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Acting as a witness in legal proceedings

1 In *Good medical practice*^{*} we say:

- 11 You must be familiar with guidelines and developments that affect your work.
- 12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.
- 14 You must recognise and work within the limits of your competence.
- 72 You must be honest and trustworthy when giving evidence to courts or tribunals. You must make sure that any evidence you give or documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information.

b You must not deliberately leave out relevant information.

- 73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in *Confidentiality*.
- 74 You must make clear the limits of your competence and knowledge when giving evidence or acting as a witness.

2 In this guidance, we explain how doctors can put these principles into practice when acting as a professional witness or as an expert witness. If you give evidence as a witness of fact in a non-professional capacity (for example, as a witness to a traffic accident) you must follow the guidance in paragraph 72 of *Good medical practice*. Serious or persistent failure to follow this guidance will put your registration at risk.

Duties of all witnesses

- 3 Doctors play an important role in the justice system by contributing evidence both as expert witnesses and as witnesses of fact.
- 4 Whether you are acting as a witness of fact or an expert witness, you have a duty to the court[†] and this overrides any obligation to the person who is instructing or paying you.[‡]

* General Medical Council (2013) *Good medical practice* London, GMC.

† Also tribunals and other public inquiries such as coroners' inquests.

‡ *Civil Procedure Rules*, rule 35.3, *Criminal Procedure Rules*, rule 33.2, *Family Procedure Rules*, rule 25.3, *Children's Hearings (Scotland) Rules 1996*, *Act of Adjournment (Criminal Procedure Rules) 1996*, *Criminal Justice (Evidence) (Northern Ireland) Order 2004*.

This means you have a duty to act independently and to be honest, trustworthy, objective and impartial. You must not allow your views* about a person to affect the evidence or advice you give.

- 5 You must understand your role as a witness throughout the court process. You must cooperate with case management, making sure you meet the timescales for producing reports and going to conferences, meetings or court hearings.
- 6 You must make sure that any report you write, or evidence you give, is accurate and not misleading. This means you must take reasonable steps to check the accuracy of any information you give, and to make sure that you include all relevant information.
- 7 People who do not have a medical background may rely on your advice and evidence to help them make decisions. Where it is possible to do so without misleading anyone, you should use language and terminology that people who are not medically qualified will understand. You should explain any abbreviations and medical or other technical terminology you use. Diagrams with explanatory labels can be useful.

Giving evidence as a witness of fact (professional witness)

- 8 Witnesses of fact (also known as professional witnesses) provide professional evidence of their clinical findings, observations and actions, and the reasons for them.
- 9 As a witness of fact, your written and oral evidence should be clear and concise, and must be based as far as possible on clinical records and notes made at the relevant period of time. You may include some opinion about the findings but you should make clear what is

factual evidence and what is your opinion based on your professional judgement and experience.

Giving evidence as an expert witness

- 10 The role of an expert witness is to help the court on specialist or technical matters that are within the witness's expertise. An expert witness is able to consider all the evidence available, including statements and reports from the other parties to the proceedings, before forming and providing an opinion to the court.
- 11 You must make sure you understand exactly what questions you are being asked to answer. If your instructions are unclear, you should ask those instructing you to explain. If the instructions are still not clear, you should not provide expert advice or opinion.
- 12 You must only give expert testimony and opinions about issues that are within your professional competence or about which you have relevant knowledge including, for example, knowledge of the standards and nature of practice at the time of the incident or events that are the subject of the proceedings.[†] If a particular question or issue falls outside your area of expertise, you should either refuse to answer or answer to the best of your ability but make it clear that you consider the matter to be outside your competence.[‡]
- 13 You must give an objective, unbiased opinion and be able to state the facts or assumptions on which it is based. If there is a range of opinion on an issue, 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 if your opinion is qualified (for example, as a result of conflicting evidence), you must make this clear.[§]

* This includes your views about a patient's lifestyle, culture or their social or economic status, as well as the characteristics protected by legislation: age, disability, gender reassignment, race, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation.

[†] The same principle applies where a doctor acts in a role other than as a witness – for example, as an adviser in a case.

