

Expert Witnesses in Women's Health, Obstetric, and Neonatal Nursing

Official Position Statement of
the Association of Women's
Health, Obstetric and
Neonatal Nurses

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Position

The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) asserts that a nurse expert witness should be selected based on skills, knowledge, and experience in the relevant nursing specialty for which the nurse will offer an opinion or testimony. Nurses are not hired based on their affiliation with a specific facility or nursing professional organization unless the relationship is material to a witness's expertise. Expert opinions may differ between clinicians, but testimony should be based on recognized scientific evidence and best practice recommendations from peer-reviewed sources. Although nurses who are members of AWHONN may provide expert witness testimony, this does not represent AWHONN's endorsement. This position statement offers guidance for nurses providing expert testimony in legal proceedings involving women's health, obstetric, and neonatal nursing to comply with [AWHONN's Standards for Professional Nursing Practice in the Care of Women, Newborns, and People Across the Life Span \(2023\)](#) and the [American Nurses Association's \(2015\)](#) code of ethics for nurses.

Background

A nurse expert witness may be hired for various reasons and play an integral role in medical-legal case review and litigation. Women's health, obstetric, and neonatal nursing are the subject of litigation due to the inherently high levels of risk and dynamic nature of these specialties. It is necessary to make a clear distinction between medical maloccurrence and malpractice ([American College of Obstetricians and Gynecologists, 2007](#)). Medical maloccurrence encompasses undesirable outcomes unrelated to the quality of care provided, whereas malpractice requires a demonstration of negligence. Nurses may also be called upon to offer opinions in criminal prosecutions regarding the necessity or impact of care.

Nurses who serve as expert witnesses review case facts and identify applicable standards of care based on the clinical circumstances. A medical record review

should involve a comprehensive, impartial, and unbiased analysis of data elements and not exclude relevant information to create a view favoring either the plaintiff or the defendant. Once facts are determined, a nurse expert decides if the case has merit and provides an opinion within the scope of nursing practice on whether nurses involved with a patient's care acted within the standard of care.

Opinions and testimony shall reflect the state of nursing knowledge at the time of the event, not what a nurse expert would have done in their clinical practice. These views should be consistent with nationally accepted nomenclature and practice recommendations. Knowledge of community standards may also be required. It is recognized that opinions may change over time based on evolving evidence or best practice recommendations. For example, terms such as "fetal distress" or "reassuring/nonreassuring fetal status" are not supported by the standardized, descriptive terms set forth in the National Institute of Child Health and Human Development consensus statement ([Macones et al., 2008](#)).

With some nuances based on state law, the standard of care generally is defined as reasonable care that a nurse would provide in the same or similar circumstances. This is supported by the nursing process, professional guidelines, literature, knowledge, training, and experience. Opinions are based on facts and supported by literature. These opinions shall neither criticize performance that falls within generally accepted practice standards nor legitimize care that falls outside of these standards ([Markowitz, 2023](#)). The nurse should not knowingly provide false oral or written testimony. Nurses should only offer causation testimony in jurisdictions where allowed based on their licensure.

The nurse expert assists the court in understanding complex, technical, or scientific issues. However, for purposes of court testimony, only a judge may determine whether a witness is qualified to provide expert testimony in accordance with applicable law. Qualifications of an expert witness are outlined by state or federal rules of civil procedure and

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accompanying case law (Narang & Paul, 2017). Although there is nothing implicitly wrong with advertising or marketing an expert review business, nurses who market their services should ensure that their qualifications and experience are accurately stated.

Nurses who serve as expert witnesses are compensated for their time and expertise. The potential for financial and professional rewards from expert witness testimony requires the nurse to adhere to strict personal and professional ethics. For example, a nurse expert does not advocate for a specific outcome on behalf of the patient, nurse, or hospital. In addition, a nurse expert does not allow hindsight bias to affect opinions, even with an adverse outcome.

Reasonable compensation commensurate with expertise and the time and effort necessary to offer a comprehensive opinion or testimony is recommended. Additionally, nurse experts shall not agree to accept fees that are contingent upon a specific outcome or opinion.

Role of the Nurse

The role of a nurse expert witness in malpractice claims includes the following:

- Act as an objective educator and fact finder
- Outline and clarify case facts discovered in medical records and testimony
- Provide expert opinion(s) regarding nursing care only
- Testify at deposition and trial under oath

Qualifications of a Nurse Expert Witness

Registered nurses are exclusively prepared to perform a critical review and analysis of clinical nursing care and practice that provides the foundation for offering expert opinions and testifying on nursing or hospital negligence issues. Although a judge, applying the rules of civil procedure and case law, will ultimately determine whether a nurse has the requisite credentials to qualify as an expert, it is AWHONN's opinion that at a minimum, certain markers of expertise in the specialties of women's health, obstetric, or neonatal care are necessary to safeguard the reputation of the nursing profession.

Suggested requirements include the following:

- Graduate of an accredited school of nursing.
- Current unencumbered/unrestricted registered nurse license.
- Five years of practice experience in the clinical area in which opinions regarding the nursing standard of care are rendered.
- Demonstrated expertise in the specialty where a nurse provides standard of care opinions. In addition to clinical experience, this may be evidenced by certification, publication, or advanced education.
- Responsible for identifying conflicts of interest (personal or professional) to retaining counsel.
- Command of the literature, with an ability to interpret scientific studies. This includes use of evidence on which to base an opinion. "Junk science" plays no role in consultation and legal proceedings, which may be challenged on the science and limited in testimony. For example, the poorly defined term "skewed uterine contractions" is not used in clinical practice or based on scientific merit.

- Keeping professional knowledge current by remaining up to date on emerging practice recommendations from professional associations such as AWHONN, American College of Nurse-Midwives, American College of Obstetricians and Gynecologists, Society of Maternal-Fetal Medicine, and American Academy of Pediatrics.
- Ability to articulate scientific reasoning utilized in testimony to ensure that opinions are clearly understood and can be effectively used in legal proceedings.

Recommendations

AWHONN supports the following for qualified nursing experts in women's health, obstetric, and neonatal care:

- Provide opinions on nursing care in these specialties. Their opinions are based on the nursing process: assessment, interpretation, planning, intervention, and re-evaluation.
- Exhibit impartiality driven by medical and nursing science if reviewing and providing opinions on behalf of the plaintiff or defense.
- Comprehensively review reputable scientific and medical literature to inform expert testimony.
- Stay abreast of emerging practices within the profession to ensure that expert testimony reflects evolving practices.
- Practice with high moral and ethical standards when functioning in the role of an expert witness, understanding that providing false, misleading, or discredited information may undermine AWHONN's mission, damage the reputation of the nursing profession, or harm the public health and, as such, may amount to improper or unprofessional conduct.

AWHONN Contextual Statement

AWHONN recognizes the existence of diverse gender identities and acknowledges that patients may not identify as women, exclusively or otherwise. AWHONN strives to use gender-inclusive language where possible. In some instances, words like "women" (and related pronouns "she" and "her") have been retained for accuracy (e.g., to preserve the terminology of a published study) and specific case scenarios. To provide appropriate, respectful, and sensitive care, the health care provider is encouraged to always ask individuals what words they use to describe themselves, their bodies, and their health care practices.

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