

# Expert Witnesses: Neuroradiologists' Perspectives

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**Purpose:** Physician malpractice expert witnesses may testify on behalf of physicians or patients. The goal of the study was to assess the experience of neuroradiologists as expert witnesses and their attitudes about such testimony.

**Methods:** A survey was distributed to the 4,357 e-mail addresses of the members of the American Society of Neuroradiology with questions about expert witnesses.

**Results:** The survey found that 1,301 of 4,357 answered at least one survey question. Five hundred twenty seven of 1194 (44.1%) of respondents had experience as expert witnesses. Most offer to testify on behalf of both plaintiffs and defendant physicians (324 of 465; 69.7%). Some do not testify/review cases on behalf of a plaintiff because they do not think that physicians should testify against other physicians, even if negligence is a factor (40 of 198; 20.2%). This reason was the most common for not agreeing to be an expert witness for a plaintiff, for all age groups. Of those expressing an opinion, 312 of 874 (35.7%) of neuroradiologists feel negatively about expert witnesses, whereas 434 of 874 (49.6%) say they serve a purpose, and 105 of 874 (12.0%) feel they should be commended for their work on behalf of the justice system.

**Conclusions:** Of neuroradiologists answering the survey, nearly half have served as expert witnesses, and most feel comfortable testifying for both plaintiffs and defendants. Substantive negative perceptions (35.7%) of expert witnesses were found.

**Key Words:** Medicolegal, expert witness, malpractice, litigation, neuroradiology

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## INTRODUCTION

The ACR has provided guidelines for expert witnesses in medicolegal cases. The ACR specifically states: "The public interest requires readily available, objective, and unbiased medical expert testimony." As stated in section III A of the ACR guideline entitled "ACR practice guideline on the physician expert witness in radiology and radiation oncology":

the role of the expert witness is to help the fact finder analyze the issues in dispute necessary to decide the case. The expert witness is expected and should be able to render an opinion regarding the reasonableness of the conduct of the parties in the circumstances at hand. Depending on the legal issues being tried, this may include an opinion about a defendant doctor's training and experience; the relevant standard of care; the relevance of particular imaging findings, interventional procedures, or radiation therapy treatment to causation of damages; or the adequacy of the technical equipment used [1].

Despite the ACR's impartial treatise regarding expert witnesses, individuals who testify on behalf of one side

or the other are often chastised among peers, in the social media, or during the medicolegal process [2]. In physician circles, those who defend peers are often viewed more favorably than those who testify on behalf of plaintiffs. We sought to determine the viewpoints of American Society of Neuroradiology (ASNR) members towards their colleagues that serve as medical experts in malpractice cases. We hypothesized that there would be strong opposing feelings represented regarding the ethics of medical expert testimony.

## METHODS

The data were based on a subset of survey questions e-mailed to 4,357 ASNR members conducted in February 2013, and again in February 2014 with those who did not respond the year earlier. The survey questions on which this paper is based and the full results of the survey (for 2013) can be viewed in the [appendix](#).

The survey was sent by means of a web link by the ASNR to all ASNR members. Repeated e-mail reminders (3 total messages) were sent to maximize the response rate for both attempts. The individuals who had responded in 2013 were NOT sent the survey again in 2014. The survey was conducted using the Survey Monkey website (<http://www.surveymonkey.com>) and administered by

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the ASNR. The data were anonymized without individual respondent identification. Confidentiality was assured to respondents. Answers to open-ended questions were grouped for response trends by two independent reviewers, who met when necessary to achieve consensus. The responses were aggregated by age group; gender; practice pattern (predominantly in training, diagnostic neuroradiology, interventional neuroradiology, or nonclinical); and whether the respondents had ever been sued.

## RESULTS

The survey found that 1,301 of 4,357 ASNR members (29.9%) answered at least 1 survey question. Of these 1,301 respondents, 1,123 answered some of the demographic questions. Of 1,119 providing gender data, 85.5% (957 of 1119) were men, and 14.5% (162 of 1,119) were women. Of the 1,123 that responded to the question about their age, most were age 41-60 years (668 of 1,123; 59.5%). The majority practiced in diagnostic neuroradiology (907 of 1,072; 84.6%). Smaller segments practiced in interventional neuroradiology (97 of 1,072; 9.0%); were "in training" (55 of 1,072; 5.1%); or were nonclinical (13 of 1,072; 1.2%).

