

Giving evidence in court: always be prepared

Keeping the lines of communication open with the patient's solicitors in advance can minimise stress associated with arranging to attend court, writes Dee Duffy

A GP'S EVIDENCE CAN HAVE a central role in assisting the courts in making informed and fair decisions. GPs are often asked to give evidence in respect of a wide range of proceedings, including personal injury actions, family law matters and criminal proceedings.

This article concerns GPs giving evidence as medical factual witnesses, ie. concerning treatment they provided to a patient), as opposed to providing an expert opinion on issues such as liability/breach of duty and causation.

Requests to give evidence

GPs often provide medico-legal reports for their patients at a solicitor's request and it is important to always bear in mind that you can be called to give evidence as to the contents of these reports. The typical scenario is that a patient's solicitors write to a GP asking them to attend court and give evidence in respect of a report prepared some years previously.

Any request to attend court can be overwhelming and it is natural to feel aggrieved by the inconvenience of having to arrange for the absence from practice for a particular day or days. Ideally, patients' solicitors should contact GPs with sufficient notice to arrange adequate cover.

On foot of receipt of a request, we recommend that, with patient consent, the GP liaises with the solicitor requesting the attendance to try and narrow down a specific day/time when they will be required (as some cases can run for days/weeks).

It is important to remember that your evidence will not always be required. The vast majority of personal injury

cases settle in advance of a full hearing. Sometimes evidence is not required because certain facts are agreed between the parties without the need for formal proof. It is a good idea to ask the solicitor that you be immediately informed if a case settles or if your attendance is no longer required. It is advisable to obtain a mobile phone number for the solicitor overseeing the matter and to specify details in advance, such as the location of the specific courtroom and the full name of the case.

In some cases it may be possible to give your evidence by video link; you should enquire about this and get the appropriate details if it would be more convenient. It is advisable to communicate openly any estimate of fees for standby and attendance at court.

Compelling attendance

Some solicitors may choose to serve a witness summons (for the Circuit Court) or a subpoena (for the High Court), compelling attendance at court, particularly if they have not had confirmation of attendance. Failure to attend court on foot of a summons or subpoena can constitute contempt of court.

There may be circumstances wherein a GP should insist on a witness summons or subpoena as they may not have patient consent to disclose confidential information. For example, you may be requested to give evidence by someone other than your own patient or their solicitor, such as the Director of Public Prosecutions (DPP) or a defendant insurance company. Another example where a witness summons or subpoena should be obtained is in family law proceedings

where you may have treated both partners at various stages. In these types of circumstances, it is important to contact your indemnifier for specific advice as your patient(s) may not be aware of the request for you to attend.

Preparation

Prior to attending court, you should review your notes and any medical reports you have prepared, together with any documents received from the requesting solicitor. If the solicitor asked that you bring any documents, ensure you have them and take utmost care not to misplace any hard copies.

Attending court

Witnesses must dress in professional attire and arrive on time, ensuring mobile phones are switched off before entering the courtroom. It is a good idea to ring or text the solicitor when you arrive so they know you are there and can advise you on when to enter the courtroom.

All parties present will stand when the judge enters the court. Typically there will be other parties present, such as solicitors, barristers, the court registrar and a stenographer. It is common to be anxious as the set-up can seem unfamiliar but for most people present, it is as normal as a GP consultation room is for you.

Sometimes members of the public or court reporters may be in attendance. However, family law proceedings are held 'in camera' which means the case is held behind closed doors. Only people permitted by the judge are allowed in the courtroom while the case is being heard.

Giving evidence

When asked to give evidence, you will be asked to go to the witness stand, which is typically located at the top of the courtroom near the judge. You will be asked whether you wish to give an oath or affirmation. An oath involves you placing your hand on the bible or another holy text and repeating the oath after the registrar. Alternatively, witnesses can take an affirmation without the use of a bible or holy text.

After this, you are usually asked to state your full name and qualifications. This can give you a chance to settle initial nerves. When giving your answers, it is good practice to turn to the judge or jury (where applicable, using the correct form of address: "judge").

In circumstances where you do not have specific patient consent to disclose their information (eg. you have been summonsed by someone other than the patient's solicitor, such as the DPP), you should ask at the outset that the judge direct that you answer the questions. That way, any disclosure of confidential information is done at the direction of the court.

Firstly, the barrister/solicitor representing the party who requested your attendance will ask you direct questions, based on your evidence/report ('examination in chief').

You may be subsequently asked questions by the barrister or solicitor representing the other party to the case ('cross-examination'). This could include being asked about any inconsistencies or any possible alternative explanations in respect of the evidence you provided. The purpose of cross-examination is generally to test/challenge the evidence that you have provided.

Following this, the first barrister/solicitor may ask further questions to clarify the evidence provided by you on cross-

examination. This is known as 're-examination'.

It is important to speak slowly and clearly, focusing on and answering only the question being asked, even if you think you know what the line of questioning is aiming for. It is perfectly reasonable to ask a barrister or solicitor to repeat or explain the question if it is unclear, or to ask for an explanation.

If you are asked a question to which you do not know the answer, you should simply state that you do not know. It would be inadvisable for a doctor to attempt to answer a question which may be outside his or her area of expertise or knowledge.

You may refer to the contemporaneous notes or reports with the permission of the court.

When your evidence is complete, you will be asked to leave the witness stand. Most people conventionally bow towards a judge when they are leaving the door of the courtroom.

Video link

Since the pandemic, in certain cases it has been possible for hearings to be held remotely and a doctor could be providing evidence by video link. If a GP is giving evidence by video link, the virtual courtroom should be treated in the same way as a physical courtroom would be. Your camera should be adequately lit, ensuring your face can be seen, and you must join the courtroom from a quiet, private location. Your full name should appear on your display and sound should be muted when not speaking. If you wish to take an oath, you should have a bible or holy text with you and will be asked to hold it up for the court to see on video.

Conclusion

On a practical level, keeping the lines of communication open with the patient's solicitors in advance can minimise any inconvenience and stress associated with arranging to attend court.

Remember, a doctor's role is to provide impartial evidence to assist the court. Try to give clear, concise answers to the questions asked, take the time to think before you answer and don't be afraid to seek clarity where necessary.

If you have any concerns about being asked to give evidence, it is recommended that you speak to your indemnifier, who would be happy to advise you. [i](#)

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GP Educational Webinar on PVFS and ME/CFS

Dr Ros Vallings, a New Zealand GP who is an expert on myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS), will present a free talk entitled 'Key Messages for Primary Care on the Diagnosis and Management of Post Viral Fatigue Syndrome and ME/Chronic Fatigue Syndrome', followed by a Q&A session on Monday, May 30 at 7:30pm. Approved for 1 CPD point by the ICGP. For more info, contact CPD@irishmecfs.org