

GUIDELINES FOR EXPERT TESTIMONY IN IMPLANT DENTISTRY

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KEY WORDS

Oral implantology
Implant dentistry
Expert testimony

The legal decisions in our society influence how we practice dentistry, especially in the fast-evolving field of implant dentistry.¹ Expert testimony entails, in effect, a proclamation of the status of the knowledge base of the art and science of implant dentistry. The expert witness assists the trier of the facts, the judge, to understand the evidence or to determine fact.^{2(p39)} The expert witness has only one chance at his testimony. Even if a case is appealed, rarely does the expert appear in appellate court because these decisions are rendered from the transcripts of his testimony. The expert has to “do it right” the first time. There probably will be no second chance. This article discusses some guidelines for consideration for expert witnesses in oral implantology.

MATERIALS AND METHODS

It is assumed that the expert is familiar with the fundamentals of court testimony and the anatomy of a lawsuit. If not, he should read and consult with attorneys and other expert witnesses or probably not offer testimony. The courtroom is a hostile environment and any mistakes or inconsistencies by the expert will be brought to the fore and painstakingly (and painfully for the expert) examined at length.

The expert should be qualified to testify. The expert is qualified by knowledge, skill, experience, training, or education.^{2(p51)} He should have spe-

cific and intimate knowledge of the particular area of testimony. For example, a physician would probably not be allowed to testify in a physical therapy litigation case unless he had specific training and experience in that field.

A current and accurate curriculum vitae is very important. Any mistakes may give the appearance of sloppiness or even dishonesty.^{2(p77)}

An opinion given by an expert should be backed up by facts and research data. The *Daubert vs Merrill Dow Pharmaceuticals, Inc* US Supreme Court decision has set 4 standards for admissibility of expert testimony in the federal courts.³⁻⁵ A fifth criterion was added by the Ninth Circuit Court of Appeals. The judge acts as a gatekeeper and considers and applies the 5 factors. They are

1. Can and has the theory or technique been tested?
2. Has the theory or technique been peer reviewed and published?
3. Is the rate of error or failure known?
4. To what degree is the theory or technique accepted by the relevant scientific community, ie, practitioners of oral implantology?
5. Did the theory or technique exist before the litigation begin (added by the Ninth Circuit Court)?

The Supreme Court wants to insure that expert testimony is based on sound methodology of scientific reasoning and have set these criteria for

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admissibility. Many state courts have adopted these Daubert standards.⁴

Before the actual trial begins, the opposing attorney may file a motion in limine. A hearing is then held and the expert's testimony is heard. The 5 Daubert standards are then applied by the judge. Rarely will a judge exclude testimony based on a single factor. In oral implantology, a procedure or technique testified to should have been previously published and the results and outcomes examined.⁶ The technique should be able to be tested and have been tested for reliability and success rates.⁷ Animal studies are probably not enough. There is a quantum leap from animal studies to human clinical use, and animal studies are held not to be reliable by the scientific community in oral implantology.⁸

A written report may be drafted by the expert but only if instructed to do so by the retaining attorney.^{2(p127)} An error in a written report can be used against the expert at the trial at hand and even at trials in the future.^{2(p129)} Any written report should be carefully proofread and contain no words that appear to give bias. It should state only the scientific opinion and not draw legal conclusions.^{2(pp129-131)}

When testifying before a jury, several points should be kept in mind. The testimony should be understandable and coherent. The language used should be clear and unambiguous. The expert should be sincere and respectful of the jury.^{2(p135)} The opposing attorney will try to destroy the expert's credibility during cross-examination. The

expert should explain his opinion simply and directly and stay within his area of expertise. He should not volunteer information and not be afraid to say "I don't know." An expert should not argue with the attorneys. He should be calm and listen carefully to the questions and keep the facts straight. During testimony, the expert should be assertive and finish an answer if interrupted. Any questions about a document should be answered only after seeing the document.^{2(pp169-174)}

There is a potential for liability for the expert witness. In general, there is immunity; however, an expert may be held liable for losing or destroying evidence, for defamation, or for unethical behavior.^{2(pp229,237)} It is best for the expert to be paid in advance of testimony by a replenishable retainer or he may be faced with slow payment or non-payment.^{2(p312)}

DISCUSSION

The key to expert testimony is preparation. The expert renders an opinion based on factual evidence that he has accumulated through education, training, and experience. He is called upon to render an unbiased scientific conclusion based on research and not a legal conclusion. The legal conclusion is the task of the judge or jury and should not be rendered by an expert witness. A legal conclusion by the expert would demonstrate bias and make his testimony dubious.

CONCLUSIONS

Guidelines for expert testimony in oral implantology have been presented. The body of knowledge of oral implantology is rapidly expanding. The way this knowledge base is used in clinical practice is being affected by court decisions. Expert witnesses play a key role in court decisions. It is important for an expert witness in oral implantology to be well informed, well prepared, and an excellent communicator.

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