Policy for Expert Witness Testimony

Approved by FPP Board of Directors: July 15, 2004
Revised & Approved: June 18, 2013

Introduction

The American legal system permits both plaintiffs and defendants to present expert witness testimony. Washington University School of Medicine (WUSM) firmly believes such testimony must be truly expert and impartial. Accordingly, WUSM has established a Code of Conduct, as well as this Policy for Expert Witness Testimony, for faculty members who serve as expert witnesses. This policy applies to expert witness consultation and testimony in lawsuits (including consultation with attorneys regarding contemplated or anticipated lawsuits), administrative hearings, worker’s compensation hearings, domestic relations cases (divorce, child custody, and domestic abuse matters), criminal legal proceedings, or other similar proceedings in which attorneys are asking WUSM faculty members to provide their expert opinions or testimony.

With few exceptions, faculty members who serve as expert witnesses must do so on their own time as a personal consulting activity conducted at all times in a manner consistent with WUSM’s policy, “Consulting Privileges.” The faculty member will retain any compensation for this activity, but will also be personally responsible for any expenses associated with the expert witness activity (including travel expenses, legal representation, accounting fees, professional liability, licensure board investigations related to expert witness activities, etc.). The University will be responsible for any expenses associated with the expert witness activity only under the following circumstances: (1) if the University requests that the faculty member serve as an expert and the University retains the fee, or (2) if the faculty member offers to contribute his/her expert fees to the University and the University, through the decision of the Department Head, agrees to such an arrangement.

Rationale

The purpose of this Policy for Expert Witness Testimony is:

- To ensure the quality, integrity and credibility of faculty expert testimony.
- To assure that the faculty member’s service as an expert witness does not infringe upon his/her duties and responsibilities as a WUSM faculty member.
- To ensure that a faculty member’s service as an expert witness does not conflict with or compromise the interests of WUSM.

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1 When proposed testimony relates in any way to medical care provided by WUSM providers to WUSM patients, the “Fact Witness” as opposed to the “Expert Witness” Policy applies. In such cases, faculty members should refer to the “Policy on Fact Witness Testimony by WUSM Employees” and contact WUSM Department of Risk Management.


**Policy**

WUSM faculty should not serve as an expert witness on any matter in which the patient involved in the underlying lawsuit or claim was treated by WUSM medical providers. If a faculty member believes an exception should be made to this policy due to the remoteness in either time or circumstances between that patient’s treatment at WUSM and the litigation at issue, or other extraordinary circumstances, that faculty member must contact the WUSM Director of Risk Management, who, in consultation with the Office of General Counsel and the Associate Vice Chancellor for Clinical Affairs, will decide whether an exception will be made.

Prior to agreeing to serve as an expert witness or providing expert testimony in any proceeding, WUSM faculty members must review and abide by this Policy and the WUSM Code of Conduct for Expert Witness Testimony, including having a current “Expert Witness Affirmation Form” on file with the WUSM Office of Risk Management. For the sake of clarification, providing a preliminary medical chart review and consultation is considered expert witness testimony and is subject to this Policy.

**Peer Review**

Because the faculty expert witness’s status as a WUSM faculty member will invariably be cited as one of his/her credentials, WUSM has a direct interest in ensuring the quality, integrity and credibility of faculty expert testimony. Therefore, if requested by their Department Head, faculty experts will be expected to submit a copy of their testimony to the Department Head for internal peer review. Department Heads who give expert testimony will be expected, upon request of the Dean, to submit a copy of their testimony to the Dean for internal peer review.

- Each Department will determine its own peer review process for this purpose.
- The Department Head and the Dean are the only people who can require peer review of faculty expert witness testimony and the Department Head and Dean need not accede to any request that a faculty member’s testimony be subjected to peer review.
- The faculty member must make a reasonable effort to obtain a copy of his/her expert testimony, consistent with any court orders of confidentiality or other restrictions and impediments.

**Sanctions**

The Department Head or Dean, as the case may be, may issue a reprimand or other sanction to address violations of this Policy, including violations of the Expert Witness Code of Conduct and the Expert Witness Affirmation, based upon the seriousness of the violation.
WASHINGTON UNIVERSITY SCHOOL OF MEDICINE
Expert Witness Code of Conduct

The American legal system permits both plaintiffs and defendants to present expert witness testimony. Washington University School of Medicine (WUSM) firmly believes such testimony must be truly expert and impartial. Accordingly, WUSM has established the following Expert Witness Code of Conduct for faculty members who serve as expert witnesses.

