Policy for Expert Witness Testimony

Approved by FPP Board of Directors: July 15, 2004
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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.

With few exceptions, faculty members who serve as expert witnesses must do so as a personal consulting activity consistent with WUSM’s policy on 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, 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 identify faculty who can provide expert consultation when claims are filed against the medical school.

Policy

Prior to giving expert testimony in any proceeding, WUSM faculty members must:

- Review and abide by the WUSM Code of Conduct for Expert Witness Testimony.
- Notify the WUSM Office of Risk Management at 362-6956 and provide basic information, including: (a) a brief description of the matter, (b) whether any care was provided by that witness or by any other WUSM faculty/employee, (c) the name of the defendant, (d) on behalf of which party he/she is testifying, and (e) the attorneys for the parties (if known).
• Annually confirm, via a listing provided by the WUSM Office of Risk Management, his or her expert witness testimony activity for the previous year.

• For purposes of this policy, a preliminary medical chart review and consultation is not considered expert witness testimony. However, at the point that any such engagement proceeds beyond a preliminary chart review and consultation, this policy is triggered.

**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 by 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. 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.

• If a peer review panel determines that the testimony does not meet the standards set forth in the Expert Witness Code of Conduct or the Expert Witness Affirmation, the Department Head may issue a reprimand or other sanction, 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.

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.

6) The faculty member must submit a signed copy of the WUSM Expert Witness Affirmation form to the WUSM Office of Risk Management. This form need only be executed once, as long as it remains on file with the Office of Risk Management.
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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 and with accepted medical and scientific standards. 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, if requested 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.

Name: ___________________________ Date: ___________________________

Signature: ___________________________ Department: ___________________________

Return this form to the Office of Risk Management: 
Campus Box 8038 or fax # 362-0242