
Acting as an expert witness

1. *Good Medical Practice* focuses on the principles which underpin good care. When doctors act as expert witnesses, they take on a different role from that of a doctor providing treatment or advice to patients. The principles set out in *Good Medical Practice* also apply to doctors working as expert witnesses.
2. In paragraph 66-67 of our core guidance *Good Medical Practice* we say
 - If you have agreed to prepare a report, complete or sign a document or provide evidence, you must do so without unreasonable delay.
 - If you are asked to give evidence or act as a witness in litigation or formal inquiries, you must be honest in all your spoken and written statements. You must make clear the limits of your knowledge or competence.
3. This guidance explains how the principles set out in *Good Medical Practice* apply to the work of the medical expert witness. It also lists other sources of information and advice. Serious or persistent failure to follow this guidance will put your registration at risk.

The role of the expert witness

4. The role of an expert witness is to assist the court on specialist or technical matters within their expertise¹. The expert's duty to the court overrides any obligation to the person who is instructing or paying them².

¹ Doctors are not by definition expert witnesses – they may also be witnesses to fact, ie testifying about events that they themselves have observed.

² Civil Procedure Rules Part 35.3

Giving expert advice and evidence

5. You must ensure that you understand exactly what questions you are being asked to answer. If your instructions are unclear or inadequate, you should seek clarification from the person instructing you.
6. You must provide advice and evidence only within the limits of your professional competence. When giving evidence or writing reports, you must restrict your statements to areas in which you have relevant knowledge³ or direct experience. You should be aware of the standards and nature of practice at the time of the incident under proceedings. If a particular question or issue falls outside your area of expertise, you should make this clear and, where appropriate, seek advice from an expert in the relevant field.
7. You must make sure that any report that you write, or evidence that you give, is accurate and is not misleading. This means that you must take reasonable steps to verify any information you provide, and you must not deliberately leave out relevant information.
8. You must give a balanced opinion, and be able to state the facts or assumptions on which it is based. If there is a range of opinion on the question upon which you have been asked to comment, you should summarise the range of opinion and explain how you arrived at your own view. If you do not have enough information on which to reach a conclusion on a particular point, or your opinion is otherwise qualified, you must make this clear.
9. If, at any stage, you change your view on any material matter, you should tell those instructing you without delay, so that this information can be communicated to the other parties and, if appropriate, to the court or tribunal.
10. You must be honest, trustworthy, objective and impartial. You must not allow your views about any individual's age, colour, culture, disability, ethnic or national origin, gender, lifestyle, marital or parental status, race, religion or beliefs, sex, sexual orientation or social or economic status to prejudice the evidence or advice that you give.

Keeping up to date

11. You must keep up to date with, and adhere to, the laws and codes of practice that affect your work as an expert witness. In particular, you should make sure that you understand
 - how to construct a court-compliant report
 - how to give oral evidence
 - the specific framework of law and procedure within which you are working

³ In his 2006 report *Bearing Good Witness*, the Chief Medical Officer for England recommended that clinicians acting as expert witnesses should be in active practice or have retired within the previous two years

Information security and disclosure

12. You must take all reasonable steps to access all relevant evidence materials and maintain their integrity and security whilst in your possession.

13. In civil proceedings, you must satisfy yourself that the patient or client understands the need for, and has agreed to, disclosure of all relevant information to the parties to the case or inquiry. If you have reason to believe that appropriate consent has not been obtained (from the patient or client, or from any third party to whom their medical records refer) you should return the information to the person instructing you and seek clarification.

14. You should not disclose confidential information other than to the parties to proceedings, unless

- obliged to do so by law
- ordered to do so by a court or tribunal
- your overriding duty to the court and the administration of justice demands that you disclose information

Conflicts of interest

15. If you have any prior involvement or personal interest that gives rise to a potential conflict of interest (real or perceived) you must declare this to the person from whom you have received instructions, and to the patient or client. In such cases, you may continue to act as an expert witness only with the explicit written consent of all concerned.

Raising concerns

16. If you become aware that patients or others are being placed at risk of death or serious harm, you should report your concerns, to the appropriate person or organisation without delay. If the information giving rise to your concerns is covered by legal professional privilege (legal advice or litigation privilege⁴) you can still report that you have concerns and about whom, though you must explain that you came by your concerns in privileged circumstances and so cannot lawfully disclose the documents or their substance.

17. Documents exchanged between parties in litigation (thereby waiving legal privilege) remain confidential, and disclosure of those documents or their substance

⁴ *Legal advice privilege* applies to communications between lawyer and client for the purpose of giving or receiving legal advice, in both litigation and a non-litigious context. *Litigation privilege* applies to communications between a client or his lawyer and third parties for the privilege of litigation. Under English law, privilege applies only to confidential communications. It can be waived by the client or overridden by statute, but is otherwise absolute, and cannot be overridden by public interest considerations.

may be in contempt of court. As with documents that are legally privileged, you can report that you have concerns, and about whom, without disclosing the documents or their substance. It will then be for the person or organisation to investigate as they see fit.

18. You should exercise caution if asked to enter into contracts that require you to remain silent about details of cases settled out of court, which are not legal privileged but are confidential. Signing a contract which may require silence will, in those exceptional cases where patients may be at risk, put you in the difficult position of having to break that contract in order to satisfy your professional, ethical obligations.

Useful sources of information

The Civil Procedure Rules	<u>www.dca.gov.uk</u>
The Criminal Procedure Rules <i>[when updated]</i>	<u>www.opsi.gov.uk</u>
The Society of Expert Witnesses	<u>www.sew.org.uk</u>
The Council for the Registration of Forensic Practitioners	<u>www.crfp.org.uk/contents/code.asp</u>
The Expert Witness Institute	<u>www.ewi.org.uk</u>
The Academy of Medical Royal Colleges	<u>www.aomrc.org.uk</u>
The Law Society of England & Wales	
The Law Society of Scotland	<u>www.expertwitnessscotland.info/codepract.htm</u>
The Crown Prosecution Service	<u>www.cps.gov.uk/legal/section20</u>