



ELSEVIER

Surgery for Obesity and Related Diseases xx (2011) xxx

ASMBS guidelines/statements

American Society of Metabolic and Bariatric Surgery patient safety committee policy statement on the qualifications of expert witnesses in bariatric surgery medicolegal matters

R. M. Dallal, M.D.*, D. Cottam, N. Bertha, F. Bonanni, E S. Bour, R. E. Brodin, K. Keith, A. Petrick, W. A. Sweet, R. P. Blackstone; on behalf of the ASMBS Patient Safety Committee and Executive Committee

Patient Safety Committee of the American Society for Metabolic and Bariatric Surgery

Received December 5, 2011; accepted December 5, 2011

The Patient Safety Committee of the American Society for Metabolic and Bariatric Surgery (ASMBS) encourages its members to testify in court to promote safe and responsible bariatric surgical care. The widespread availability of expert opinion to both defendants and plaintiffs is critical in meeting the Society's social responsibility. The expert witness in a medical malpractice suit is of critical importance. The purpose of expert witness testimony in medical malpractice matters is to describe the standards of care relevant to a given case, identify any breaches in those standards, and, if so noted, render an opinion as to whether those breaches were the most likely cause of injury. The expert must be able to distinguish between negligence (substandard medical care that results in harm) and an unfortunate medical outcome (recognized complications as a result of medical uncertainty). Defendants and plaintiffs deserve expert witnesses who demonstrate integrity and expertise in the field for which the opinion is being rendered.

Only the courts can determine the eligibility, reliability, and relevance of an expert witness. No organization can interfere with or influence any member's right to testify or provide an opinion in medicolegal matters. However, the ASMBS can provide guidance for expert witness qualifications in bariatric surgery medicolegal matters.

The field of bariatric surgery has evolved substantially in recent decades. Bariatric surgical services are now widespread nationally, a large body of clinical research has refined the development of evidence-based practices, and highly experienced bariatric surgeons are now common-

place. Thus, the availability of expert opinion should be sufficiently widespread such that both the defendant and plaintiff should have access to high-quality bariatric surgeons willing to provide expert witness testimony.

This Policy Statement is offered to provide guidance to ASMBS members and nonmembers and to nonsurgeon members of the medicolegal community regarding the qualifications of expert witnesses in bariatric surgery medicolegal matters. This Policy Statement differs from the Expert Witness Guidelines contained in the ASMBS Code of Ethics in that the Code of Ethics applies only to ASMBS members and, in addition to providing guidance for ethical behavior, can be the basis for disciplinary action against a member. This Policy Statement is intended for a wider audience and is not intended as the basis for disciplinary action against an ASMBS member.

The Patient Safety Committee supports without reservation the guidelines set forth by the American College of Surgeons and the Expert Witness Guidelines in the ASMBS Code of Ethics.

Guidelines for the Qualifications of Expert Witnesses in Bariatric Surgery Medicolegal Matters

1. Although there is currently no accredited specialty certification for bariatric surgeons, there is a widely accepted standard in the surgical community that bariatric surgery is a subspecialty of general surgery. Some states courts have affirmed that expert witnesses must hold the same specialization as the defendant in medical malpractice cases. The ASMBS endorses this standard. As such, the expert witness in a bariatric surgery legal matter

*Correspondence: R. M. Dallal, M.D., Patient Safety Committee, 60 East Township Line Road, Ekins Park, PA 19027.

E-mail: dallalr@einstein.edu

- 50 should hold or have held privileges for the specific pro- 50
 51 cedure at issue in the legal matter at the time the alleged 51
 52 malpractice occurred. At least 1 expert witness each for 52
 53 the defense and the plaintiff in bariatric surgery malprac- 53
 54 tice litigation should be a surgeon with expertise in 54
 55 bariatric surgery. 55
- 56 2. A bariatric surgeon under consideration for providing 56
 57 expert opinion or testimony should have the following 57
 58 credentials: 58
- 59 a. The bariatric surgeon should only provide expert 59
 60 opinion regarding procedures for which he or she has 60
 61 significant direct experience. Experts can be asked to 61
 62 give an opinion regarding nonstandard procedures, 62
 63 emerging technologies, or relatively uncommon clinical 63
 64 situations. In these situations, in which the identification 64
 65 of an expert with “significant direct experience” could 65
 66 be burdensome to the litigants, the expert should at least 66
 67 have direct experience with procedures technically sim- 67
 68 ilar to the procedure in question and with similar clinical 68
 69 management. The ASMBS believes that “significant di- 69
 70 rect experience” is demonstrated if the expert has per- 70
 71 formed bariatric operations and has treated the pre- and 71
 72 postoperative bariatric patient in substantial numbers 72
 73 such that he or she has a thorough understanding of the 73
 74 standards of care for that procedure. The ASMBS en- 74
 75 courages both the plaintiff and the defense to identify 75
 76 the most experienced bariatric surgeons that are also 76
 77 able to give articulate testimony based on a reliable 77
 78 scientific foundation. 78
- 79 b. The expert should show a dedication to the practice of 79
 80 bariatric surgery through a history of clinical practice 80
 81 that incorporates the care of the bariatric patient. 81
 82 Identifying experts whose clinical practice is accred- 82
 83 ited by national organizations (i.e., ASMBS Center of 83
 84 Excellence or American College of Surgeons Bariat- 84
 85 ric Surgery Center Network), certificated by health 85
 86 insurance companies or similar other outside entities, 86
 87 is strongly encouraged. 87
 88 c. The expert witness should have a minimum of 24 88
 89 hours of the American Medical Association Physi- 89
 90 cians Recognition Award Category 1 credits continu- 90
 91 ing medical education in bariatric surgery every 3 91
 92 years. The expert witness should be current with this 92
 93 minimum when rendering any expert opinion. 93
 94 d. The expert must have met all these criteria at the time 94
 95 the alleged negligence had taken place. 95
 96 3. Expert witnesses are advised that they must respect the 96
 97 privacy of all parties involved with the litigation. Expert 97
 98 witnesses must not discuss the case with colleagues, 98
 99 other attorneys, or any third parties unless given explicit 99
 100 permission to do so by the attorney who retained the 100
 101 expert witness. All information is confidential until a part 101
 102 of the public record. 102
 103 4. The expert witness should make all reasonable efforts 103
 104 to maintain integrity and avoid conflicts of interest. 104
 Potential conflicts of interest include providing an
 expert opinion for a close friend or providing expert
 testimony against a direct competitor. The expert wit-
 ness should avoid any possibility of professional ad-
 vantage from serving in this capacity. If unavoidable,
 any questions of potential conflicts should be explic-
 itly disclosed to the attorneys for both the defense and
 the plaintiff.
5. The ultimate test for medical accuracy and impartiality is
 a willingness to prepare testimony that could be pre-
 sented unchanged for use by either the plaintiff or the
 defendant. Expert witnesses are encouraged to make
 initial recommendations and reports without regard to
 whether the hiring attorney is representing the plaintiff or
 the defendant.