Report writing and record keeping

Useful notes

MEDICAL REPORT

Re: Jane Smith. 1, Acacia Ave, Abingdon, Oxon, OX14 3LH. DOB: 14/3/1958
This Medical Report is prepared at the request of Franks Solicitors, 34 Bridge Street, Abingdon, Oxon 0X14 7HJ. I am a graduate of the Anglo-European College of Chiropractic. I specialise in the manipulative rehabilitation of spinal conditions.

THE ACCIDENT

Mrs Smith was involved in a road traffic accident on the 20 August 1997. I understand that her car was travelling on the B1234 and struck another vehicle that was emerging from a side road. Mrs Smith's car was travelling at approximately 25 miles per hour. She was a passenger in the front passenger seat and was wearing a safety belt.

Immediate effects of the accident
Mrs Smith was aware of the impending impact. Immediately following the collision she felt pain across her shoulders and in her neck and both of her hands went numb. She then developed “pins and needles” in both arms.

Immediate Treatment
Mrs Smith was taken to the John Radcliffe Hospital Oxford by ambulance, secured to a spine board. She did not have any cervical X-Rays and was not prescribed a collar. She was told that she had sustained a whiplash injury and was recommended to take Ibuprofen. She saw her General Practitioner on the25th September 1997 who signed her off work. She also saw her General Practitioner on the13th October 1997 who agreed that chiropractic treatment would be appropriate for her injury. She first attended this clinic on 13th October 1997.

RELEVANT MEDICAL HISTORY

Mrs Smith has generally enjoyed good health. The most significant medical condition that she could recall was tonsilitis. She was taking Oxtetracycline for a skin condition. She has three children aged 12, 9 and 5 respectively at the time of the accident She has been working as an auxiliary nurse, but now acts as a receptionist.

EXAMINATION (13th October 1997)

Mrs Smith indicated that the left side of her neck and upper thoracic and upper arm region and her left shoulder were the source of her symptoms.

Orthopaedic Examination
Rotation of her head to the left was limited to approximately 50% of normal. Active left shoulder range of movement was limited to approximately 60% of normal. She has some pain and weakness of the left shoulder abductor muscles. Palpation of the cervical spine revealed tenderness and limitation of movement in the mid-cervical region, particularly on the left. The mid-thoracic region was also quite tender and stiff

Neurological Examination
The deep tendon reflexes in the legs and arms were present and symmetrical. There was no obvious sensory loss. Muscle strength appeared normal, apart from some weakness of the painful left shoulder abductors.

Physical examination
Mrs Smith's blood pressure was 130/85. Her heart and lungs sounded normal. Her peripheral pulses were symmetically palpable.

DIAGNOSIS

Mrs Smith appeared to have sustained a whiplash injury to the cervical and upper thoracic spine as well as having sustained a traumatic tendonitis of the left supraspinatus muscle.

TREATMENT

Mrs Smith was treated with some gentle chiropractic manipulation to the cervical and upper thoracic spine. Her left shoulder was treated with deep cross-friction massage of the left supraspinatus tendon as well as some mobilization of the left shoulderjoint. She was given some exercises to help to maintain cervical mobility and improve posture.

PROGRESS

By the 20th December 1997 Mrs Smithyappeared to have made a good symptomatic improvement. However on the 30th December 1997 Mrs Smith developed acute left-sided neck pain. Her General Practitioner diagnosed a “trapped nerve” and prescribed some pain killers and a cervical collar.

CURRENT SITUATION (September 1999)

Since January 1998 Mrs Smith's symptoms have gone through periods of exacerbation and remission. She complains of intermittent left neck and shoulder pain which respond reasonably well to manipulative treatment.

Current Symptoms
Mrs Smith gets intermittent pain across her shoulder and neck with associated numbness in the hands and “pins and needles”. The types of activity that aggravate her symptoms include anything which involves lifting or pulling. She has problems looking over her left shoulder when reversing the car and cannot sit in one position for any length of time with any degree of comfort. The neck symptoms have prevented her from going swimming. She has traumatic dreams as a result of the injury.

