



Opinion Medico-Legal

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Giving evidence in court

Ms Sile O'Dowd outlines the role of the doctor in the process and key preparation steps to be taken when requested to attend as a witness

Doctors are frequently asked to give evidence in court in respect of a wide range of proceedings. These include personal injury actions, family law matters, Coroner's inquests, and criminal proceedings and can have a central role in assisting courts reach their decisions.

This article will deal with issues arising for doctors who are requested to appear in court and provide evidence as a medical factual witness, as opposed to where doctors are asked to provide an expert opinion on issues such as liability/breach of duty and causation.

Request to attend court

Typically, a patient's solicitor will contact the doctor in advance to request their availability to attend court on a particular date or dates. However, there can be occasions where very little notice about a court date is provided to a doctor, which can result in significant difficulties for doctors with patient commitments. On foot of receipt of a request, it is advisable to contact the solicitor requesting the attendance to try and narrow down a specific day/time when you will be required, bearing in mind that some cases can run for days or weeks.

The majority of personal injury cases settle in advance of a full hearing. Even if a hearing is necessary, sometimes oral 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.

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 or if there is a refusal to attend. Failure to attend court on foot of a summons or subpoena can constitute contempt of court. If you receive a witness summons, but believe that you have a legitimate reason for being unable to attend, it is recommended you seek advice from your indemnifier on how to respond.

Witness summons and patient confidentiality

There may be circumstances in which a doctor should insist on a witness summons or subpoena being served on them 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



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subpoena should be obtained is in family law proceedings where you may have treated multiple family members. Your duty of professional confidence is not automatically waived by being called to give evidence; therefore, you should not disclose or discuss confidential information without the patient's express consent or the direction of the court.

Preparation

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.

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. It can also be helpful to check with the solicitor whether the medical records and a copy of your report will be available at the court.

It is important to dress professionally when attending court and to conduct yourself appropriately, including switching off your mobile telephone or any other device before entering the courtroom. Typically, there will be other parties present in the courtroom, such as solicitors, barristers, the court registrar, a stenographer and possibly some members of the public or court reporters.

Family law proceedings take a slightly different format and are, for the most part, held *in camera*, which means the case is held behind closed doors and only people permitted by the judge are allowed in the courtroom while the case is being heard.

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.

Giving evidence

If you are called as a witness, your role is to provide impartial evidence to help the court reach its decision. It is not to act as an advocate for either party.

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. 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), 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. If you perceive any conflict of interest on your part, you should make this known to the court.

You will firstly undergo what is known as 'examination-in-chief', where the barrister/solicitor representing the party who requested your attendance will ask you direct questions, based on your evidence/report.

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'. Once this has happened, the judge may wish to question you.

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. The prospect of undergoing examination and cross examination can be understandably daunting. However, it is helpful to bear in mind that 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 your report(s) with the permission of the court. When your evidence is complete, you will be asked to leave the witness stand.

Video link

In certain cases, it is possible for hearings to be held remotely and for evidence to be given via video link. The Courts Service has provided useful guidance on remote hearings, titled *Virtual Courtrooms: Guidance for Practitioners and Lay Litigants*, which can be found at www.courts.ie

If 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.

It is advisable to request the connection details in advance and to ensure that you have the required software installed if necessary. You should give yourself sufficient time in advance to access the virtual court.

Media attention

Although most court cases are open to the public, it is unlikely that you will be approached by the media as a witness to fact and asked to comment.

In the event that you are approached by a member of the media at court or afterwards, it is important to bear in mind that there is no obligation to speak with the media and to be mindful of patient confidentiality.

Conclusion

Appearing in court can be a stressful and challenging experience, so being as prepared as possible is helpful. If you receive a request or a summons to attend court as a factual witness, please do seek assistance from your indemnifier.