

THE RAY E. HELFER SOCIETY



POLICY TITLE: Policy for Ethical Testimony and Court Case Review
CLASSIFICATION: Ethical
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Preamble

In working toward the Ray E. 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 E. 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. Therefore, The Ray E. Helfer Society has developed this *Policy for Ethical Testimony and Court Case Review* to provide policies on how to achieve this goal and serve as an impartial educator for attorneys, jurors, and the court.

Qualifications

- 1.1 Unless retired from clinical practice, expert witnesses shall hold a current, valid, and unrestricted medical license in the state in which they practice medicine. Retired physicians shall only provide testimony if they retired with their medical license in good standing.
- 1.2 Expert witness should be certified to practice medicine by the relevant board organization (i.e., American Board of Medical Specialties, Royal College of Physicians and Surgeons, etc.) in the country where they practice medicine.
- 1.3 Unless retired from clinical practice, expert witnesses should be actively engaged in clinical practice or quality assurance 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).
- 1.4 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).
- 1.5 Expert witness shall not give false, misleading, or misrepresentative details about their qualifications.
- 1.6 Compensation for expert witness work shall not be contingent on the outcome of the case.

Content of Testimony and Reports

- 2.1 Regardless of the source of the request for testimony (plaintiff or defendant), physician expert witnesses shall 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

- 2.2 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.
- 2.3 Physicians should ensure that the expert work is relevant, reliable, honest, unbiased, and based on sound scientific principles.
- 2.4 Physician expert witnesses shall take necessary steps to ensure that they have access to sufficient medical documents that they feel are necessary to establish the facts of the case. Opinions shall identify the sources upon which they are based. A preliminary or narrowly scoped opinion shall be clearly identified as such. If relevant medical records are unavailable for review, experts may consider recusing themselves from serving in an expert capacity.
- 2.5 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 shall state that transparently.
- 2.6 Physician expert witnesses shall not exclude relevant information; doing so may create a perspective that inappropriately favors the plaintiff or the defendant.
- 2.7 An expert shall respect the privacy and confidentiality of the process as required by law.
- 2.8 When raising a differential diagnosis to explain findings that may be the result of abuse, physician experts shall include only disease entities that are generally accepted in clinical medicine, and which could reasonably be relevant to the case at hand.
- 2.9 Physician experts shall not endorse disease entities or pathophysiological theories in the courtroom that have been discredited in clinical medicine.
- 2.10 The expert's final opinion shall 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 may state whether or not maltreatment is still a reasonable consideration in the differential diagnosis.

Peer Review of Testimony and Reports

- 3.1 Expert witnesses should know that that transcripts of depositions and courtroom testimony are public records and may be reviewed by others outside the courtroom.
- 3.2 Expert witness testimony is a part of medical practice. The Ray E. 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

- 4.1 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 shall be clearly stated in the methods section of the related manuscript.
- 4.2 Individuals who seek to publish data from cases in which they served as expert witnesses shall clearly report their role and whether they received remuneration to the journal and within the published manuscript.
- 4.3 Authors shall report any remuneration to themselves or their institutions on their behalf for medical-legal work or 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.