

University of Washington Physicians

POLICY REGARDING EXPERT WITNESS TESTIMONY

Members and associates of University of Washington Physicians ("UWP") provide expert witness testimony from time to time in lawsuits. Such testimony may involve, for examples, claims of medical malpractice, assessments of injuries in tort actions of all types, or industrial insurance claims.

I. Expert Witness Testimony as a UWP Activity

When a UWP member or associate testifies as to any UW, UWP, or Children's University Medical Group ("CUMG") patient, regardless of whether a present or former patient, such testimony is considered to be in the line of duty, and the fee or revenue with respect to the testimony must be billed through UWP. When a UWP member or associate acts as an expert witness under these circumstances, the activity is covered by the risk management program of the UW. A patient is considered a "UW, UWP, or CUMG patient" if the patient's medical record presented for review to the member or associate indicates treatment by a UWP or CUMG physician or if the member or associate otherwise knows that such treatment has occurred.

A UWP member or associate also may act voluntarily as an expert witness in a lawsuit not involving his/her patient or another patient of UW, UWP, or CUMG and treat that service as a UWP service. In such case, the service will be billed in the ordinary course through UWP, conducted at UWP sites of practice, and covered by the UW risk management program.

If testimony of any kind is given, it must be honest. Testimony, including expert witness testimony, is subject to perjury penalties in all events. A UWP member or associate cannot be required to give expert witness testimony except in limited circumstances where he/she has actually treated the patient in question and has formed such an opinion in the course of treatment. Even if he/she is subpoenaed to testify as a fact witness with respect to a patient he/she treated, his/her obligation to give an expert opinion should be limited to those opinions within his/her expertise and actually formed in the course of his/her services to the patient. Before accepting voluntary service as an expert witness, a UWP member or associate should consider the implications of testimony involving the UW, UWP, or CUMG and avoid conflicting loyalties and

¹ Members and associates should also refer to the memorandum entitled "Guidelines for Deponents" and/or any successor guidance from the Attorney General's Office for University of Washington ("UW") faculty members regarding legal testimony, copies of which may be secured through the UW Dean of the School of Medicine (the "Dean").

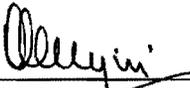
interests when possible, especially when expert witness testimony is available from other sources.

Exceptions to this Section I, "Expert Witness Testimony as a UWP Activity," may be made under unusual circumstances after review and advice of the Management Committee and with the approval of the Dean. An appeal for exception must be made in writing with supporting rationale and addressed to the Dean, with copies to the UWP President and the Trustee of the requesting individual's department. It is expected that few exceptions will be granted.

II. *Expert Witness Testimony as a Consulting Activity*

A UWP member or associate acting as an expert witness in a lawsuit not involving his/her patient, or another patient of UW, UWP, or CUMG and not billed through UWP, is acting in a consulting capacity for purposes of UWP guidelines. Acting as an expert witness is always voluntary (see discussion above). The activity must be reviewed and approved prospectively by the involved Department Chair and the Dean of the UW School of Medicine in the manner that consulting activity is normally approved under the UW faculty rules (e.g., using Form 1460). UW rules with respect to outside consulting require that the activity not be incompatible with and not interfere with UW faculty duties and that UW resources not be inappropriately utilized in this activity. No engagement is to be accepted which is likely to embarrass or involve the UW in unwarranted controversy.

Under UWP's Bylaws and policies, UWP members and associates are also precluded from engaging in the outside private practice of medicine. Expert witness activities which involve examination, diagnosis and/or treatment of patients could violate this limitation. Fees for outside consulting belong to the individual member or associate. Outside consulting, including expert witness testimony, is not covered by the UW risk management program.

Recommended: 
Carlos A. Pellegrini, M.D.
President
University of Washington
Physicians

Approved: 
Paul G. Ramsey, M.D.
Vice President for Medical
Affairs and
Dean, School of Medicine

Date: 1/20/98

Date: 1/22/98

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¹ See Vol. IV, page 47, of the UW Handbook, and UW Form 1460 or any successor or related forms from the Dean.

