



Ask the Ethicist: The Non-Operating Expert Witness

Question: I was asked to serve as an expert witness in a malpractice case involving visual loss related to cataract surgery. Although I am a general ophthalmologist and have performed many cataract surgeries in my career, I have not operated in several years. Is it ethical to serve as an expert?

Answer: The trial judge will review your qualifications and determine whether you may testify. Typically, expert witnesses are practicing ophthalmologists who hold a current, valid, and unrestricted license. Considering that the opposing counsel will question your testimony and credentials as an expert witness, you must be very clear about your qualifications and the fact that you no longer operate.

Despite your status as a nonoperating physician, you are responsible for knowing about the accepted surgical techniques and standard of care relevant to the time and place of the case in question. The judicial process relies on expert witnesses to establish standard of care and therefore deviation from the standard of care. To help others understand the case and distinguish between malpractice and maloccurrence, it is your role to present truthful, unbiased information supported by the literature.

The Academy does not wish to influence which cases you choose to serve on as an expert witness. However, if your testimony is challenged, the Academy will enforce Rule 16 of its Code of Ethics:

“Expert testimony should be provided in an objective manner using medical knowledge to form expert medical opinions. Nonmedical factors (such as solicitation of business from attorneys, competition with other physicians, and personal bias unrelated to professional expertise) should not bias testimony. It is unethical for a physician to accept compensation that is contingent upon the outcome of litigation. False, deceptive or misleading expert testimony is unethical. For purposes of this Rule, expert testimony shall include oral testimony provided under oath, affidavits and declarations used in court proceedings and certificates or merit signed, ratified or otherwise adopted by the physician.”

Learn more at the Redmond Ethics Center, <https://www.aao.org/clinical-education/redmond-ethics-center>.

Send questions to the Ethics Committee at ethics@aa.org.