

ACR PRACTICE PARAMETER ON THE PHYSICIAN EXPERT WITNESS IN RADIOLOGY AND RADIATION ONCOLOGY

The American College of Radiology, with more than 40,000 members, is the principal organization of radiologists, radiation oncologists, and clinical medical physicists in the United States. The College is a nonprofit professional society whose primary purposes are to advance the science of radiology, improve radiologic services to the patient, study the socioeconomic aspects of the practice of radiology, and encourage continuing education for radiologists, radiation oncologists, medical physicists, and persons practicing in allied professional fields.

The American College of Radiology will periodically define new practice parameters and technical standards for radiologic practice to help advance the science of radiology and to improve the quality of service to patients throughout the United States. Existing practice parameters and technical standards will be reviewed for revision or renewal, as appropriate, on their fifth anniversary or sooner, if indicated.

Each practice parameter and technical standard, representing a policy statement by the College, has undergone a thorough consensus process in which it has been subjected to extensive review and approval. The practice parameters and technical standards recognize that the safe and effective use of diagnostic and therapeutic radiology requires specific training, skills, and techniques, as described in each document. Reproduction or modification of the published practice parameter and technical standard by those entities not providing these services is not authorized.

PREAMBLE

This document is an educational tool designed to assist practitioners in providing appropriate radiologic care for patients. Practice Parameters and Technical Standards are not inflexible rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care¹. For these reasons and those set forth below, the American College of Radiology and our collaborating medical specialty societies caution against the use of these documents in litigation in which the clinical decisions of a practitioner are called into question. The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the practitioner considering all the circumstances presented. Thus, an approach that differs from the guidance in this document, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in this document when, in the reasonable judgment of the practitioner, such course of action is indicated by variables such as the condition of the patient, limitations of available resources, or advances in knowledge or technology after publication of this document. However, a practitioner who employs an approach substantially different from the guidance in this document may consider documenting in the patient record information sufficient to explain the approach taken.

The practice of medicine involves the science, and the art of dealing with the prevention, diagnosis, alleviation, and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment. Therefore, it should be recognized that adherence to the guidance in this document will not assure an accurate diagnosis or a successful outcome. All that should be expected is that the practitioner will follow a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care. The purpose of this document is to assist practitioners in achieving this objective.

¹ *Iowa Medical Society and Iowa Society of Anesthesiologists v. Iowa Board of Nursing*, 831 N.W.2d 826 (Iowa 2013) Iowa Supreme Court refuses to find that the "ACR Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures (Revised 2008)" sets a national standard for who may perform fluoroscopic procedures in light of the standard's stated purpose that ACR standards are educational tools and not intended to establish a legal standard of care. See also, *Stanley v. McCarver*, 63 P.3d 1076 (Ariz. App. 2003) where in a concurring opinion the Court stated that "published standards or guidelines of specialty medical organizations are useful in determining the duty owed or the standard of care applicable in a given situation" even though ACR standards themselves do not establish the standard of care.

I. INTRODUCTION

For the purpose of this practice parameter, radiology is defined as diagnostic radiology, interventional radiology, nuclear medicine, radiation oncology, and medical physics. For the scope of this practice parameter, radiologists and radiology oncologists include diagnostic radiologists, interventional radiologists, nuclear medicine physicians, and radiation oncologists. For medical physicists, please see the [ACR–AAPM Practice Parameter on the Expert Witness in Medical Physics](#) [1].

Radiologists and radiation oncologists help with training and assessment of students, residents, and fellows, and are frequently called upon to serve as medical expert witnesses in a variety of legal proceedings that may include

cases of alleged medical malpractice, personal injury, product liability, workers compensation, and criminal law and have an obligation to do so in the appropriate circumstances. This obligation includes not only the review of documents, radiologic images, records of treatments, and/or procedures but also the willingness to give sworn testimony by deposition or in court. The public interest requires readily available, objective, and unbiased medical expert testimony. The expert witness should be qualified for the role and follow clear and consistent guidelines. The American College of Radiology (ACR) recognizes the decisive role of the judge in determining admissibility of expert testimony as well as the difficulty in setting the balance between variations of viewpoints and their reasonableness, which fairness requires (see Note 1 that appears in the "Notes" section after the references).

Medical expert witness testimony is indicated in any legal proceeding in which the court needs an objective physician who is not a party to the case, has no personal interest in the outcome of the case, and has expertise in the matter at hand to help explain the issues.

II. QUALITY AND RESPONSIBILITIES OF THE EXPERT WITNESS

The expert witness should be a physician with the following qualifications:

Unless otherwise stipulated by applicable state law, licensure and active engagement at the time of the incident under review and for a reasonable period of time in the practice of the radiologic specialty or subspecialty relating to the testimony.

