

Guideline for Testifying as a Fact or EXPERT WITNESS GUIDELINES

Published: July 2008

Preamble

This document provides an overview of Expert Witness and Testimony Guidelines.

Qualifications

Testifying

Some times a clinical engineer or a BMET may have to give a deposition regarding a medical device incident at the facility. It is most likely that it will be a “fact witness” and not as an expert witness. The role of the fact witness is to state the facts about what happened. No opinion should be given as part of the testimony. An “expert witness” is typically an independent consultant who gives an opinion about the incident.

The following summarize the difference between fact and expert witnesses:

Fact witness: Fact witnesses are most frequently involved in testing or managing the medical technology involved in the incident. A fact witness will not generally testify as an expert in a case where they are responsible for the technology.

Expert Witness: An expert witness will have education and training in Clinical Engineering and legal procedures/processes. Additionally He or she will have many years of experience, both broad in healthcare and deep in Clinical Engineering and safety. Part of their testimony will be an opinion—based on facts, and may be recognized as an expert by the court.

Expert Witness Activities: The expert witness has a much more active role in the legal process. Activities can include; educating the client, preparing reports and summary judgments, as well as giving depositions and testifying.

Guidelines

1. Be knowledgeable and familiar with the standards, policies and procedures.
2. Train the users and maintainers of medical equipment.
3. Keep detailed and accurate records of work.
4. Create an incident toolbox.
5. Develop a working relationship with the Risk Manager.

Testimony

- Following are some simple rules that should be followed.
- The basic rule of testifying at a deposition or in a court is to tell the truth.
- Be concise with your answers and trying to respond with a yes or no answer if possible.
- Be prepared to protect your professional credentials.
- Answer your questions in a plain language.
- Take your time to think your response and answer slowly.
- Ensure sure your records/documentation are current and will stand up in court; if doubtful review it with your Risk Manager

Stressful situation; reduced when you are prepared

Listen carefully to the question; answer only the question asked; do not speculate; avoid being provoked; do not answer when upset; request a break; use understandable language; and straight forward answers

NEVER attempt to lie

Expert witness specific:

Educating Yourself About the Case

Try to determine depth of lawyers knowledge

Listen carefully to the facts as he/she explains them

Ask what they expect of you as an expert (they may not know)

Pressure is always to frame your answers to support their case

Educating Your Client

Listen carefully to the facts to be sure you understand the case

Use simple phrases to explain complex facts or issues

Tell it as it is; if you can't help the client's case, he will tell you

Testifying

Court needs to recognize you as an expert on the topic

Do not deviate from the facts presented in your deposition; do not speculate nor propose new theories

Reports And Summary Judgments

Some states want written opinions; in some, your lawyer doesn't even want you to make notes.

May write summary judgment report

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Approval Date (ACCE Board): May 31, 2008

Review Date: June 2011