Current Treatment
She has to take Ibuprofen and Paracetamol regularly for pain relief. She also finds that a combination of massage, chiropractic manipulation and exercises relieve her neck and shoulder symptoms for a short period of time. Mrs. Smith continues to take Oxytetracycline for her skin.

PROGNOSIS

In my opinion Mrs Smith has reached maximum improvement. I do not anticipate her condition resolving any further. I feel that she will continue to be troubled by intermittent neck and shoulder pain and that her degree of disability is significantly more than would be expected from someone of her age.

This report is true to the best of my knowledge and belief. *Andrew T Rowe DC, 10 Sept 1999*

Medico-legal report writing

Writing legal reports is an art that is best learned by reading good reports written by others and then seeking to emulate them. It is essential to bear in mind that, while you might write many pages about what you found and how you elicited it, the solicitor is interested mainly in your opinion of what this evidence amounts to and the implications that flow from it. Some very bright and well educated non-medical people (lawyers) will scrutinise it minutely, and so it is best to avoid the use of technical terminology as far as possible and instead to use ordinary language. It is essential that your conclusions avoid all use of jargon and be couched in as unambiguous a manner as you think possible. The history given by the patient should be given in the past historic tense and not as a statement of current fact ("I gathered Miss Jones had been born in Cardiff" rather than "Miss Jones was born in Cardiff"), which can take a bit of getting used to. Similarly record things presented to you by the patient as facts as just that - statements said to be true by the patient ("Miss Jones said that her father had been a millionaire" rather than "Miss Jones's father was a millionaire"). When describing your own examination findings, the past tense can be fairly used: you were there and can vouch for their truth. Finally, your conclusions reached after subsequent consideration can be written in the present tense, since they were true as you wrote them and were not thoughts that you had when examining the patient. Know your limits. Avoid expressing opinions in an area in which you have no recognised expertise. Even if the patient has ankles the texture of porridge and the size of melons and lungs crackling like wrapping paper, it's not heart failure until a physician says it is. As a psychiatrist, I would just strongly suspect heart failure and recommend a cardiac opinion be obtained. Caution during the preparation of reports will avoid much potential embarrassment later.

BMJ 7147 Volume 316: Saturday 13 June 1998

A COMPLETE GUIDE
For GPs

Writing Reports and Giving Evidence in Court

MEDICAL PROTECTION SOCIETY

MEDICAL PROTECTION SOCIETY

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To most doctors the prospect of writing a report with medico-legal implications, or appearing in court, is unappealing. You may worry about incriminating yourself or others, or breaking confidentiality. If you are asked to appear in court, you may have additional worries about the procedure and whether hostile questioning will trip you up. However, with a little preparation, it can be an interesting, even enjoyable experience. The smoothness of an appearance in the witness box is determined long before you actually go to court, when you make your original report on the medical facts. That is also the best time to contact MPS for advice if you have any concerns at all about your own position, the procedure or any potential consequences of the case.

This guide is based on the legal system in England and Wales. For important differences in Scotland, see the *Scotland* section of *Additional Information*.

Writing reports

One incident can be investigated in a number of different ways – as a complaint, a negligence claim, a criminal case, a disciplinary matter with your employer, a coroner's inquest and a complaint to the GMC. A written report from you on the circumstances of the incident will be an important starting point. It is therefore vital to write an accurate report at the outset.

The most important points are that the report should be:

- **Detailed** – err on the side of providing too much information, rather than too little.
- **Clear** – avoid ambiguity and be clear about who did what.
- **Objective** – state the facts. Do not use the report to criticise others or make comments on practice politics.

Who is asking me to write the report and why?

The first step is to be sure who is asking you to write the report, and why. In other words what it is about, the information required and, if appropriate, your opinion. Most commonly a report is requested by:

- A coroner.
- A solicitor.
- The police.
- A patient's employer.
- Your own employer, possibly after something goes wrong.

It is important that you also clarify your own role. Are you writing as:

- A lay witness – in other words, as any other member of the public.
- A professional witness – if as a doctor you were involved in some aspect of the patient's care.
- An expert witness, giving an expert opinion on events that you were not personally involved in.

