatric Cardiology or Cardiovascular Surgery.
4. The expert must be knowledgeable and familiar with commonly accepted clinical practice standards and be actively engaged in the practice of the specialty under consideration.
5. The expert should give fair, thorough and impartial testimony, making certain not to exclude data that may have a bearing on the case.
6. The expert must admit, when appropriate, that there may be other "correct" ways to address the issue under question.
7. Compensation should not be contingent on outcome and should not exceed "reasonable value" for the effort expended.
8. The expert testimony provided should be such that the "expert" would be willing to submit testimony to peer review.
9. The expert must recognize that causality is a key issue in any malpractice suit and be aware that deviation from standards of practice may not be related to outcome in any given instance.

If these principles and guidelines are adhered to, expert witness testimony will be fair and impartial and will eliminate the itinerant testifier and the perception that the "right" medical opinion is for hire at the "right" price.

## References

1. Committee on Medical Liability Guidelines for Expert Witness Testimony. *Pediatrics* 1989;83:312-3.
2. American Academy of Orthopedic Surgeons. A Physicians Statement: Qualifications and Guidelines for the Orthopedic Expert Witness. February 1989.
3. American College of Obstetrics and Gynecology Committee Opinion. Committee on Ethics. Ethical Issues Related to Expert Testimony by Obstetricians and Gynecologists. October 1987.
4. The Expert Witness: Some Observations and a Response From Neurosurgeons. Richard L. Rovit and Carl Hauber. *American College of Surgeons Bulletin*, No. 7. 1989;74:10-16.
5. Black HC. *Black's Law Dictionary*. 5th ed. St. Paul: West, 1979.