

# Giving evidence

Doctors can be called upon to provide evidence in a variety of settings. There is a professional responsibility to be honest and trustworthy when giving evidence and to ensure it is not false or misleading. Most doctors will be unfamiliar with legal processes and may find the prospect of going to court quite intimidating. This advice should help by offering general practical advice, which is appropriate for most settings. Members can contact MDDUS for more specific advice.

## Basic considerations

Doctors may be required to attend a court or tribunal to provide factual witness evidence in legal proceedings, such as coroner's inquests / fatal accident inquiries and in criminal or civil proceedings (for example, a personal injury claim, family law or employment law proceedings). A doctor may also require to appear in Court in defence of a claim for medical negligence or before the Medical Practitioners Tribunal in the event of a GMC complaint against yourself or indeed a colleague.

If you receive a witness summons or citation, you must comply. Failure to do so can amount to contempt of court and (although unlikely) you could be arrested. When you are required to attend court, make sure you have arranged work cover. If you are employed, your employer will need to allow you the time off but make sure you give them sufficient notice. If you are self-employed, you may require to arrange locum cover.

Preparation is vital and before attending court you should re-familiarise yourself with the facts of the case. If you have previously prepared a report or witness statement, read over it again in detail – your legal adviser or those calling you to give evidence should be able to provide a copy if necessary. Ensure you have also reviewed the relevant medical records and other documentation, paying particular attention to those areas likely to be the subject of questioning.

You will not be expected to memorise records and these can be made available to you when giving evidence. If you are unable to answer a question without sight of the relevant record, then you should ask the questioner for sight of it (all relevant documentation should have been produced to the Court and should be available). Remember that your answers must be honest and factually accurate. Do not attempt to answer when you are uncertain and also ensure that your comments are within your level of experience and expertise. Provide all relevant information and ensure that your evidence is in no way false or misleading.

## Practical considerations

- Ensure you know where and when you are going to court and that you arrive in good time.
- Dress professionally.

- Take along your citation if you are claiming expenses – you may be required to have this stamped in order to claim.
- Bring something to keep occupied, as you may have to wait before giving evidence.

## **Process – what to expect**

In the witness box/seat you will first be asked to take the oath/affirm and provide some basic information: your name, qualifications etc. The party who called you will open the questioning (known as examination-in-chief) and then you may be asked questions by the other parties involved and the presiding judge, sheriff, etc. (known as cross-examination). The party who called you will then be given a final opportunity to ask any follow up questions arising from the cross-examination.

It is important to consider confidentiality before providing information about a patient, even to the police or officers of the court. GMC guidance is clear that you must disclose information if ordered to do so by a judge or presiding officer of a court, overriding your duty of confidentiality. You may also have the patient's consent to provide information to the court about the case. Seek clarification from the presiding officer/judge if you are uncertain whether the court is ordering you to answer or if you feel that attempts are being made to compel you disclose irrelevant confidential information.

Evidence should be provided in response to questions, and you must answer the questions put to you (with the exception of answering questions which may incriminate you, although this should be a rare occurrence). Keep your answers short and concise – even if this is just to say “yes”, “no” or “I don't know”. The questioner will ask for more detail if needed. Do not be afraid to ask for clarification if a question is unclear.

Remember that you are not there to argue the case for one side or the other. Your role is to provide objective and factually accurate evidence for the court so that a balanced decision can be made on the relevant facts. Be prepared to explain and justify any subjective comments or opinions and remember that the evidence provided must be within your sphere of competence.

You may be required to offer an explanation of any medical terminology used; this is not a test but to ensure that your evidence is fully understood. In answering questions about medical findings and what they mean, remember to stick to your own level of experience and expertise. You can only be expected to comment at the level of a doctor with your experience and in your speciality. Do not feel you have to undertake revision for the particular details of a medical condition. Any questions which are more complex or that require specialist input should be answered politely with an explanation that you “don't know”. You may wish to suggest who might be better placed to answer that question, such as a sub-specialist.

Take time to consider how best to answer to a question; there is no need to respond immediately. Once you have answered a question to your satisfaction, stop talking. Resist the temptation to fill the silence in any pause by talking more. Often parties and the judge are simply catching up on note-taking. Elaborating unnecessarily or providing extra detail that was not asked for (even if well intentioned) can lead to more extensive questioning.

Remember to speak clearly so that you can be heard. Court proceedings are usually transcribed/ recorded so it is important that your evidence is audible and intelligible.

## Expert witnesses

Doctors may also attend court as an expert witness. This is a different role from a factual witness, as they will be independent (i.e. not involved in the care of the patient). An expert witness is selected and commissioned for their specific knowledge and experience to opine upon a case. Any individuals considering undertaking such work must ensure they are appropriately trained.

## Common pitfalls

- Lack of preparation, especially at short notice before a court appearance. Take advice from MDDUS if in doubt.
- Lack of appreciation that orders to appear in court are mandatory. Diary conflicts can sometimes be resolved by polite negotiation but be aware that the involved parties will be bound by court timetables.
- Absence of objectivity or displaying bias when giving evidence. This will reduce your credibility and the value of your evidence overall. In some cases it can lead to a complaint against you to the regulator.

## Key points

- Court orders to attend are compulsory.
- Prepare adequately so you are familiar with the case.
- All of your evidence must be factually accurate, honest and objective. You must not provide evidence that is false or misleading, or leave out relevant information.
- If in doubt contact MDDUS for advice.

## Further guidance

- GMC. *Acting as a witness in legal proceedings*: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/acting-as-a-witness/acting-as-a-witness-in-legal-proceedings>
- GMC: *Protecting children and young people - Doctors giving evidence in court*: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/protecting-children-and-young-people/doctors-giving-evidence-in-court>
- GMC: *Confidentiality – good practice in handling patient information*: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality>
- Academy of Medical Royal Colleges: *Acting as an expert or professional witness – Guidance for healthcare professionals*: <https://www.aomrc.org.uk/reports-guidance/acting-as-an-expert-or-professional-witness-guidance-for-healthcare-professionals/>

**MDDUS Training & CPD resources:** <https://www.mddus.com/resources/resource-library/risk-alerts/2016/november/preparing-for-a-day-in-court>