There is an important distinction between fact and opinion. Many reports will be statements of fact, giving information from your personal knowledge of what took place. You should limit yourself to reporting the facts as far as you know them. If you are asked to give an opinion, comment only within your expertise. If you don't want to give your opinion, you don't have to.

Am I authorised to provide a report?

A medical report involves the disclosure of confidential information about a patient. You must make sure that you have the authority to disclose this information. In most cases this consent should come from the patient, in which case you should ensure that the patient is clear on what information they have agreed to make available, and to whom. You should be careful not to go beyond the scope of this consent.

Reports for solicitors

If a request for a report comes from a solicitor acting on behalf of the patient, you may assume that they are acting on the client's instructions and no separate consent from the patient is necessary. However, be particularly careful in family disputes, where different solicitors may be representing different members of the family. If the request for a report comes from the solicitor acting for someone other than your patient, do not provide any information without the written permission of the patient. The solicitor should provide this. Again in the case of children, consent to reveal information should be given from someone with parental responsibility. Be aware that parental responsibility is not always straightforward, for example in the case of divorced or unmarried parents. If you are in any doubt you should check.

If a solicitor instructed by a patient asks for a report, in a situation where you have reason to believe the patient is dissatisfied with their care, it is a warning sign that you may be the target of a claim. You should contact MPS for advice immediately.

Useful tips

- Write your report honestly and don't allow yourself to be influenced by others.
- Write the report as soon as possible, while the events are still fresh and clear in your mind. The more you discuss the events with others before writing your report, the greater the danger of distortion.
- If you are writing your report as a result of a complaint or claim, make sure that you have seen the letters of complaint, Letter of Claim or details of any court proceedings.
- Write in the first person singular. So, for example, 'I injected Mrs Peacock' avoids the ambiguity of 'Mrs Peacock was injected'.
- The report is a record of your personal involvement. For example, details on the future management of the patient should only be included if you were personally involved.
- Address the report to an intelligent lay person, avoiding jargon and avoiding abbreviations.

Useful tips

- Organise the report chronologically. Give the actual dates (not 'Wednesday'). Say whether times are a.m. or p.m. If you are reporting several episodes give each a separate paragraph.
- Include only relevant facts in your narrative. If an opinion is required, this should form a separate part of your report.
- Do not comment on behalf of others. So, for example, do not write 'Dr Black believed the patient was dead'. (It is of course permissible to write 'Dr Black said, "This patient is dead"' if you heard them say so.)
- Check your spelling, grammar and punctuation carefully. A typed, rather than handwritten, report is preferable.
- When you have written the report, read it while asking yourself whether you feel vulnerable to criticism and whether you would feel unhappy being cross-examined on it. If you would, then talk to MPS before submitting your report.
- Keep a copy of your report. Keep a note of when, how, and to whom you submitted it.

Employment and insurance reports

Insurance companies and employers often ask for information about a patient. If you have been responsible for their care then you should follow the requirements of the Access to Medical Records Act 1988. The procedure is outlined in the diagram opposite. Remember that it is the duty of the person or organisation asking for the report to obtain consent from the patient, and this consent should be in writing. At the same time, they should also let patients know their rights under the Act. You should check that this has been done; if it has not, you should not provide any information.

You should also find out what the patient has consented to – for example they may have consented to disclosure of only limited information about a certain condition or event. In the case of children who are not competent to give their consent, anyone with parental responsibility for the child may consent on their behalf. However, as with any consent on behalf of a child, this should be given in their best interests. This includes not just their clinical health but their social and psychological well being. In practice, this should only be overruled if it might cause 'grave and irreversible mental or physical harm' to the child.

