

Guidelines for expert witness testimony for the specialty of medical genetics

Social, Ethical and Legal Issues Committee, American College of Medical Genetics

The American College of Medical Genetics (ACMG) recognizes that its members and others may be called upon to provide expert witness testimony in judicial proceedings regarding medical genetics and scientific matters. These proceedings may entail issues ranging from medical malpractice, invasion of privacy, personal injury, worker compensation, and child abuse to DNA identity testing in criminal and paternity cases. Concerns about the ethics and accuracy of expert witness testimony by physicians or scientists have been raised in recent years in a variety of medical specialties including pediatrics and teratology,¹ neurology,² and child abuse and maltreatment.³ For example, Chadwick and Krous³ noted that irresponsible medical expert testimony typically involved one or more of the following shortcomings: lack of suitable qualifications, unique theories of causation, unique interpretation of findings, misquoting of the scientific literature, and blatantly false statements. Concern about inaccurate medical expert witness testimony has prompted many professional organizations to develop guidelines for the minimum qualifications and appropriate behaviors of expert witnesses. These organizations include, for example, the American Academy of Neurology,⁴ the American Academy of Pediatrics,⁵ the American College of Emergency Physicians,⁶ the American College of Physicians,⁷ and the American Academy of Orthopaedic Surgeons.⁸ As the newest member of the Council of Medical Specialty Societies, the ACMG supports other member societies in this regard and now provides a set of guidelines for expert witness testimony in the field of medical genetics.

Background

The ACMG recognizes that it is in the public interest for expert testimony in the medical genetics specialties to be knowledgeable, readily available, unbiased, and objective. To limit uninformed and possibly incorrect or misleading testimony, expert witnesses should be qualified for their role and should follow a clear and consistent set of ethical guidelines. The Social, Ethical and Legal Issues Committee of the ACMG surveyed the literature and the guidelines of selected medical specialty organizations with regard to current guidelines for

expert witness testimony. From existing guidelines, a consensus set of guidelines was prepared to meet the needs of the members of the ACMG, other health care professionals, and the public. The following recommendations for expert witness qualifications and ethical guidelines have been adopted by the ACMG for those who assume the role of expert witness in medical genetics.

Medical genetics expert witness: qualifications

To limit uninformed and potentially incorrect or misleading testimony, the ACMG recommends that the expert witness in the specialty of medical genetics should meet the following minimum qualifications:

1. The physician expert witness should have a current, valid, and unrestricted license to practice medicine in the state or territory in which he or she practices.
2. The medical genetics expert witness, whether a physician, laboratory scientist, genetic counselor, or PhD Medical Geneticist, optimally should be a Diplomate of the American Board of Medical Genetics or the American Board of Genetic Counseling. Moreover, he or she should be qualified by experience and demonstrated competence in the subject matter of the case, e.g., through clinical or laboratory practice, publications, submitted abstracts, presentations at scientific meetings, and service on editorial boards.
3. The expert witness should be familiar with the clinical practice of the specialty or the subject matter in the case and should be actively involved in the clinical practice of the specialty or the subject matter of the case for at least three of the previous five years at the time of testimony.
4. The expert witness should affirm and be able to document that not more than 20% of his or her professional activities involve serving as an expert witness.

Medical genetics expert witness: ethical guidelines for legal proceedings

Physicians and scientists have an ethical obligation to testify in courtroom proceedings when appropriate. The expert wit-

This guideline is designed primarily as an educational resource for medical geneticists and other health care providers who provide expert witness testimony in medical genetics. Adherence to this guideline is voluntary. This guideline should not be considered inclusive of all considerations or exclusive of others that are reasonably directed toward obtaining the same results. In determining the propriety of any specific testimony, the geneticist should apply his or her own professional judgment to the specific facts presented by the individual case.

ACMG guideline

ness should meet high ethical standards, should be impartial, and should adhere to the following ethical guidelines:

1. The expert witness should provide fair and impartial testimony and should base opinions on first-hand knowledge in the area of specialty and an understanding of the facts of the case.

2. The expert witness should review and be knowledgeable about the standards of care or practice that were accepted at the time of the event(s) giving rise to the litigation.

3. The expert witness should be prepared to state the basis of the testimony presented, and whether it is based on personal experience, specific clinical or scientific reference, or generally accepted standards in the specialty field or area.

4. Compensation for an expert witness should be reasonable and commensurate with expertise and the time and effort necessary to evaluate the facts of the case. The expert witness should not agree to or accept a fee that is contingent upon the outcome of a case.

5. The expert witness should be aware that transcripts of depositions and courtroom testimony are public records and may be subject to independent peer review.

6. The expert witness should not engage in advertising or soliciting employment as an expert witness if such advertising or solicitation contains false or misleading representations about the expert's qualifications, experience, or background.

Discussion

The genetics community must guard against the practice of the self-identified expert witness who invokes unsupported theories of medical or genetic causation^{2,3} or who presents inaccurate interpretations of scientific fact or process. These minimum recommendations provide general guidance regarding appropriate qualifications for the expert witness in medical genetics, for acceptable professional conduct. The ACMG hopes that these guidelines will increase the awareness of expert testimony issues and encourage the participation of more geneticists in this process. An increased level of participation will help to avoid the possibility that only a small number of physicians and scientists spend disproportionate amounts of time as expert witnesses. Increased professional participation will also foster the credibility of professionals in medical genetics and genetics research. The ACMG intends that these guidelines will serve to limit uninformed and irre-

sponsible testimony, to ensure consistency in expert testimony, and to identify unqualified witnesses.

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