1) If the faculty member is testifying in his or her capacity as a clinician, and/or testifying about standards of clinical care, he/she must:
   a. have a current, valid, and unrestricted license to engage in clinical practice in the state in which he or she practices.
   b. possess the specialty/subspecialty training and experience appropriate to the subject matter in the case.
   c. be currently certified by a board recognized by the American Board of Medical Specialties or its equivalency, and be qualified by experience or demonstrated competence in the subject matter of the case.
   d. be actively involved in the clinical practice of the specialty or the subject matter of the case within the five (5) years prior to the time he/she was retained to provide an expert opinion in the matter.
   e. be familiar with the standard of care provided and the available scientific evidence at the time of the alleged occurrence.
   f. testify as to the practice of a prudent clinician giving differing viewpoints, if such exist.
   g. otherwise provide expert witness testimony in accordance with WUSM policy.

2) The faculty member should be able to demonstrate evidence of continuing medical or scientific education, and/or other continuing education, relevant to the specialty or subject matter of the case.

3) The faculty member should diligently and thoroughly prepare by reviewing the relevant facts of the case and all available information.

4) The faculty member should not adopt a position of advocacy except as a spokesperson for the field of special knowledge that they represent.

5) Compensation should be reasonable and commensurate with the time and effort given to the preparation as an expert witness. Contingency fees should not be accepted. If the faculty member is providing expert witness services on behalf of Commercial Health Care Companies that manufacture, distribute or otherwise provide medical devices, implants, pharmaceuticals or other medical care related products and services (“Commercial Health Care Companies,”) then the “Policy on Conflicts of Interest in Clinical Care” and associated “Faculty Consulting Agreement Guidelines” apply and the fees charged must be fair market value, which may vary according to subspecialty but ordinarily should not exceed $500/hour. This $500/hour limitation applies only to expert witness services on behalf of Commercial Health Care Companies and not to other kinds of expert witness services.

6) All faculty, when hired, sign the Affirmation, accessed through the Learn at Work website found on the main portal page after logging in on the HRMS website: https://wuissrv20.wustl.edu/sp/HRMS/?cmd=login.

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Expert Witness Affirmation

As a member of the faculty of Washington University School of Medicine (WUSM), I affirm my duty, when giving evidence or testifying as an expert witness, to do so solely in accordance with the merits of the case, accepted medical and scientific standards and WUSM policy. Furthermore, I declare that I will abide by the WUSM Expert Witness Code of Conduct and uphold the following professional principles.

1) I will always be truthful.
2) I will conduct a thorough, fair and impartial review of the facts and/or the medical care provided, not excluding any relevant information.
3) I will provide evidence or testify only in those matters where I have relevant clinical or scientific expertise regarding the medical care or other issues that are the subject of the proceeding.
4) I will evaluate the medical care and/or other facts in light of generally accepted standards, neither condemning performance that falls within generally accepted practice standards nor endorsing or condoning performance that falls below these standards.
5) I will evaluate the medical care and/or other facts in light of the scientific knowledge and generally accepted standards that prevailed at the time of the occurrence.
6) I will provide evidence or testimony that is complete, objective, scientifically based, and helpful to a just resolution of the proceeding.
7) I will make a clear distinction between a departure from accepted practice standards and an adverse outcome.
8) If I am testifying about medical care, I will make every effort to determine whether there is a causal relationship between the alleged substandard practice and the medical outcome.
9) I will submit my testimony to my Department for peer review, upon request by the Department Head. If I am a Department Head, I will submit my testimony to the Dean for peer review, upon request by the Dean.
10) I will not accept compensation that is contingent upon the outcome of the litigation. If I am providing expert witness services on behalf of a Commercial Health Care Company that manufactures, distributes or otherwise provides medical devices, implants, pharmaceuticals or other medical care related products and services (“Commercial Health Care Company,”), I will abide by the “Policy on Conflicts of Interest in Clinical Care” and associated “Faculty Consulting Agreement Guidelines.” For expert witness services provided on behalf of a Commercial Health Care Company, my fees will be fair market value in accordance with those policies.

All faculty, when hired, sign the Affirmation, accessed through the Learn at Work website found on the main portal page after logging in on the HRMS website: https://wuissrv20.wustl.edu/psp/HRMS/?cmd=login.