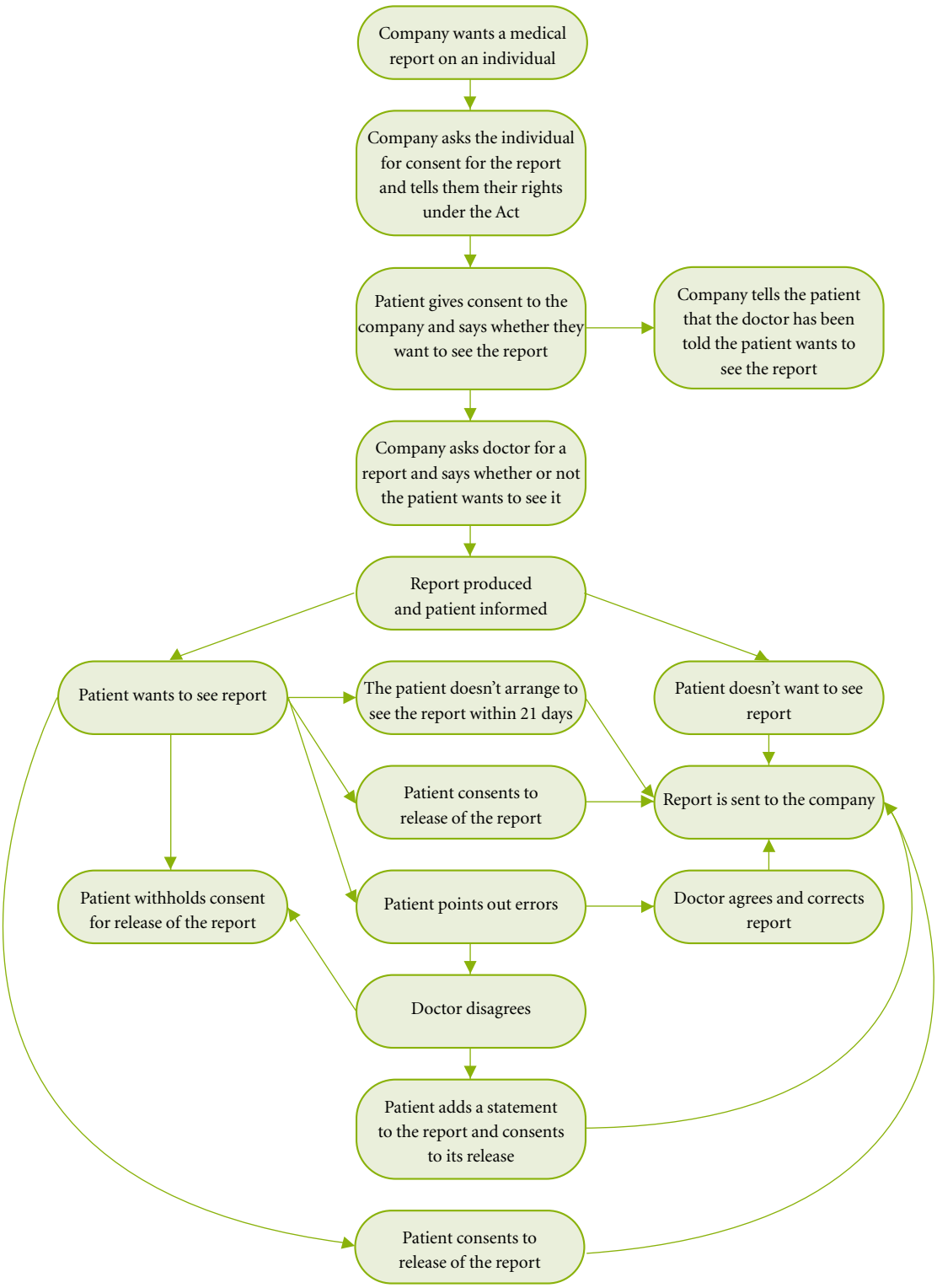
Statutory notification

There are situations in which doctors have a statutory duty to provide a report - notification of births and deaths; notifiable infectious diseases; and terminations of pregnancies carried out under the Abortion Act. Consent from the patient is not required in these situations; you are obliged to make the notification even if the patient objects.

