

Acting as an expert witness

- 1 Our core guidance *Good Medical Practice* sets out 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 paragraphs 63-67 of *Good Medical Practice* we say
 - You must be honest and trustworthy when writing reports and when completing or signing forms, reports and other documents.
 - You must always be honest about your experience, qualifications and position, particularly when applying for posts.
 - You must do your best to make sure that any documents you write or sign are not false or misleading. This means that you must take reasonable steps to verify the information in the documents, and that you must not deliberately leave out relevant information.
 - 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. If you have concerns arising from an appointment as a medical expert witness, you should consider seeking advice from the GMC, your medical defence body or professional association.
- 4 Serious or persistent failure to follow this guidance will put your registration at risk.

The role of the expert witness

- 5 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. This means that you have a duty to act independently and not be influenced by the party who retains you.

Giving expert advice and evidence

- 6 You must ensure that you understand exactly what questions you are being asked to answer. If your instructions are unclear, inadequate or conflicting, you should seek clarification from those instructing you. If you cannot obtain sufficiently clear instructions, you should not provide expert advice or opinion.
- 7 When giving evidence or writing reports, you must restrict your statements to areas in which you have relevant knowledge or direct experience. You should be aware of the standards and nature of practice at the time of the incident under proceedings.
- 8 You must only deal with matters, and express opinions, that fall within the limits of your professional competence³. If a particular question or issue falls outside your area of expertise, you should make this clear. In the event that you are ordered by the court to answer a question, regardless of your expertise, you should answer to the best of your ability but make clear that you consider the matter to be outside your competence.
- 9 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 clear⁴.

- 10** 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.
- 11** Where you are asked to give advice or opinion about an individual without the opportunity to consult with or examine them, you should explain any limitations that this may place on your advice or opinion, and be able to justify the decision to proceed on such a basis.
- 12** Your advice and evidence will be relied upon for decision-making purposes by people who do not come from a medical background. Wherever it is possible to do so without being misleading, you should use language and terminology that will be readily understood by those for whom you are providing expert advice or opinion. You should explain any abbreviations and medical or other technical terminology that you use.
- 13** If, at any stage, you change your view on any material matter, you have a duty to ensure that those instructing you, the opposing party and the judge are made aware of this without delay. Usually you need only inform your instructing solicitor who will communicate with the other parties. If the solicitor fails to disclose your change of view, you should inform the court. If you are unsure what to do, you should seek legal advice.
- 14** 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

- 15** You must keep up to date in your specialist area of practice. You must also ensure that you understand, 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

Information security and disclosure

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

- 17** If you have reason to believe that appropriate consent for disclosure of information 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.
- 18** You should not disclose confidential information other than to the parties to proceedings, unless
- the subject consents (and there are no other restrictions or prohibitions on disclosure)
 - you are obliged to do so by law
 - you are 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

- 19** If there is any matter that gives rise to a potential conflict of interest, such as any prior involvement with one of the parties, or a personal interest, you must follow the guidance on disclosure in paragraph 13. You may continue to act as an expert witness only if the court decides that the conflict is not material to the case.

Rules and legislation

England and Wales

The Criminal Justice Act 2003

www.opsi.gov.uk/acts/acts2003/20030044.htm

The Civil Evidence Act 1995

www.opsi.gov.uk/ACTS/acts1995/Ukpga_19950038_en_1.htm

The Civil Procedure Rules

The Criminal Procedure Rules

The Family Procedure Rules (draft)

www.dca.gov.uk/procedurerules.htm

Practice Direction on Experts in Family Proceedings Relating to Children

www.hmcourts-service.gov.uk/cms/pds.htm

Scotland

The Criminal Procedure Rules and Court Rules

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

Northern Ireland

The Rules of the Supreme Court

Not available online. Contact the Office of Public Sector Information (www.opsi.gov.uk) for details of how to obtain a copy.

**Criminal Justice (Evidence)
(Northern Ireland) Order 2004**

www.opsi.gov.uk/SI/si2004/04em1501.htm

Other sources of information

The Academy of Experts

(Experts' Declaration, Code of Practice for Expert Witnesses, Protocol for the Instruction of Experts to give evidence in civil claims) www.academy-experts.org

The Academy of Medical Royal Colleges

www.aomrc.org.uk

The Civil Justice Council

www.civiljusticecouncil.gov.uk

The Council for the Registration of Forensic Practitioners

www.crfp.org.uk

EuroExpert

www.euroexpert.org/en/home/337

**The Expert Witness Institute (Experts' Declaration,
Code of Practice, Experts Protocol, Model Form
of Reports in Civil and Criminal Proceedings)**

www.ewi.org.uk

The Society of Expert Witnesses

www.sew.org.uk

The Crown Prosecution Service

(Disclosure manual)

www.cps.gov.uk/legal/section20

The Law Society of England & Wales

www.lawsociety.org.uk

The Law Society of Scotland

(Code of Practice: Expert witnesses engaged by solicitors)

www.expertwitnessscotland.info/codepract.htm

British Medical Association

(Expert Witness Guidance)

www.bma.org.uk/ap.nsf/Content/Expertwitness

Footnotes

1. Doctors are not necessarily expert witnesses. They may also be witnesses of fact (testifying about events that they themselves have observed) or professional witnesses (giving evidence regarding a particular patient that they have treated).
2. Civil Procedure Rules Part 35.3, Criminal Justice Procedure Rules Part 33.2, Rule 156 of the draft Family Procedure Rules
3. The same principle applies where doctors act in other roles, for example as an advisor in a case.
4. See judgement of Cresswell J in The "Ikarian Reefer" [1993] FSR 563