

# MPS and SMA Training Course for Medical Experts

## The Medical Expert

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### Introduction

The doctor, in the course of his professional work, could be summoned to be a witness in a court of law proceeding, as either a witness of fact or an expert witness.

The doctor could be called to testify under oath in a court of law giving evidence regarding a particular patient that he treated or had a doctor-patient relationship with. In such a situation, the doctor is acting as a witness of fact.

An expert witness would not have been involved in the care of the patient in question. An expert witness possesses special knowledge and experience of a subject that enables him to give opinions and draw conclusions relevant to the case, and to impartially and objectively assist the court or tribunal in its work. The medical expert witness is expected to articulate the standard of care in medical negligence cases and standard of professional conduct in disciplinary tribunals, and give an opinion supported by good arguments and evidence.

To be effective, a medical expert witness needs to be trained to acquire competence. Untrained, unskilled and incompetent expert witnesses would mislead the courts and tribunals to inappropriate conclusions and make dispute resolutions complex, wasteful and costly.

### The duties and responsibilities of a medical expert witness

The expert's duty to the court overrides any obligation to the person who is instructing or paying him. This means that the expert has a duty to act independently and not be influenced by the party who retains the expert. The role of an expert witness is to assist the court on specialist or technical matters within his expertise.

The expert is not supposed to give opinions on which version of facts he thinks is correct. He is expected to write a report after studying all the facts and documents provided to him regarding the case at hand, based on the instructions given to him.

The expert witness must be honest, trustworthy, objective and impartial when writing reports, when completing or signing documents, and in all spoken and written statements. It is the duty of the expert to be independent and unbiased in his formation of opinions.

The expert is obliged to ensure that any documents written or signed are not false or misleading. The expert is expected to take reasonable steps to verify the information in the documents, and ensure that important and relevant information are not deliberately left out. Request for medical reports must be completed without unreasonable delay.

The medical expert must make clear the limits of his knowledge or competence. Honesty and accuracy must be exercised about experience, qualifications, publications and positions held.

Confidentiality must be preserved. No confidential information

should be disclosed to others aside from the parties in proceedings, unless by consent or obliged to do so by law, or ordered to do so by a court or tribunal.

All potential conflicts of interest must be declared early. One may act as an expert witness only when the court decides that the conflict is not material to the case.

### Writing an expert witness report

It is important as an expert witness to ensure that you understand exactly what questions you are being asked to answer. If the instructions you receive are unclear, inadequate or conflicting, you should seek clarification from the instructing party.

In medical reports and oral testimony, it is important to use language and terminology that will be readily understood by those for whom you are providing expert reports or opinions. Explain any abbreviations and medical or other technical terminology that are used.

The report must give a balanced opinion, and be able to state the facts, reasons or assumptions on which it is based. When there is a range of opinions on the question or the subject under consideration, the report should summarise the range of opinions you consider to be acceptable and the reasons why. The report should also contain a summary of the range of opinions which are not acceptable with the reasons why. It is important to explain how you arrived at your own preferred view. Suitable references should be made and appended to the report.

In the case when an expert is unable to reach an opinion because of insufficient information, he should state the extent to which such opinion may be provisional or qualified by further information or facts.

All medical expert witnesses must be familiar with the Rules of Supreme Court, Order 40A, rule 3: Requirements of expert's evidence, which can be accessed at [http://app-stg.supremecourt.gov.sg/data/doc/ManagePage/97/roc\\_o40.htm](http://app-stg.supremecourt.gov.sg/data/doc/ManagePage/97/roc_o40.htm)

This rule is reproduced below:

#### *Requirements of expert's evidence (O. 40A, r. 3)*

- (1) *Unless the Court otherwise directs, expert evidence is to be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him testifying that the report exhibited is his and that he accepts full responsibility for the report.*
- (2) *An expert's report must —*
  - (a) *give details of the expert's qualifications;*
  - (b) *give details of any literature or other material which the expert witness has relied on in making the report;*
  - (c) *contain a statement setting out the issues which he has been asked to consider and the basis upon which the evidence was given;*

- (d) if applicable, state the name and qualifications of the person who carried out any test or experiment which the expert has used for the report and whether or not such test or experiment has been carried out under the expert's supervision;*
- (e) where there is a range of opinion on the matters dealt with in the report —
  - (i) summarise the range of opinion; and*
  - (ii) give reasons for his opinion;**
- (f) contain a summary of the conclusions reached;*
- (g) contain a statement of belief of correctness of the expert's opinion; and*
- (h) contain a statement that the expert understands that in giving his report, his duty is to the Court and that he complies with that duty.*

### **Appearing in court as an expert witness**

All expert witnesses should be thoroughly prepared for trial by knowing the facts of the case and being familiar with all the documents and the expert report.

An expert's authority derives from his objectivity and impartiality in his report and testimony. The expert should avoid being drawn into an argument, pulled into the "arena of dispute", nor view himself as an advocate.

It is important to speak clearly and slowly to the judge and

maintain eye contact, even though the questions may have come from the examining counsel. It is important to answer only when you have understood the question and spent time thinking about the answers i.e. think before speaking. If the questions are not clear, seek clarifications.

Even though you may be asked a leading answer requiring an answer of either yes or no, you may inform the judge that you need to explain your answer. Stop speaking when objections are raised and resume only if the objections are overruled.

Stay calm in the face of provocative or aggressive questioning. Do not answer hastily or impulsively. You must be prepared to be challenged on your credentials, incompleteness of your report, relevance and logic of your opinions, as well as whether your opinions are based on the correct application of the facts for which they are required.

### **Conclusion**

The medical expert witness provides the opinions and conclusions in a medical expert report. The testimony is offered by the medical expert witness during examination in court. Both are critical components in arriving at an equitable and fair decision in any dispute resolution. The interests of the patients, the public and the profession are best served when competent and objective expert witness reports and testimony are made available to the courts of law. The interests of the patients, public and the profession are convergent and congruous, as always. **SMA**