Reports for the coroner

If a coroner asks you for a report, you have an obligation to provide it in the public interest. The GMC's *Good Medical Practice* adds that 'you must assist the coroner or procurator fiscal, by responding to inquiries, and by offering all relevant information to an inquest or inquiry into a patient's death. Only where your evidence may lead to criminal proceedings being taken against you are you entitled to remain silent.' If you feel vulnerable, contact MPS before submitting your report.

When an insurance company or employer asks for a medical report on an individual



How should the report be organised?

The following is a useful template for most reports.

- Your own brief personal details (including your qualifications, number of years in practice, job title, relevant clinical experience and background).
- It is essential to review the medical records in order to write your report. If they are not available, or are missing, then you should contact MPS for advice.
- Relevant local factors, for example if the regular receptionist was on holiday and a temp was covering, or if you work from more than one surgery.
- Patient details.
- The details of other doctors and medical staff involved, particularly if the report is for the coroner.
- Presentation and history, with dates.
- Findings on examination.
- Differential diagnosis considered.
- Investigations and subsequent management, with dates.
- If you are describing several incidents, then give full details (presentation, history, examination, investigation, management) and a separate paragraph for each contact with the patient.
- Date of the report.
- Your signature.

Example reports

Report for the Coroner re James Fenton

Mr Fenton had been my patient for many years, and was on warfarin because of his heart problems. He also had a number of other medical problems, including diabetes. He came to surgery infrequently, but saw the nurse regularly for blood checks. As far as I know he was always reliable with his medication. His last blood test was abnormal so we arranged for him to be reviewed by the duty doctor. Unfortunately he suffered a stroke the same day, and later died in hospital.

A more helpful report might be worded as follows.

Report for the Coroner re James Fenton

I am Dr Martin Morgan, a general practitioner at Floodgates Surgery, where I have been in practice since 1994.

Mr James Fenton registered with the practice in 1988, orginally with Dr Hazel. I took over the care of Mr Fenton when Dr Hazel retired in 1996.

Mr Fenton had suffered from osteoarthritis of the knees since the early 90s, and in 1998 he developed diabetes, which was reasonably well-controlled on diet alone.

In 1991 Mr Fenton underwent surgery to replace the mitral heart valve. Subsequently he was put on anticoagulants (warfarin), which he needed to remain on permanently.

Patients on warfarin need to have regular blood tests, and the dose of the warfarin is then adjusted in order to keep the anticoagulation at the right level. Originally this monitoring was undertaken by the hospital, but in August 1999, this was taken over by the practice. The routine was for Mr Fenton to attend the practice nurse, Mrs Brunton, on a regular basis (usually every 4-5 weeks). Mrs Brunton would take the blood sample, which would be forwarded to the laboratory for testing. Once the result was available it would be passed to me, and I would then telephone Mr Fenton to give him the details of the warfarin dose he should take until the next blood test was due.

On February 12 2002, I saw Mr Fenton in morning surgery. He had a chest infection, and I prescribed a course of an antibiotic, amoxycillin. I saw from the records that he was due for his routine blood test the following week. At the time he was taking 2mg of warfarin a day, and had been stable on this dose for the preceding year.

On Monday 18 February Mr Fenton attended Mrs Brunton and had his blood test taken as usual. The sample was despatched to the laboratory later that day, for testing.

The following day (Tuesday 19 February) was my half day, and after morning surgery I left to do my visits at about 12.15. I understand that at about 1.30 pm the laboratory rang the practice and reported that Mr Fenton's blood test was abnormally high (INR of 4.7). The call was taken by Mrs Gallagher, one of the practice receptionists.

Mrs Gallagher passed the message to my colleague, Dr Jones, the duty doctor that day, who was on the surgery premises at the time. I understand that Dr Jones decided that a visit was necessary, and left at about 1.55 pm, arriving at Mr Fenton's house approximately 10 minutes later. Unfortunately, on arrival he found the ambulance in attendance, Mr Fenton having apparently collapsed that morning. Mr Fenton was taken to the District Hospital where he subsequently died. I understand that the eventual diagnosis was that of brain haemorrhage.

What might happen if I write a poor report?

It is worth taking trouble over any report, because a poor one could cause difficulties for you and others.

