



Paul E. Okamoto, D.C.

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The Expert Witness (Part Two - of Two Segments)

To continue this look at being an expert witness, we will examine the next step, which concerns your testimony. Testimony commonly occurs in three different scenarios. First of all, you may be asked to attend arbitration. This typically involves speaking to a board of three attorneys, one appointed by the patient's attorney, one appointed by the defense, and one agreed upon by both. This is usually straightforward. The second scenario is the deposition, which involves meeting with both attorneys. The deposition is solely a fact-finding mission. The third involves your appearance in court, either solely before a judge or before judge and jury.

Either attorney may summon you to a trial. Whoever has requested you to testify should provide you with all medical records, so that you are well informed of other doctors involved. It is the responsibility of the summoning attorney to pay you for your time, and that should be done ahead of the trial. If you wait to be paid afterward, you may be out in the cold with no compensation. Ask the attorney how much time will be involved. I typically ask for an additional hour's pay, as the attorney can only estimate how long the opposing party will take. I also mention if less time is involved, I will refund what has not been used.

In reality, very few cases ever end up in court. It is primarily the ones that include either pre-existing treatment, large medical bills with little vehicle damage, or insurance companies fighting over responsibility involving multiple accidents that are the cases that go to trial.

Still, it is best to be prepared, so I would like to give several tips on courtroom protocol. Wear a dark suit or dress. Bring the patient's entire chart with you. Be aware of what is in the chart. If there is information that is not related to the care and management of your patient, remove it prior to going to court.

Realize that the jury has probably never seen a chiropractor and would have no understanding of chiropractic. Probably the only stories that they have heard are by those who either love or hate our profession. Thus there may be prejudices formed either for or against you before you even speak.

When you testify, find someone on the jury with whom you can maintain eye contact. Don't weaken your own testimony by using limiting phrases such as *"to the best of my knowledge,"* or *"I guess."* When testifying to the cause of your patient's injuries, don't be equivocal.

It is the responsibility of the opposing attorney to discredit either you or your testimony. Early in my career, I heard questions such as, *"Isn't it true that you are not a real doctor, that you cannot prescribe medication?"* *"How many spinal surgeries have you attended?"* In other words, these questions were aimed at attacking your profession. In recent years, chiropractic has become

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more mainstream, and thus questions are more geared toward downgrading your testimony. One trap that you should avoid is when the opposing attorney asks you if you are being paid for your testimony. If you respond affirmatively, the lawyer can manipulate that statement to make it appear that your fee is dependent upon a prejudicial testimony. You are not being paid for your testimony. Rather you are being compensated for your time.

Additionally, an attorney may ask you a question and only accept a yes or no answer, even though you feel that additional information is necessary to clarify your response. Never volunteer testimony. Don't allow the cross-examiner to hurry or rattle you. Take all the time you need to answer the questions. Do not be afraid to look at the records in your chart in order to answer a question. If the cross-examiner is successful in cutting you off before you can fully answer the question, you must rely on the lawyer who called you to follow up with you on the subject and ask

you the questions necessary to bring out the whole truth. However, always feel free to state that you have not finished answering and ask the judge for permission to complete your answer. If at any time during your testimony you realize that you have made a mistake, say so as soon as possible. If you don't correct the mistake yourself immediately, the cross-examining attorney will undoubtedly use the misstatement in an effort to discredit you, perhaps waiting until after you have left the witness stand and can no longer correct it. If there is a prior inconsistent statement on your part or if an inconsistency in the record is called to your attention, freely admit it and correct it. Candor and honesty are always your best allies.

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As a witness, you have five alternatives when you are asked a question.

1. You know the answer
2. You do not understand the question
3. You do not know the answer
4. You do not remember
5. If you cannot answer a "yes or no" question, say so.

When testifying, do not refer to your patient's lawyer as your lawyer. If you are asked, don't hesitate to admit that you met with your patient's lawyer to discuss the case.

Realize that a number of professionals will be called to appear in court, and the opposing attorney will attempt to discredit all expert witnesses involved. No matter what is thrown at you, do not act smart, rude, or argumentative. Rather be pleasant and unintimidated.

As you testify, it is your responsibility to tell the chiropractic story, particularly if it is the patient's attorney who has requested that you appear in court. It is not your responsibility, nor should you try to persuade the jury to side with you. You are to only state the facts. Remember that you are only one person of many that will be called. The judge or jury will make a decision at the end when all witnesses have testified.

If you follow these recommendations, you will find that courtroom testimony can actually be fun. You can share the chiropractic story with a group of people that may have never heard. Have a blessed day!

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