The experiences and attitudes of ASNR respondents with regard to each question relating to expert witness testimony are provided in [Table 1](#). Five hundred twenty seven of 1,194 (44.1%) respondents had served as expert witnesses. The age and practice pattern distributions of those who had served as expert witnesses can be found in [Table 1](#) (Question 2, parts b and c). Fifty six of 162 (34.6%) of women and 426 of 955 (44.6%) of men had served as experts (note that not all respondents completed gender and age questions; these differences account for variations in the denominators).

The most common hourly rates charged are shown in [Table 1](#) (Question 6). Those practicing interventional neuroradiology charged >\$600 per hour 20.4% (11 of 54) of the time while those in diagnostic neuroradiology charged >\$600 per hour only 14.0% (54 of 386) of the time. These numbers were equivalent for men and women across all practice types.

Most respondents offer to testify on behalf of both plaintiffs and defendant physicians (324 of 465; 69.7%). However, in practice, 138 of 474 (29.1%) respondents stated that they only testify for physician defendants, and 103 of 474 (21.7%) stated that they testify 81%-99% of the time for defendants. The survey found 32 of 474 (6.7%) had only testified for plaintiffs, and 59 of 474 (12.4%) testified >80% of the time for plaintiffs. Women (71.4%; 35 of 49) are as likely to testify for both plaintiff and defendants as men (69.7%; 281 of 403).

The respondents were asked why they did not testify for plaintiffs. The most common answer chosen was that they did not think that physicians should testify against

physicians, even if negligence had occurred (40 of 198; 20.2%). This sentiment was the most common at all age groups, for both genders, for all practice patterns, and whether or not the responder had been named in a lawsuit. Other reasons for not testifying for plaintiffs are provided in [Table 1](#), Question 7. In the comments submitted for this question, many (n = 24) noted that they had not testified on behalf of plaintiffs because they had never been asked to do so. Other reasons included not wanting to hurt other physicians (n = 11); believing that plaintiff lawsuits are frivolous (n = 10); finding the process to be too time consuming (n = 7); and believing the plaintiffs' lawyers to be unethical (n = 7).

As far as attitudes about expert witnesses, 434 of 874 (49.7%) of those with an opinion responded that generally those physicians who act as expert witnesses serve a purpose, and 12.0% (105 of 874) felt that people who serve as expert witnesses should be commended for their work on behalf of the judicial system. Eighty one of 874 (9.3%) felt that expert witnesses are generally unethical and traitorous, and 231 of 874 (26.4%) felt that expert witnesses are greedy and out for personal gain. Comments regarding opinions of expert witnesses were separated into 3 categories: positive (n = 24); neutral (n = 92); and negative (n = 59). The most common positive comment was that medical experts are helpful and needed (n = 22). The most common neutral comment was that the motivation of experts varied from person to person (n = 60). The most common negative comment was that experts (particularly plaintiff experts) were unethical, greedy, or dishonest (n = 49).

Although men had stronger negative attitudes toward plaintiff experts (279 of 742 with an opinion; 37.6%) than did women (27 of 119; 22.7%), responses showed no variability across practice patterns or age groups of <61 years. Physicians age >60 years, however, had a more favorable attitude toward plaintiff experts (58 of 334 = 17.4%) than did those age <60 years (71 of 722; 9.8%).

The data were also separated based on whether the respondent had ever been sued. The rate of serving as an expert witness for those sued (343 of 556; 61.7%) versus not sued (183 of 634; 28.9%) is likely a reflection of age differences, with 355 of 534 (66.5%) of those sued being age >50 years, whereas only 147 of 584 (25.2%) of those not sued were age ≥51 years. The rate at which a person who had ever been sued would testify for both plaintiff and defense (72.1%) was slightly higher than that for someone who had never been sued (62.7%). The survey found 171 of 435 (39.3%) of physicians sued had a negative opinion of expert witnesses, and 12.9% (56 of 435) a positive opinion. Of those who had never been sued, 31.6% (137 of 434) had a negative opinion of expert witnesses; a positive opinion was held by 20.7% (90 of 434).

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