[‡] The Right Honourable Justice Wall (2007) *A handbook for expert witnesses in Children Act cases* Bristol: Jordans, 2nd edition.

[§] See *Oldham MBC v GW & Ors* [2007] EWHC 136 (Fam). The judgement is available at www.bailii.org/ew/cases/EWHC/Fam/2007/136.html.

- 14 If you are asked to give an opinion about a person without the opportunity to consult with or examine them, you should explain any limits this may place on your opinion. You should be able to justify the decision to provide your opinion.
- 15 If, at any stage, you change your view on any relevant matter, you have a duty to make sure those instructing you, the other party and the judge are made aware of this without delay. You should tell your instructing solicitor, who should tell the other people who need to know. If the solicitor fails to do this, you should tell the court about your change of view. If you are not sure about what to do, you should ask the court or get legal advice.
- 16 You must respect the skills and contributions of other professionals giving expert evidence, and not allow their behaviour to affect your professional opinion.

Notes and records

- 17 You must make full and accurate notes of meetings or interviews with the people involved in the case at the time an event happens or as soon as possible afterwards. Any notes or reports you make must be written fairly and impartially.

Understanding your role

- 18 You must understand and follow the law and codes of practice that affect your role as an expert witness. You should consider undertaking training for the role, where available (for example, from your medical defence body or your employer's legal department). In particular, you should make sure you understand:
 - a how to write a report that follows the procedures set out by the courts
 - b how to give oral evidence.

- 19 If you have expertise and experience in acting as an expert witness, you should be willing to share your knowledge with colleagues who might be called to give evidence in court, to help build their confidence and willingness to give evidence in the future.

Information security and disclosure

- 20 You must take all reasonable steps to read all relevant papers and keep them secure while in your possession.
- 21 If you receive information about a person and have reason to believe that they have not given consent for the information to be shared, you should return the information to the person instructing you and seek confirmation that consent has been given.
- 22 You should not disclose confidential information to anyone who is not involved in the court proceedings, unless:
 - a the person the information relates to gives their consent (and there are no other restrictions or limits on sharing the information)
 - b you must do so by law
 - c you are ordered to do so by a court or tribunal
 - d your overriding duty to the court and the administration of justice means that you must disclose the information.

Conflicts of interest

- 23 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 our guidance on conflicts of interest.* You must

* General Medical Council (2013) *Financial and commercial arrangements and conflicts of interest* London, GMC.

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.

Other sources of information

British Medical Association (2008) *Expert witness guidance* London, British Medical Association

The medical defence bodies publish resources to support their members who act as witnesses of fact and expert witnesses.

The Right Honourable Justice Wall (2007) *A handbook for expert witnesses in Children Act cases* Bristol, Jordans, 2nd edition

General Medical Council (2009) *Confidentiality* London, GMC, available at www.gmc-uk.org/confidentiality

The Academy of Medical Royal Colleges
www.aomrc.org.uk

The Civil Justice Council
www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc

Family Justice Council
www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc

The Crown Prosecution Service (Disclosure manual)
www.cps.gov.uk/legal/d_to_g/disclosure_manual

The Law Society of England and Wales
www.lawsociety.org.uk

The Law Society of Scotland
www.lawscot.org.uk

The Scottish Children's Reporter Administration
www.scra.gov.uk

Rules and legislation

England and Wales

The Criminal Justice Act 2003

www.legislation.gov.uk/ukpga/2003/44/
contents

The Civil Evidence Act 1995

www.legislation.gov.uk/ukpga/1995/38/contents

The Civil Evidence Act 1995

The Civil Procedure Rules

The Criminal Procedure Rules

The Family Procedure Rules

Practice Direction on Experts in Family Proceedings Relating to Children

Access these documents using the search on the Ministry of Justice website

www.justice.gov.uk

Scotland

The Criminal Procedure Rules and Court Rules

www.scotcourts.gov.uk/library/rules/index.asp

Northern Ireland

The Rules of the Supreme Court

This document is not available online – contact the Office of Public Sector Information (www.opsi.gov.uk) to find out how to get a copy.

Criminal Justice (Evidence) (Northern Ireland) Order 2004

www.legislation.gov.uk/nisi/2004/1501/contents

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