

YOUNG ON TRIALS

Opposing Medical Experts:

3 Problems You Can Solve with the AMA's
Ethical Rules

By Steve Young

YOUNGONTRIALS.COM

Jury Selection Webinar Series

I am presenting a webinar series on my unique method of facilitating the interchange between jurors in *voir dire*. In the six-part series, you will discover the processes, the nuances, and the tools of persuasion that will allow you to connect deeply with jurors.

Whether you are a beginner or a seasoned trial attorney, my “Mastering the Courtroom” webinar series will change what you think you know about trials and arm you with the strategies and techniques to make your case as powerful as possible.

[Find out more at MasteringTheCourtroom.com](http://MasteringTheCourtroom.com)



About the Author

Steve Young has conducted almost 200 Civil Jury Trials during 34 years as a lawyer. He is a national board certified Civil Trial Advocate. Mr. Young's firm, the Law Offices of Steven R. Young, specializes in "last minute trials."

Copyright © 2014 Steve Young
All Rights Reserved

Feel free to pass this document around the web, but please do not alter any of its contents when you do.

YoungOnTrials.com

Opposing Medical Experts: 3 Problems You Can Solve with the AMA's Ethical Rules

The Code of Medical Ethics of the American Medical Association presents fertile ground for counsel to cross examine opposing medical experts. In my experience, most doctors are unaware of these rules and in all cases violate the proscription against disclosing without permission the plaintiff's medical information derived from a medical / legal examination.

Problem 1:

The Physician Who Demands Payment to Testify

Invariably when I serve a trial subpoena on a treating physician concerning a client, the doctor immediately demands that I pay an exorbitant fee and threatens to either ignore the subpoena if I don't pay, or worse, threatens to scuttle my case if the judge compels him to testify. Somehow doctors have elevated themselves to paid witnesses no matter their role at trial.

I respond, citing Rule 9.07 "Medical Testimony" of the AMA Ethics Rules, which provides:

*"As a citizen and as a professional with special training and experience, **the physician has an ethical obligation to assist in the administration of justice.** If a patient who has a legal claim requests a physician's assistance, **the physician should furnish medical evidence, with the patient's consent, in order to secure the patient's legal rights.**"*

The ethical rules are silent as to any compensation to the doctor, and instead impose an affirmative duty on the doctor to appear and testify.

Problem 2:

The Other Side's Expert Hasn't Treated a Patient in Years

What do you do when you encounter the professional witness physician? You know the type; he does not treat patients but makes his living selling insurance medical examinations (IMEs) and delivering damning medical testimony. Rule 9.07 "Medical Testimony" addresses this and gives a rich source for cross examination.

*"Medical experts should have **recent and substantive experience** in the area in which they testify and should limit testimony to their sphere of medical expertise."*

A cross examination of a professional medical witness might sound like:

"Please tell the jury how long it has been since you treated a patient."

"Five years ago when you last treated a patient, what area of medicine was it in which you were treating that patient?"

"How long ago was it that you last practiced medicine in the area in which you are offering your opinion today?"

"Have you retired from the practice of medicine?"

"Are you still using your medical school training and the experience you obtained caring for the sick and injured to generate income for yourself at the present time?"

"Is that income only from examinations related to court cases, like this one?"

"When you come to court to testify, you are paid as an expert witness, correct?"

Opposing Medical Experts: 3 Problems You Can Solve with the AMA's Ethical Rules

"During the past five years, your sole source of income from your medical training has come from serving as a testifying expert for attorneys at trial, correct?"

"Are you a member of the AMA?"

"Please tell the jury what that is."

"Please look at Exhibit 47. For the record your honor, 47 is the American Medical Association's Code of Ethics. Do you recognize that Doctor?"

"Tell the jury why you haven't seen this in 30 years."

"Regardless of that, please look at Rule 9.07 'Medical Testimony' of the American Medical Association. It says, 'Medical experts should have **recent and substantive** experience in the area in which they testify and should limit testimony to their sphere of medical expertise.' Please tell the jury what 'substantive experience' means."

"Please tell the jury what 'recent' means in that rule."

"Please tell the jury why whether you have resigned your membership in the AMA."

"Did you resign your membership in the AMA because you did not want to be a member of an association that says that if you have not treated patients for five years that it is unethical for you to testify in that field?"

"No further questions."

Problem 3:

The Opposing Medical Expert Assumes the Role of Advocate

Who hasn't confronted the physician at trial who assumes the role of advocate and argues not only the opponent's case, but sets out to destroy your case, even if the testimony is not medically sound?

Rule 9.07 of the AMA Rules of Ethics tells doctors that they cannot be advocates:

"The medical witness must not become an advocate or a partisan in the legal proceeding. The medical witness should be adequately prepared and should testify honestly and truthfully. The attorney for the party who calls the physician as a witness should be informed of all favorable and unfavorable information developed by the physician's evaluation of the case."

A cross examination of a professional medical witness might sound like:

"Doctor, are you here as an advocate for the defense?"

"What does it mean for a doctor to be an advocate in a case?"

"You know you cannot be an advocate, or else you violate the ethical rules of the AMA, correct?"

"You know that part of your obligation to remain neutral and not be an advocate requires you to tell my opponent not only the medical information favorable to his defense, but also the unfavorable information developed during your examination, correct?"

"Please list all the information unfavorable to the defense that you developed during your evaluation of the Plaintiff."

Opposing Medical Experts: 3 Problems You Can Solve with the AMA's Ethical Rules

"Why didn't you note that information?"

"Is safe to assume you did not share that with my opponent?"

"Is it also safe to assume that you did not intend to share that with the jury, unless perchance on cross examination, I asked you specifically about it?"

After getting the doctor to state for the jury that he is not an advocate, if the medical expert begins to slip back into the argumentative role, I bring them back by asking: "Doctor, are you advocating again?" When I do this, the doctor embarrassedly apologizes and affirms, "No, no please ask your question again, I will try to answer it."

Sign Up for My Jury Selection Webinar Series

Thank you for reading this short article. I wanted to make this direct and immediately useful, without narrative and fluff that usually litters “how to” articles. If you found even one question helpful I have succeeded.

I am presenting a webinar series on my unique method of facilitating the interchange between jurors in *voir dire*. Imagine the jurors smiling at you because they know you are not wasting their time. Imagine the jurors actually appreciating you asking them questions because you are seeking to know them as people rather than talk down to them. Imagine creating a law practice where the other side has to consider settlement with you because they know you will not hesitate to go to trial.

In the six-part series, you will discover the processes, the nuances, and the tools of persuasion that will allow you to connect deeply with jurors. I will teach you how to plumb the jurors’ feelings. I will give you the confidence to stand in front of the jury as you walk the tightrope that is the jury selection.

[Find out more at MasteringTheCourtroom.com](https://MasteringTheCourtroom.com)