Certification in Radiology, or Diagnostic Radiology, Therapeutic Radiology, Nuclear Radiology, or Radiation Oncology by the American Board of Radiology, the American Osteopathic Board of Radiology, the American Board of Nuclear Medicine, the Royal College of Physicians and Surgeons of Canada, or the Collège des Médecins du Québec. Continuing Certification (Maintenance of Certification) by the relevant board, if they have a time limited board certificate.

Education, training, and practical experience, as well as current knowledge and skill, concerning the subject matter of the case, including in a medical liability case the relevant standard of care.

Should the proceeding involve a physician defendant who is required by federal or state statute to fulfill certain educational or practice experience requirements, the expert witness should also meet these same requirements.

III. REQUISITES OF AN EXPERT WITNESS

A. The role of the expert witness is to help the finders of fact analyze the issues in dispute necessary to decide the The expert witness is expected and should be able to render an opinion regarding the reasonableness of the conduct of the parties in the circumstances at hand. Depending on the legal issues in question, this may include an opinion about a defendant doctor's training and experience; the relevant standard of care; the relevance of particular imaging findings, interventional procedures, or radiation oncology treatment to causation of damages; or the adequacy of the technical equipment used.

B. In a medical liability proceeding, the expert opinion should be based on careful review of all relevant clinical and radiologic information available at the time of the incident now under consideration. Information, facts, and results of imaging studies performed after the incident should never be used to formulate a standard of care opinion. The expert witness should make every effort to avoid being influenced by hindsight and framing biases [2,3]. Mechanisms to mitigate bias have been well studied in the literature [4]. It should be recognized that physicians with different levels of expertise may still practice within the relevant standard of care. Determination of standard of care should take into consideration the relevant circumstances under which the involved physician or facility is operating and not necessarily the practice environment of the expert witness.

C. Recommended Guidelines of Conduct for the Radiologist and Radiation Oncologist Expert Witness

1. Although the nature of legal proceedings is adversarial, the expert witness must remain as impartial

- and objective as possible. The expert's opinion should not be influenced by the client counsel.
2. In a medical liability case, the expert witness should be familiar with the relevant standard of care. Care must be taken to distinguish between the expert's personal opinion and the generally accepted standard of care for the site of the incident under consideration.
 3. Expert witnesses must be provided information including medical records and imaging studies that permit the expert witness to formulate an opinion on whether the defendant physician satisfied relevant legal standard of care. For imaging examinations, original images are preferred over copies. Where a picture defendant physician reviewed computer generated or stored images, the expert witness should replicate viewing conditions that existed when the studies were originally reviewed. The expert witness should attempt to replicate the original viewing conditions [5].
 4. The expert witness should be prepared to explain the basis of their opinion, which may include citing relevant literature. Any expert should expect to be aggressively challenged by opposing counsel and be prepared to defend your opinion.
 5. Compensation of the expert witness should reflect the time and effort involved. Linking compensation for expert testimony to the outcome of the case (contingency fee) is unethical.
 6. The expert witness should strive to minimize all potential sources of conscious and subconscious bias when reviewing case materials. Images and other relevant material presented in a blinded fashion to the expert in a malpractice lawsuit strengthens the credibility of the opinion rendered by the expert.
 7. If the expert witness requested is believed to be helpful enabling a sound development of an opinion, but materials have not been provided, the lack of availability of that requested material should be revealed to the relevant parties and stated for the record of proceedings.
 8. The expert witness should review serial studies prospectively and in tandem, to more closely approximate the circumstances of the original interpretation. Some formats such as CD-ROMs may not permit this approach and, where appropriate, hard copy images should be requested instead.

Any individual holding an official capacity with the College who testifies in a legal proceeding must exercise great care to distinguish between his or her personal opinions and the policy positions of the College (see Note 2 that appears in the Notes section after the references).

The expert witness can be held accountable for statements made during a legal proceeding. Expert witness testimony may be reviewed and evaluated by medical boards and professional societies.

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NOTES

1. These practice parameters are not meant to apply to percipient witnesses such as a doctor who is a party to the case. However, in some jurisdictions (California, for example) a defendant doctor can be deposed both as a defendant and as an expert [5].

2. The policies of the College are a matter of public record and, if relevant, may be appropriately cited in testimony. Also, the fact that an individual holds an official position with the College may be an appropriate part of his or her qualifications as an expert witness. However, the College, except pursuant to specific action by the Board of Chancellors, does not take a position on the merits of particular cases. A witness who holds an official capacity with the College must therefore be at pains to make clear that his or her testimony expresses his or her personal views and must not state or imply in a written opinion or deposition or trial testimony that he or she is speaking as a representative of the College or is testifying to the views of the College on the merits of a particular case. (1987, 1997, 2007 - ACR Resolution 36-v).

*Practice parameters and technical standards are published annually with an effective date of October 1 in the year in which amended, revised or approved by the ACR Council. For practice parameters and technical standards published before 1999, the effective date was January 1 following the year in which the practice parameter or technical standard was amended, revised or approved by the ACR Council.

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