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## *Expert Witness Guidelines for the Specialty of Emergency Medicine*

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Expert witnesses are asked to render opinions as to assess the requisite standard of care pertaining to emergency physicians in cases of alleged medical malpractice and peer review. Because medical expert witness testimony has demonstrated the potential to establish standards of medical care, and because physician expert witnesses hold themselves out as qualified to render an opinion by virtue of a medical degree, such testimony is considered by the American College of Emergency Physicians (ACEP) to constitute the practice of medicine.

To qualify as an expert witness in the specialty of emergency medicine, a physician shall:

- Be currently licensed in a state, territory, or area constituting legal jurisdiction of the United States as a doctor of medicine or osteopathic medicine;
- Be certified by a recognized certifying body in emergency medicine<sup>1</sup>;
- Be in the active clinical practice of emergency medicine for at least three years (exclusive of training) immediately preceding the date of the occurrence giving rise to the case<sup>2</sup>. A physician serving as an expert witness who is not currently engaged in the clinical practice of emergency medicine shall be considered to have met this requirement if he or she was so engaged during the three years immediately preceding the date of the occurrence giving rise to the case.
- Abide by the following guidelines:
  - The expert witness should possess current experience and ongoing knowledge in the area in which he or she is asked to testify.
  - The expert witness should not provide expert medical testimony that is false, misleading, or without medical foundation.<sup>2</sup> The key to this process is a thorough review of available and appropriate medical records and contemporaneous literature concerning the case being examined.
  - A medical expert's opinion should reflect the state of medical knowledge at the time of the event giving rise to the case.

- The expert witness should review the medical facts in a thorough, fair, and objective manner and should not exclude any relevant information to create a view favoring either the plaintiff or the defendant.
- Expert witnesses should be chosen on the basis of their experience in the area in which they are providing testimony, and not on the basis of offices or positions held in medical specialty societies, unless such positions are material to the expertise of the witness.
- An emergency physician should not engage in advertising or solicit employment as an expert witness where such advertising or solicitation contains false or deceptive representations about the physician's qualifications, experience, titles or background.
- The expert witness should be willing to submit the transcripts of depositions and testimony to peer review.
- An expert witness should never accept any compensation arrangement that is contingent on the outcome of litigation.
- Misconduct as an expert, including the provision of false, fraudulent, or misleading testimony, may expose the physician to disciplinary action.<sup>2, 3</sup>
- Be not only familiar with the local state law, regulations, and practice of emergency medicine, but strictly adhere to the state specific definitions of negligence.

#### References

1. American College of Emergency Physicians. ACEP recognized certifying bodies in emergency medicine [policy statement; reaffirmed February 2020]. *Ann Emerg Med.* 2020 Oct;76(4):e101=108.
2. American College of Emergency Physicians. Code of ethics for emergency physicians [policy statement; approved January 2017]. *Ann Emerg Med.* 2017 Jul;70(1):e7-25.
3. American College of Emergency Physicians. Procedures for addressing charges of ethical violations and other misconduct. Revised 2020. American College of Emergency Physicians web site. Accessed July 2021.