



Ask the Ethicist: Appropriate Compensation for Expert Witness Testimony

Question: I have been asked to review medical records for an attorney. What is the standard payment for an ophthalmologist reviewing a case as an expert witness? What about fees for a deposition or testifying at trial?

Answer: Unfortunately, the Academy cannot provide specific advice to any member on the issue of fees and there are no hard and fast rules. There are, however, a few things to consider.

Before you start. Find out if your employer has a policy about serving as an expert. Some practices and institutions expect that any fees earned from outside activities must go to the employer.

What to charge. Some physicians who offer expert testimony charge what they would have earned during a routine practice day. Others set one hourly rate for reviewing records and writing a report, and a different hourly rate for actually providing testimony in a deposition or a court appearance. Some physicians even charge for a whole day rather than just the hours required for a court appearance. Your travel expenses, if any, should enter into your calculations. Your fees should not exploit parties to the litigation, and ultimately you should only accept compensation that is fair and is commensurate with the time and effort involved. You should never coordinate fees with other potential experts because doing so is a violation of antitrust laws. Finally, under Rule 16 of the Code of Ethics, it is unethical for a physician to accept compensation that is contingent upon the outcome of litigation.

If you decide to take on the work, make sure – before you get started – that your fees are clear to the attorney who hires you and that you obtain a signed agreement for payment for services rendered. When setting your fees for reviewing records and providing testimony, be sure to take the following into account:

- Percentage of your time serving as an expert witness
- Your hourly fee
- Percentage of time spent reviewing transcripts of deposition and trial testimony

Academy resources. The Ethics Committee has documents that relate to providing expert testimony at www.aao.org/ethics-center-browse?topic=expert-witness-testimony. Rule 16 of the Code of Ethics addresses ethical expert witness testimony.

To read the Code of Ethics, www.aao.org/ethics-detail/code-of-ethics.

For more information or to submit a question, contact the Ethics Committee at ethics@aao.org.