

Committee Opinion  
February 12, 1989

LEGAL ETHICS OPINION 1192

WITNESS: PROPERTY OF OPPOSING  
COUNSEL ADVISING AN  
UNREPRESENTED WITNESS IN A  
DEPOSITION.

You present a hypothetical situation in which the plaintiff's attorney is taking the deposition of a treating physician in a medical malpractice case, who is attending the deposition without counsel of his own. The deposition is also attended by the defendant doctor's counsel. During the deposition plaintiff's counsel asks the treating physician for his opinion as to the standard of care provided by the defendant doctor and whether the conduct of the defendant doctor proximately caused injury to the plaintiff. When this question is asked the defense counsel tells the treating doctor that he is not required to answer the question unless he has agreed to serve as an expert witness.

You ask whether the defense counsel's statement to the treating doctor is unethical.

The Committee opines that defense counsel's conduct does not violate any of the provisions of the Code of Professional Responsibility.

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