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FREQUENTLY ASKED QUESTIONS

Questions

1. Q: Does the policy prohibit the provision of expert witness testimony for compensation?
A: No. If one follows the rules, expert witness consulting and testimony may be undertaken as a UWP activity or as an outside consulting activity. Under certain circumstances, it is required that expert witness consulting be performed as a UWP activity and billed through UWP.

2. Q: Under what circumstances must expert witness consulting be billed via UWP?
A: Billing through UWP is required if expert witness consulting involves a CUMG, UW, or UWP patient, requires anything other than minimal and incidental use of State resources, or if the physician doing the consulting desires University professional liability coverage. If none of these conditions is present, and if University rules regarding disclosure and prospective approval for the activity are followed, then expert witness testimony may be conducted as an outside consulting activity and billed privately.

3. Q: May we have some examples?
A: Yes, see below.

Examples

1. Dr. T files Form 1460 to propose expert witness consulting activity. The activity is approved by the Departmental Chair and the Dean according to UW consulting rules. Frequently asked questions:

- Q: Can Dr. T use his office in connection with this activity?
A: No.

Q: Can Dr. T use his secretary or UW stationery in connection with this activity?

A: No.

Q: Can Dr. T use any other UW space or resources?

A: Only certain *de minimis* use of local telephone service according to State ethics regulations.

Q: Is Dr. T's consulting activity covered by the UW risk management program?

A: No.

2. Dr. W wishes to accept an expert witness engagement as part of her UWP services. She will conduct the engagement at UWP sites of practice just as she normally conducts her practice. The services will be billed by UWP as part of the usual funds flow. Frequently asked questions:

Q: Can Dr. W use her office, secretary and stationery in connection with this activity?

A: Yes, at any UWP site of practice.

Q: Is Dr. W's activity covered by the UW risk management program?

A: Yes, consistent with the usual UWP practice rules.

3. Dr. Z takes care of a UWP patient. Subsequently, he is asked to perform a disability review of the patient. Frequently asked questions:

Q: Can Dr. Z perform the disability review as an independent consulting activity?

A: No. This is a UWP patient and any subsequent review is a UWP activity which must be billed through UWP. Regular UWP rules regarding funds flow will apply.

Q: Is Dr. Z's review covered by the UW risk management program?

A: Yes, consistent with the usual UWP practice rules.

TALKING POINTS FOR REVIEW OF UWP EXPERT WITNESS POLICY

1. Policy. Policy was established in January 1998 by UWP.
2. Expert Witness as a UWP Activity.
 - a. Certain activities must be done as practice plan activity per the UWP and CUMG bylaws.
 - b. Practice plan member testimony as to any present or former patient is considered in the line of duty. Billing if any is through UWP.
 - c. How to know if present or former patient? If the medical record system (ORCA) indicates that the person has been a patient, or if you know otherwise.
 - d. Can also testify voluntarily as expert witness regarding a UW, UWP or CUMG patient.
 - e. Testimony must be honest, based on knowledge and opinions actually formed.
 - f. Covered by UW risk management.
3. Expert Witness as Consulting Activity.
 - a. Not involving present or former patient.
 - b. Use UW approval process for outside work.
 - i. "1460" (now new electronic outside work form)
 - ii. Chair, Dean, Provost approval
 - iii. No conflicts
 - iv. No use of UW resources
 - c. Beware of UWP and CUMG bylaws limitation on outside practice of medicine
 - i. Examination, diagnosis, treatment, could violate
 - d. Not covered by UW risk management: the practitioner is personally liable.
4. Outside Work.
 - a. Must be compatible with University duties/loyalties
 - b. Limit to 13 days per calendar quarter
 - c. Must be approved in advance
 - d. File forms 1460 and 1461 with Office of Research (Michael Corn)