

## ***Standards of Professionalism***

# **Orthopaedic Expert Witness Testimony**

Adopted April 18, 2005 (effective for expert opinions offered before May 12, 2010; expert witness opinions rendered on or after May 12, 2010, are governed by the amended Standards of Professionalism for Orthopaedic Expert Opinion and Testimony)

*AAOS Standards of Professionalism (SOPs) establish the minimum standards of acceptable conduct for orthopaedic surgeons. Violations of any SOP may result in professional compliance actions against an AAOS Fellow or Member found in violation. Not prepared using a systematic review, SOPs are developed through a consensus process and are ultimately adopted as official AAOS statements by the two-thirds vote of the AAOS Fellowship casting ballots.*

Orthopaedic surgeons are frequently called upon to provide medical testimony in legal or administrative proceedings. It is in the public interest for orthopaedic testimony to be readily available, knowledgeable and objective. As a member of this profession, an orthopaedic surgeon must recognize a responsibility to provide testimony that is truthful, scientifically correct and in accordance with the merits of the case. To this end, the American Academy of Orthopaedic Surgeons and the American Association of Orthopaedic Surgeons (“AAOS”) have adopted the following Standards of Professionalism.

The Standards of Professionalism draw from the aspirational Code of Medical Ethics and Professionalism that appears in bold Italics. The statements that follow the aspirational Code establish the minimum standard of acceptable conduct for orthopaedic surgeons when providing expert witness testimony. Violations of these minimum standards may serve as grounds for formal complaint to and action by the AAOS as outlined in the AAOS Bylaws Article VIII.

These Standards of Professionalism apply to all AAOS Fellows and Members who provide expert opinion services to attorneys, litigants, administrative agencies or the judiciary in the context of administrative, civil or criminal matters and include written expert opinions as well as sworn testimony. Only an AAOS Fellow or Member may file complaints of an alleged violation of these Standards of Professionalism regarding another AAOS Fellow or Member.

### **A. IMPARTIAL TESTIMONY**

#### **Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:**

***Orthopaedic surgeons are frequently called upon to provide expert medical testimony in courts of law. In providing testimony, the orthopaedic surgeon should ensure that the testimony provided is non-partisan, scientifically correct, and clinically accurate.***

Mandatory Standards:

1. An orthopaedic expert witness shall not knowingly provide testimony that is false.
2. An orthopaedic expert witness shall provide opinions and/or factual testimony in a fair and impartial manner.
3. An orthopaedic expert witness shall evaluate the medical condition and care provided in light of generally accepted standards at the time, place and in the context of care delivered.
4. An orthopaedic expert witness shall neither condemn performance that falls within generally accepted practice standards nor endorse or condone performance that falls outside these standards.
5. An orthopaedic expert witness shall state how and why his or her opinion varies from generally accepted standards.
6. An orthopaedic expert witness shall seek and review all pertinent medical records related to a particular patient prior to rendering an opinion on the medical or surgical management of the patient.

**B. SUBJECT MATTER KNOWLEDGE**

**Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:**

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Mandatory Standards:

7. An orthopaedic expert witness shall have knowledge and experience about the standard of care and the available scientific evidence for the condition in question during the relevant time, place and in the context of medical care provided and shall respond accurately to questions about the standard of care and the available scientific evidence.
8. An orthopaedic expert witness shall provide evidence or testify only in matters in which he or she has relevant clinical experience and knowledge in the areas of medicine that are the subject of the proceeding.
9. An orthopaedic expert witness shall be prepared to state the basis of the testimony presented and whether it is based on personal experience, specific clinical or scientific evidence.

## C. QUALIFICATIONS

### **Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:**

***The orthopaedic surgeon should not testify concerning matters about which the orthopaedic surgeon is not knowledgeable.***

#### Mandatory Standards:

10. An orthopaedic expert witness shall have a current, valid, and unrestricted license to practice medicine in any state or U.S. territory.
11. An orthopaedic expert witness shall maintain a current certificate from the American Board of Orthopaedic Surgery (ABOS), the American Osteopathic Board of Orthopaedic Surgery, or the certifying body, if any, in the country in which the orthopaedic surgeon took his or her training.
12. An orthopaedic expert witness shall be engaged in the active practice of orthopaedic surgery or demonstrate enough familiarity with present practices to warrant designation as an expert.
13. An orthopaedic expert witness shall not misrepresent his or her credentials, qualifications, experience or background.

## D. COMPENSATION

### **Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:**

***It is unethical for an orthopaedic surgeon to accept compensation that is contingent upon the outcome of litigation.***

#### Mandatory Standards:

14. An orthopaedic expert witness shall not agree to or accept an expert witness fee that is contingent upon the outcome of a case.
15. Compensation for an orthopaedic expert witness shall be reasonable and commensurate with expertise and the time and effort necessary to evaluate and testify on the facts of the case.