Criticism by the court

The court may criticise your report if it is inaccurate, you exceed your level of competence, or you are so cautious that your report is unhelpful. Your report should not deliberately conceal anything. If it is revealed that you have left out relevant facts this will cast doubt on your integrity, and will make your subsequent comments less credible.

Criticism from the patient or the patient's relatives

When writing the report you should assume that the patient or the patient's relatives will see it at some stage. This should not, of course, prevent you from writing a clear, objective and factual account. However, as with medical records, avoid any pejorative, humorous or unnecessary subjective remarks.

Problems with colleagues

You should not attempt to protect colleagues, but if you think your report will open up contentious issues, contact MPS for advice.

General Medical Council

You run the risk of a referral to the General Medical Council if you write an inaccurate account, and any doctor guilty of deliberately distorting the facts can expect little sympathy from the Professional Conduct Committee.

Can I be paid for the report?

For some reports there is a fee, for others you will have to agree a rate. The British Medical Association publishes some guidance on this. If you are claiming a fee, the request for payment should be separate from the main report. There is no fee for reports to a coroner.

What if I am asked to change the report?

If you agree that you have got something wrong you may change the report, but do not give in to pressure because the facts are unhelpful to someone's cause. Change your report only after thinking very carefully, and only if you have made a factual mistake that needs to be corrected.

Supplementary report

Sometimes it is necessary to produce a supplementary report to deal with issues that have only just come to light. This normally happens when an expert opinion is being given. Before preparing a supplementary report always review your original report, the medical records and any new documentation.

Appearing in court

This guide provides information on the way the courts – criminal, civil and coroner's – operate. For more information on GMC procedures see our booklet *Fit to Practise? How the GMC Handles Complaints About Doctors*.

What are the various types of court?

The major division in the justice system is between civil and criminal law.

Civil cases involve an individual, group or organisation taking action against another, usually to obtain money. In a civil action, such as a clinical negligence claim, the court is asked to intervene in settling a dispute between claimant and defendant by deciding if compensation is payable and if so how much.

Criminal cases involve the state taking action against an individual they believe has committed a crime. In a criminal prosecution, such as assault or theft, the police investigate the circumstances and the Crown prosecutes the defendant for failing to abide by the law of the land.

Doctors may be asked to give evidence in both civil and criminal courts as well as in the coroner's court and a variety of other tribunals. Virtually all court cases are held in public and the press may be present.

Civil courts

The majority of civil cases are heard in the county court. More complex cases and those of high value are heard in the High Court. The court is presided over by a Judge who will hear all the evidence and decide in favour of the claimant or the defendant. There is rarely a jury in a civil trial and virtually never in a clinical negligence action.

Criminal courts

The great majority of criminal cases are heard in the Magistrates' Court and that is where all defendants facing criminal charges will have their first appearance in court. Doctors are likely to be involved in a case at a Magistrates' Court, at least as a witness. The magistrates hear the evidence and decide the sentence for those offences within their jurisdiction and will commit to the Crown Court more serious cases or those where the defendant opts for a Crown Court trial. The magistrates' bench usually consists of three lay magistrates with a legal adviser although in London there are some legally qualified stipendiary magistrates who sit alone.

Criminal cases that fall outside the jurisdiction of the magistrates will be heard in the Crown Court in front of a jury of twelve.

Coroner's court

The role of the coroner is to determine the identity of the deceased and the circumstances of death. The courtroom may be anything from a special building to a side-room in a hospital or municipal offices. The procedure may appear relatively informal and the coroner does not adhere to the strict rules of evidence that apply in other courts. The coroner's inquest is a public hearing at which the press can be present.

Scotland has a different court system. For more details please see the *Scotland* section in *Additional Information*.

What types of witness are there?

As a witness your role is a straightforward one – to provide impartial evidence to help the court reach its decision. You are not on anyone's side; you should be honest and independent. This applies to all kinds of witnesses – lay, professional or expert – but in other respects there are some important differences:

A lay witness simply tells the court something they saw or claim to know about a case; they are a witness to a fact. If you appear as a lay witness you will do so in your capacity as a citizen, not because you are a doctor.

