

# AAN Sets Guidance for Expert Witness Testimony

BY MARY ELLEN SCHNEIDER  
Senior Writer

The net effect of new guidelines from the American Academy of Neurology that outline the qualifications and proper conduct for neurologists offering medical expert testimony may be to make neurologists less likely to serve that function at trial, according to one lawyer.

John Vail, senior litigation counsel for the Center for Constitutional Litigation P.C., agrees that AAN's existing guidelines, in place since 1989, have made it harder to find willing experts. The revisions won't change that.

The efforts by medical societies in this arena are "punitive and very dangerous," according to Mr. Vail.

The AAN guidelines, more than those issued by other medical groups, seem to be trying to narrow the definition of what makes a medical expert, he said. Mr. Vail said that if AAN officials want to change the way courts define experts, they should address it with the courts, not by trying to constrain their own members.

Dr. Michael A. Williams, a member of

AAN's grievance committee, which developed the guidelines, said in an interview that neurologists who violate the provisions of the guidelines while they are members of the academy could face disciplinary action by the AAN ranging from a warning letter to expulsion.

And the guidelines specify that testimony by a medical expert generates a public record that is subject to peer review and could be the basis for disciplinary action not just from professional organizations, but also from courts and licensing agencies.

Members of AAN's grievance committee, who review a range of complaints from members and patients, noticed an increase in the number of complaints specifically related to expert medical testimony given by members. AAN also wanted to address some gaps in the previous policy statement addressing expert witness testimony, which hadn't been updated since 1989, Dr. Williams said.

"We want neurologists to participate in expert witness testimony," said Dr. Williams of the neurology department at Johns Hopkins University, Baltimore. When done properly, an expert witness can assist the court in finding the facts of

the case, he said. The purpose of the AAN guidelines is simply to let neurologists know how to perform that role properly, he said.

The AAN guidelines outline a number of qualifications for a medical expert, including:

► An expert should have a valid and unrestricted license to practice medicine.

► The expert witness should be a diplomate of a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association or a board with equivalent standards, and should be qualified in the subject matter of the case.

► Experts who are not active in clinical practice should be prepared to demonstrate competence; recent relevant publications or active teaching experience can apply.

► Medical experts who spend more than 20% of their professional time on medicolegal activities should be prepared to demonstrate competence.

The AAN guidelines also call on neurologists offering testimony to state whether an opinion is based on their personal clinical experience, published infor-

mation, practice guidelines, or a prevailing expert opinion. Physicians should also disclose when their opinion represents a minority view on the standard of care, according to the guidelines.

And while physicians can be reasonably compensated for their time and effort, they shouldn't have a financial stake in the outcome of the case. Contingency fees, which tie the level of payment to the outcome of the case, are unethical, according to the guidelines.

AAN officials reviewed guidelines from a number of different medical societies, discussed their own experiences, and identified gaps in the 1989 guidelines, Dr. Williams said.

Neurologists are not the only medical specialists taking this issue seriously. One of the oldest and most comprehensive policies on expert witnesses comes from the American Association of Neurological Surgeons (AANS).

AANS's expert witness guidelines were developed in 1983. Members who are found to have violated the guidelines by giving false testimony can be censured or expelled by the group, according to AANS general counsel Russell M. Pelton. ■

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