

Guidelines for Ethical Testimony and Court Case Review

The Ray E. Helfer Society

Preamble

In working toward the Ray Helfer Society's vision of safe, stable, nurturing relationships for all children and families, we are guided by ethics that underlie all aspects of our work – from clinical care to the courtroom. We all belong to larger medical professional societies that have codes of ethics for professionalism in research and clinical work, and some of these societies have standards for testifying in court, but there has not yet been a set of ethical standards for court which addresses issues that commonly occur in cases of suspected child maltreatment.

The surest way for members of the Ray Helfer Society to support children and families in court is to do our best to reach a medical diagnosis and to tell the court what we know with a reasonable degree of medical certainty. We have developed these *Guidelines for Ethical Testimony and Court Case Review* to provide guidelines on how to achieve this goal and serve as an impartial educator for attorneys, jurors, and the court.

Qualifications

- Unless retired from clinical practice, expert witnesses should hold a current, valid, and unrestricted medical license in the state in which they practice medicine.
- Expert witnesses should be certified to practice medicine by the relevant board organization (ie. American Board of Medical Specialties, Royal College of Physicians and Surgeons, etc.) in the country where they practice medicine.
- Unless retired from clinical practice, expert witnesses should be actively engaged in clinical practice in the medical specialty or area of medicine about which they testify. If retired from clinical practice, they should demonstrate active engagement in the field (e.g., CME or conferences on child maltreatment).
- As the proportion of an expert's professional activity devoted to testimony increases, so too does the potential risk for conflict of interest. Unless retired from clinical practice, most of the expert's professional effort should be devoted to activities other than medical-legal activity (including testimony in court or by deposition or interrogatory, reviewing medical records at the behest of lawyers, performing independent medical examinations for legal purposes, or furnishing opinion letters or affidavits to lawyers).
- Expert witnesses should not give false, misleading, or misrepresentative details about their qualifications.
- Compensation for expert witness work must not be contingent on the outcome of the case.

- Failure to meet these above qualifications does not, by itself, mean that a member will get a judgment against them if a complaint is filed.

Content of Testimony and Reports

- Regardless of the source of the request for testimony (plaintiff or defendant), physician expert witnesses should lend their knowledge, experience, and best judgment to all relevant facts of the case. Physicians who provide medical-legal services related to child maltreatment should be open to requests from prosecution or defense, and should take steps to ensure that their testimony is not influenced by the person or group that retains their services.
 - Physicians should ensure that the expert work is relevant, reliable, honest, unbiased and based on sound scientific principles.
 - Physician expert witnesses should take necessary steps to ensure that they have access to all medical documents that they feel may be necessary to establish the facts of the case and the circumstances surrounding the occurrence. If relevant medical records are unavailable for review, experts should consider recusing themselves from serving in an expert capacity.
 - The testimony presented should reflect generally accepted standards within the expert's specialty or area of practice. Physician experts who know that their opinions are held by a minority of their community should state that transparently.
 - Physician expert witnesses should not exclude relevant information; doing so may create a perspective that inappropriately favors the plaintiff or the defendant.
 - An expert should respect the privacy and confidentiality of the process as required by law.
- When raising a differential diagnosis to explain findings that may be the result of abuse, physician experts should include only disease entities that are generally accepted in clinical medicine, and which could reasonably be relevant to the case at hand.
 - Physician experts should not endorse disease entities or pathophysiological theories in the courtroom that have been discredited in clinical medicine.
 - The expert's final opinion should state whether maltreatment is a reasonable diagnosis. If the expert does not reach a reasonable degree of medical certainty that the child was maltreated, they should state whether maltreatment is still a reasonable consideration in the differential diagnosis, and they should state what additional information or tests might help clarify the diagnosis.

Peer review of testimony and reports

- Expert witnesses should know that transcripts of depositions and courtroom testimony are public records and may be reviewed by others outside the courtroom.
 - Expert witness testimony is a part of medical practice. The Ray Helfer Society encourages hospitals, medical practices and academic institutions to review the ethics of expert witness testimony by their physicians as they would the ethics of clinical care, academic work or other patient interactions.

Research

- A series of patients assembled from an individual's work as an expert has a high risk of selection bias, which limits generalizability. If a case or series of cases is identified or assembled from a physician's work as an expert, this should be clearly stated in the methods

section of the related manuscript.

- Individuals who seek to publish data from cases in which they served as expert witnesses should clearly report their role and whether they received remuneration to the journal and within the published manuscript.

- Authors should report any remuneration to themselves or their institutions on their behalf for medical-legal work as a potential conflict of interest for manuscripts related to the identification or diagnosis of maltreatment, according to the journal's policy for reporting conflicts of interest.

Complaint Review Process

The Ray E. Helfer Society has developed guidelines (see above) regarding the ethical standards which should be the foundation for testimony and other legal activities that relate to children who may have experienced abuse, neglect or other forms of maltreatment. Ensuring that members of the Society adhere to these guidelines is a core interest to the Society. This policy is designed to ensure that concerns about violations of this policy are examined and addressed by the Society in a fair, objective and consistent manner. Select [this link](#) for a PDF document of the process that will be followed if you feel this policy has been violated.