

Ask the Ethicist: How to Submit an Expert Witness Testimony Challenge

July 2012

Q: *I just prevailed in a lawsuit in which an ophthalmologist offered expert testimony against me. His testimony was not scientific, and he could not substantiate his opinion with peer-reviewed literature. His comments about standard of care simply did not hold water. How can I submit this matter for an Ethics Committee review?*

A: In this case, it appears as if personal opinion may have trumped objective medical knowledge, which would potentially be in violation of the Academy Code of Ethics. Rule 16 of the code requires that “Expert testimony should be provided in an objective manner using medical knowledge to form expert medical opinions.”

To submit a challenge to an expert witness testimony, go to www.aao.org/ethics and select “How to Submit.” Be sure to use the Expert Witness Testimony submission form, sign it, and send a hard copy to the Ethics Committee. If you have large volumes of supporting documentation, please submit it electronically.

Upon receiving the challenge, the Ethics Committee makes an initial review to assess whether an allegation might be actionable. If the committee believes the case warrants further investigation, the submitted materials are forwarded to the challenged Fellow or Member, and a response to the submitter’s allegations is requested. If the challenge cannot be resolved via collegial correspondence, the Ethics Committee may elect to hold a private adjudicative hearing involving all parties in the case. Details of the adjudicative and hearing processes are set forth in the administrative procedures of the Code of Ethics.

It’s important to note that the Ethics Committee must exercise utmost objectivity at all times—starting when its members carefully screen each expert witness testimony challenge submitted for review. The screening process eliminates those challenges that, when viewed in the context of the full testimony, do not provide sufficient material on which to build a robust case. This screening process is crucial because cases involving expert testimony entail painstaking review of voluminous documentation and are oftentimes extremely nuanced and emotionally charged, requiring significant time and effort of the committee’s physician-volunteers.

Physician-submitters should be aware that the committee may require their help in preparing the case and that Rule 16 of the Code of Ethics, “Expert Testimony,” became effective on Jan. 1, 2004; thus, only testimony given on or after that date is actionable.

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