

Ask the Ethicist: Expert Witness Qualifications

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Q: *A plaintiff's attorney has asked if I would serve as an expert witness in a case concerning macular hole surgery. I am a cornea specialist but would like to help if I can. Is this ethical?*

A: Be very careful before accepting this invitation. There's much for you to consider before you decide to serve as an expert witness.

In malpractice litigation, the courts rely on medical experts to establish the relevant standard of care and to determine whether a defendant physician fell below this standard (i.e., was negligent) in care of the plaintiff. The expert may also be asked to render opinions regarding causality between negligent acts and the plaintiff's injury, as well as the extent of that injury. This position demands extraordinary responsibility and requires not only scrupulous honesty and objectivity, but also true expertise in what may become a very detailed analysis of facts and circumstances.

As a cornea specialist, you may find that it's not sufficient to simply assert your knowledge about macular hole surgery. You should be prepared to present credentials sufficient to convince the court of true expertise by reason of knowledge, experience, training or education.

If you are not sufficiently qualified to discuss the anticipated details, there are several potential pitfalls. First, the opposing counsel may challenge your testimony as inadmissible and your participation may be denied. Second, even if you are allowed to testify, you may be vulnerable to attack on cross examination. Third, you will be subject in court to peer scrutiny of your testimony for 1) accuracy in using medical knowledge to form expert opinions and 2) objectivity and freedom from bias. Under Rule 16 of the Code of Ethics, false, deceptive or misleading testimony is unethical. Last, in some states, inappropriate expert testimony may be grounds for discipline by the board of medicine.

For these reasons, a careful assessment of one's qualifications to testify in a particular case should be the foremost consideration in a decision to accept or decline the invitation to serve as an expert.

For more information about expert witness qualifications, visit www.aao.org/about and click "Ethics." To submit a question for this column, e-mail it to ethics@aao.org.