

TEXAS MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution 104  
A-09

Subject: Improving the Quality and Reliability of Expert Witness Testimony

Introduced by: Dallas County Medical Society

Referred to: Reference Committee on Financial and Organizational Affairs

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1 Whereas, Expert witnesses are required both to pursue and defend professional liability claims; and

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3 Whereas, Both the plaintiff and the defense must be able to rely on the accuracy and reliability of  
4 statements made by expert witnesses; and

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6 Whereas, Expert witnesses who are physicians rely upon their training, experience, and expertise as  
7 physicians to provide medical testimony and/or medical opinions; and

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9 Whereas, A medical opinion provided to a patient would constitute the practice of medicine in Texas and  
10 be under the jurisdiction of the Texas Medical Board; therefore be it

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12 RESOLVED, That the Texas Medical Association request the Texas Medical Board (TMB) to promulgate  
13 rules that establish a temporary license solely for the purposes of providing medical opinion or testimony  
14 associated with any action, court proceeding, arbitration hearing, mediation proceeding, or other action or  
15 negotiation taking place within Texas, and require that such a license be obtained by any non-Texas-  
16 licensed physician seeking to provide such services in Texas.

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18 **Relevant TMA Policy**

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20 **160.009 Physician Expert Witness:** The Texas Medical Association believes that a physician  
21 testifying as an expert must be currently licensed to practice medicine in the United States  
22 and have recent and substantive experience in the medical field at issue in the legal dispute. It  
23 is unethical for a physician to testify upon matters when he or she is not familiar with or  
24 experienced in present accepted practices. A physician who violates this ethic should be  
25 reported to the appropriate county board of censors and/or specialty society

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27 A physician testifying as an expert must first review prior and current concepts related to the  
28 standard(s) of care upon which the physician will testify.

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30 A physician testifying as an expert must strive to testify as to the standard of care in the  
31 community in question, not the standard in another part of Texas, the United States, or the  
32 world.

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34 A physician testifying as an expert must clearly indicate to the legal decision maker(s) which  
35 part of his or her testimony is personal opinion and not generally accepted by the physician  
36 community or that is not common practice.

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38 In medical professional liability litigation a physician's medical expert testimony must not be  
39 tailored to fit legal strategies or theories.  
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1                   It is unethical for a physician to fabricate a medical expert opinion for the purpose of  
2                   attaining a particular outcome in a liability lawsuit.

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4                   Independence in medical professional judgment is as essential for reliable testimony as it is  
5                   for the delivery of appropriate health care. It is unethical for a physician to accept or agree to  
6                   accept fees for testifying as a medical expert contingent upon a particular outcome in a legal  
7                   dispute. (Committee on Professional Liability, p 96, I-94; amended BOC Rep. 3-A-04).