



## **GUIDELINES FOR EXPERT WITNESS QUALIFICATIONS AND TESTIMONY**

**(Approved by the AAPM Executive Committee on April 5, 2012, and Board on June 12, 2012)**

### **PREAMBLE**

The integrity of the litigation process in the United States depends in part on the honest, unbiased, responsible testimony of expert witnesses. Parties to litigation frequently call on Pain Medicine physicians as experts to testify regarding medical diagnoses, prognoses, and treatments. Pain Medicine physicians who serve as experts in litigation should do so only within the boundaries of their training, expertise, and professional experience. The American Academy of Pain Medicine (AAPM) supports the concept that expert testimony by qualified Pain Medicine physicians should be objective and unbiased. To limit uninformed and possibly misleading testimony, experts in pain medicine should be qualified for their role and should follow a clear and consistent set of ethical guidelines.

The AAPM offers these guidelines to assist Pain Medicine physicians who are asked to serve as expert witnesses, to attorneys who are considering the engagement of such physicians, and to courts that are called upon to evaluate the qualifications of such witnesses. Not intended to address specific peculiarities of various levels of legal issues addressed in different types of courts, these general guidelines aim to promote transparent and ethical expert witness testimony in legal proceedings.

### **A. EXPERT WITNESS QUALIFICATIONS**

1. A physician who testifies as an expert witness in pain medicine should have a current, valid, and unrestricted license to practice medicine.
2. The physician should be Board certified in Pain Medicine through the American Board of Pain Medicine or another Board recognized by the American Board of Medical Specialties.
3. The physician should have significant clinical experience in the practice of Pain Medicine.
4. The physician should disclose any conflicts of interest at the beginning of the process in accordance with sound ethical principles.

### **B. EXPERT WITNESS ETHICAL GUIDELINES:**

1. The review of the medical facts by an expert witness in Pain Medicine should be thorough and impartial. It should not exclude any relevant information. The testimony of the expert witness should be truthful and impartial.

2. The physician's testimony should reflect an evaluation of performance in light of generally accepted standards in the practice of Pain Medicine as reflected in relevant literature and clinical experience. The testimony should neither condemn conduct that falls within generally accepted practice standards nor support conduct that falls outside accepted medical practice. Testimony pertinent to a standard of care should take into account standards that prevailed at the time the event under review occurred.
3. The physician expert in Pain Medicine should be cognizant of the distinction between (a) ordinary negligence, i.e. conduct undertaken in good faith that falls below the standard of care (with consideration of a possible spectrum of standard care) and (b) gross or criminal negligence, i.e. willful disregard for the best interests of the patient or conduct so far beneath the standard of care that it shocks the conscience. Where the defendant is charged with gross negligence or criminal conduct, the physician expert should endeavor to explain whether the challenged conduct is so far outside the bounds of acceptable medical practice as to warrant imposition of punitive damages or a finding of criminality – or whether that conduct represents a good faith but negligent effort to care for the patient.
4. The physician expert in Pain Medicine should be cognizant of the distinction between a bad outcome and negligent conduct. Sometimes, an adverse outcome, as tragic as it might be, is not the result of negligence. Thus, the physician expert should consider, and be prepared to testify to, the causal relationship between the challenged conduct and the injury at issue. In other words, the physician expert should be able to testify to whether the plaintiff's poor outcome is the proximate result of negligent conduct by the defendant – or whether it was just an unfortunate event not fairly attributable to negligence.
5. The physician's fee for expert testimony should relate to the time spent in examining the facts, preparing, and testifying. In no circumstances should the fee be contingent upon outcome of the litigation.
6. If a physician expert in pain medicine knowingly provides testimony based on a theory not widely accepted in the specialty, the physician should characterize the theory as such in his or her testimony.
7. The Pain Medicine physician must hold the patient's medical interest paramount, including the confidentiality of the patient's health information, unless the Pain Medicine physician is authorized or legally compelled to disclose the information.
8. Further guidance regarding the expert witness is found in the *AAPM Ethics Charter*, specifically the section on "Legal Testimony," which should be accessed for further clarification.