



Giving evidence

Advice correct as of May 2014

As a doctor, you may be asked to give evidence in many different types of tribunals, including criminal or civil courts, the coroner's court and employment or mental health tribunals. This factsheet gives further information about what to expect and how to prepare.

The law

The GMC says you must be honest and trustworthy when giving evidence. Make sure that any evidence you give or documents you write, or sign, are not false or misleading. You should recognise and work within the limits of your competence, and abide by this guidance even when giving evidence in non-medical scenarios.

Two key points:

- You must take reasonable steps to check the information
- You must not deliberately leave out relevant information.

Witnesses

If you are called as a witness, your role is to provide impartial evidence to help the court reach its decision. There are different types of medical witnesses:

Professional witness – you are being called to supply factual information obtained in your capacity as the treating doctor in a particular case; it is important to stick to the facts, and not to stray into providing opinion, beyond the scope of your expertise.

Expert witness – you are being called to give an independent opinion on the facts of a case, based on your own specialist knowledge and experience, but without any personal involvement with treatment in the case. For more information see the MPS factsheet *A Guide to Writing Expert Reports*.

Going to court

You will usually be put on notice that your attendance is required, and asked beforehand for dates that are convenient to you.

If you are served with a witness summons, you must attend at the specified time and for a set duration. You

must comply with a witness summons, otherwise you risk being found in contempt of court – this is a criminal offence and might, in addition, be reported to the GMC. If you believe that you have a legitimate reason for being unable to attend, you should seek advice from MPS.

Conflicts of interest

If there is a possible conflict of interest – for example, you have been professionally or personally involved with one of the people involved in the case in the past, or you have a personal interest in the case – you must follow the GMC's guidance on conflicts of interest.

You must also make sure the people instructing you, the other party and the judge are made aware of this without delay. You may continue to act as an expert witness only if the court decides the conflict of interest will not affect the case.

Disclosure of confidential information

Your duty of professional confidence is not automatically waived by being called to give evidence; therefore, you should not give confidential information without the patient's express consent. If you are asked for this information, you should explain that you do not have the necessary consent to provide it and decline to answer. However, you must disclose information if you are ordered to do so by the court.

Preparation for going to court

Beforehand:

- Read through your report
- Review the medical records
- Be clear who has called you to attend
- Find out where the court is and how long it will take you to get there
- Find out how long you will be needed for
- Make sure the medical records will be available at the court
- Make sure you have adequate cover arrangements in place.

On the day:

- Get to the court in good time
- Take the medical records with you, if you have them
- Expect to be kept waiting.

What happens?

The procedure is fairly similar for civil and criminal courts. The claimant in a civil action or the prosecution in a criminal trial will put their case first. Their witnesses will give evidence and be cross-examined; once this has happened, the defendant will respond. After the evidence has been heard, both parties will make closing speeches and the judge will sum up the evidence.

In a civil case, the judge will decide, on the basis of the law and the evidence presented, whether to find in favour of the claimant or the defendant. If the claimant is successful, the judge will also decide on the level of compensation that should be paid.

In a criminal case, the judge will sum up the evidence and advise the jury on the law to be applied. The jury will then deliberate on the facts and give their verdict. If convicted, the judge will determine the sanction.

Giving evidence

When it is your turn to give evidence, you will be shown to the witness box. A court officer will ask you to swear that the evidence you are about to give is the truth.

Examination-in-chief

The purpose of the examination-in-chief is to make your evidence clear. The lawyer for the party which called you will take you through your evidence. The judge may wish to ask you questions to further clarify your evidence at this stage.

Cross-examination

The lawyer acting for the other party will question you about your evidence. Remember, their role is to draw attention to any contentious issues of fact or opinion.

Re-examination

After the cross-examination has finished, the lawyer that called you could re-question you to clarify any issues that may have been raised during the cross-examination. Once this has happened, the judge may wish to question you.

Tips on giving a successful performance in the witness box:

- Remember that you are impartial to the parties – your duty is to the court.
- Speak clearly, using short sentences – try not to over-elaborate and explain any technical terms you may have to use.
- You are giving evidence to the judge/coroner/ chairman, so ensure that you face them when answering a question.
- Listen carefully to each question. Make every answer open, honest and fair.
- If you don't know the answer, or understand the question, say so.
- Don't lose your patience with the opposing counsel. Lawyers are working on behalf of their clients and disparaging comments can be a deliberate tactic – the best witnesses are those that remain neutral and focused.
- You can appeal to the judge if you feel that a question is improper, or if you would like to expand on your answer.

Remember to take as much time as you need for each answer. A conscientious witness will pause for as long as necessary before speaking to ensure that they are giving evidence that really is “the truth, the whole truth and nothing but the truth”.

Further information

- GMC, *Good Medical Practice* – par 72 (2013) – www.gmc-uk.org/guidance
- GMC, *Acting as a Witness in Legal Proceedings*, explanatory guidance, *Good Medical Practice* (2013) – www.gmc-uk.org
- GMC, *Financial and Commercial Arrangements and Conflicts of Interest* (2013) – www.gmc-uk.org
- MPS factsheet, *A Guide to Writing Expert Reports* – www.medicalprotection.org/uk/factsheets

For medicolegal advice please call us on:

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or email us at: querydoc@mps.org.uk

www.mps.org.uk

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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