A professional witness tells the court factual matters about their patient. For example, where and when the patient was examined, the history that was obtained, the findings on examination, the diagnosis that was made and what treatment was given. If you appear as a professional witness you should be careful not to provide expert opinion outside your own expertise. For example if, as a GP, you were asked for an opinion as to the likely long term effects of significant neurological injuries suffered in a road traffic accident, you should decline unless you can offer an authoritative opinion.

An expert medical witness is usually a consultant or an established general practitioner with specialist knowledge and experience. You would give your opinion on the medical facts based on your own experience and reference to the literature. The opinion may relate to a patient that you have never seen. For example, a pathologist may describe an autopsy he or she carried out and then express an opinion based on the facts from the autopsy; a surgeon may describe his or her examination of a disabled patient and give a detailed prognosis about future recovery. See the *Expert witness* section of *Additional Information* if you are interested in becoming an expert witness.

The distinction between a professional and an expert witness may sometimes be blurred but it is an important one. The golden rule is only comment on matters that lie within your own expertise.

Do I have to go to court?

In addition to providing a written statement, your attendance at court may be required. This provides the opportunity for the lawyers to ask you questions on issues that may come to light either before or during the trial which are not covered in your written report, or to tease out your evidence in important areas.

You will usually be invited to attend and often asked beforehand to indicate dates that would be inconvenient. Remember that your attendance is needed to help the court and it is usually best to co-operate. Sometimes you will be served with a witness summons, which compels you to attend at a specified time and for a set duration. You must comply with a witness summons or you risk being found in contempt of court – a criminal offence in its own right!

However, being asked to attend court or even being served with a witness summons does not remove your duty of professional confidence. For example, someone other than the patient or their legal representative may have invited you and you do not have the necessary consent to divulge confidential information. You may even have the explicit refusal of your patient to breach confidence. If served with a witness summons you have no option but to attend court. If asked about confidential issues you should explain that you do not have the necessary consent and decline to answer unless and until the judge orders you to. In addition the GMC advises 'you should object to the judge or presiding officer if attempts are made to compel you to disclose what appear to you to be irrelevant matters, for example matters relating to relatives or partners of the patient, who are not parties to the proceedings'. Of course if you think you might find yourself in such an awkward situation you should ask MPS for advice.

How should I prepare?

Beforehand

- Read through your original report of the episode.
- Review the medical records.
- Be clear who asked you to go.
- Find out where the court is and how long it will take you to get there.
- Find out how long you will be needed for.
- Make sure the medical records will be available at court – if you have them, take them with you.

On the day

- Allow plenty of time for your journey.
- Dress appropriately – any appearance in court is a formal occasion.
- If you have the medical records, take them with you.

What will happen in the court?

The procedure is similar in the different courts, although coroners have considerable discretion to hear the evidence in whatever order they wish. The claimant in a civil action or the prosecution in a criminal trial will put their case first and when all their witnesses have given evidence and been cross-examined, it will be for the other side to respond to the case that has been made out. After all the evidence has been heard, both parties will make closing speeches and the judge will sum up all the evidence.

In a civil dispute, the judge will then decide whether, on the basis of the law and the evidence, to find in favour of the claimant or the defendant and, in most cases, the level of compensation that should be paid.

In a criminal prosecution, the judge will sum up the evidence and advise the jury on the law to be applied. The jury will then deliberate on the facts and advise the judge on their verdict.

See the *Scotland* section in *Additional Information* for ways in which Scottish procedure differs.

What will happen when I give evidence?

In criminal cases you will normally not be allowed into the court before giving evidence, unless you are an expert witness. In civil cases you can usually go in and listen to the trial. When it is your turn to give evidence, you will be invited in and shown to the witness box. A court officer will ask you to swear or affirm to the court that the evidence you will give will be 'the truth, the whole truth and nothing but the truth'. The oath is usually taken while holding up the bible or other religious book. If you have no religious beliefs you may 'affirm' – take the oath without any associated religious words or actions.

