

Cross examination of an expert at the time of trial

Jo Ann Pietro JD RN

Scope of cross examination is limited to direct examination testimony



Keep in mind that the attorney who cross examines you is limited to only asking question of information brought out on direct.

Be prepared for cross examination by knowing the case



There is no substitute for being well prepared on cross examination and the way to do that is to be very familiar with the facts of the case. The way to keep ahead of the attorney asking questions on cross examination or maintaining your credibility and defending your opinions is to know the case.

Objectives of cross examination

- **Cast down on your credentials or credibility**
- **Bring out any biases you might have**
- **Build up other expert**

The objective of cross examination is to utilize your opinions in the most favorable light to the opponent's case. Thus, the attorney asking you questions on cross examination will do all that she can to impugn your credentials and in this way be able to argue to the jury that either their expert is superior or because you lack the requisite expertise or experience and knowledge that the jury should not give significant weight to your testimony. Additionally, the attorney will attempt to attack your credibility. Therefore, it is important for you to make the necessary concessions on basic questions but hold firm on the important aspects of your testimony when they go to the heart of the case. The person who is asking you questions on cross examination would like you to assist him or her in building up the opposing side's expert. This can be done in a number of ways. A good expert knows when to make the necessary concessions and hold firm at other times. For instance, the opposing side can have a formidable expert, such as a person who is held in high regard in a particular area of nursing. If this happens to be the case, you should concede that this individual is known in the field and bears a good reputation. However, simply because someone is held in high regard in the field does not mean that he or she is necessarily correct, all the time.

Casting doubt on credentials



The cross examining attorney casts doubt on the expert's credentials by-

- Demonstrating to the jury your lack of professional training and experience
- Pointing out any gaps in your professional or work experience
- Demonstrating that your publications are all similar in nature
- Demonstrating to a jury that you are merely a dues paying member of organizations

Further examples of lack of credentials



Additional ways to attack the expert are:

Demonstration that you never actually performed the type of nursing service at issue in the case

Implying or stating you have the wrong level of experience

Your experience is in a larger or smaller healthcare organizational setting

You do not have the requisite credentials or degrees or licensure

Casting doubt on credibility



Cross examining attorneys seek to -

Demonstrate to the jury your lack of experience, training or knowledge in a particular area

Impeach you with prior testimony from another case where the facts were similar but your opinions were different

Make you appear less than honest

An attorney can demean your credibility



Credibility is attacked by-

Demonstrating to the jury that you do not know the case well

Confronting - demonstrating to the jury that you did not review all available materials

Demonstrating lack of knowledge of current literature

Highlighting biases



Biases are highlighted by –

Demonstrating to a jury that you testify for only one side

Using past testimony where you made a statement which would indicate your personal bias

Further examples of bias



Biases are also exposed by

Eliciting testimony that you work almost exclusively for one particular law firm

That you advertise to be an expert

That you are being paid for your opinions

Building up the opponent's expert



The cross examining attorney tries to build up her own expert by-

Asking you to acknowledge the adversary's expert's notoriety

Demeaning you or diminishing your opinions

Your job as an expert is to stand by your opinions & give objective information & opinions to the jury



Obviously, given that you are retained by either the plaintiff or defendant, you are acting as an advocate. However, at the time of trial you want it to appear via your testimony that you are objective and unbiased. What you are providing to the jury by way of your testimony are opinions and information which can help them decide a case. Of course, you want them to decide in favor of your client. Thus, testifying with honesty and conviction can help your side prevail.

Hallmarks of a good witness



The good witness -
Is fully familiar with the facts of the case
Stands by her opinions
Concedes when necessary

Examples of what to acknowledge



You should acknowledge-

That you are under oath

That you have no medical condition that will keep you from answering questions

That you are being paid for your testimony but not your opinion

Flow of cross examination

- **Attack on credentials**
- **Attack on credibility**
- **Gaining general concessions**
- **Gaining specific concessions**

Generally, a cross examination will have a certain flow to it. Usually the attorney will begin with reviewing your credentials or may end the cross examination with cross examination relating to your credentials. Next, the attorney might attempt to attack your credibility by questions related to your training, experience, education and the specific case. Impeachment of you could occur by use of your deposition in this case or testimony from other cases. Next, the attorney may attempt to get general concessions such as asking you “wouldn’t you agree that practicing nursing is an art and not a science”. You may be asked that there are many different approaches to nurses responding to patients’ needs. Make sure to agree with general statements if they are true. Next the attorney will ask you specific questions about this particular case that you might be able to agree with.