Examination-in-chief

The purpose of examination-in-chief is for you to make your evidence clear to the judge and jury. The lawyer acting for the party who called you will take you through your evidence. They will first establish your name, address, qualifications, appointments held and perhaps any particular experience and expertise. They may then ask you to confirm that the statement they hand to you is the one that you gave and that you do not wish to amend your evidence. This is often the full extent of the examination-in-chief. However, the judge may want to probe a little here, mainly to seek clarification. This is particularly true in criminal trials where you are likely to be asked more questions to draw out your evidence.

Cross-examination

When the examination-in-chief has ended the lawyer acting for the other party will take over. If your evidence is purely factual then there may be no need for any cross-examination and the opposing lawyer will indicate to the judge that they have no questions to put to you. Otherwise they will ask you questions to probe particular issues in your statement and evidence in order to identify any contentious issues of fact or opinion. It is their role to draw attention to any deficiencies in your evidence that may favour their client. However, remember that you are a witness to the court, not acting on behalf of one side or the other. Your role is not to 'defend' your side, but to help the court establish the facts, so answer any questions honestly and fully.

Re-examination

When the cross-examination has concluded, the first lawyer has the opportunity to re-examine, clarifying any issues raised. No fresh matters can be raised at this point, only further questions on those issues already explored.

At the end of the re-examination, the judge may wish to ask some further questions. This may simply summarise what you have been trying to put across in your evidence. It is then usual for the party that has called you to ask the judge to release you from the court so that you are free to go, even though the case may not be finished.

Inquests

The coroner may ask you to read out your statement to the court, or may take you through your involvement in the circumstances leading to death. Interested parties may then ask questions either personally or through their legal representatives. The purpose of the inquest is not to suggest any blame for the death and the coroner must ensure that the questions do not lead in that direction. Any legal liability for the events leading up to death is a matter for another court. If it becomes apparent that your competence is being questioned then you should ask the coroner for an adjournment so that you can seek legal advice. Again, the procedure in Scotland is different. See the *Scotland* section of *Additional Information* for more details.

How should I behave in court?

- Remember you are impartial – your duty is to the court and not to one side or the other.
- You should stand unless the judge allows you to sit. Stand evenly with your hands by your side, or resting on, but not gripping, the front of the witness box. It is not uncommon for witnesses to be allowed to sit.
- Speak clearly. Try to use short sentences and explain any technical terms.
- Don't say too much – avoid the temptation to over-elaborate.
- Treat questions as you would a serious conversation – answer everything openly, honestly and fairly providing it falls within your experience. Don't be defensive and don't try to be clever in your answers. If you don't know the answer, say so. It is also important to answer the question that has been asked.
- Never lose your temper, even if opposing counsel seems to have spoken unfairly or even disparagingly – this may have been done as a deliberate tactic. You can always appeal to the judge if you think that a question was improper, incapable of a fair answer or if you would like to expand on your answer.
- If you are uncertain about a question, ask for clarification.

Additional Information

Scotland

Scotland has a different legal system from England and Wales:

Civil courts

In a civil action, the court is asked to intervene in settling a dispute between pursuer and defender (equivalent to claimant and defendant) by deciding if compensation is payable and if so how much. Most civil cases will be heard in the Sheriff Court. Complex, or high value, cases will be heard in the Court of Session. There will either be a jury trial (a trial by a judge and a jury of twelve) or a proof (a trial by a judge alone). The pursuer will put their case first and when all their witnesses have given evidence and been cross-examined, it will be for the other side to respond to the case that has been made out. After all the evidence has been heard, both parties will make closing speeches and the judge will sum up all the evidence. The judge or jury will then decide, on the basis of the evidence, to find in favour of the pursuer or the defender and the level of compensation that should be paid.

Criminal courts

The police report crimes to the local procurator-fiscal who decides whether or not to prosecute, and in which court. The district court is presided over by one or more justices of the peace or a stipendiary magistrate; it deals with the least serious offences. The sheriff court is presided over by the sheriff – in more serious cases sitting with a jury. The most serious cases (such as murder or rape) are dealt with by the High Court of Justice. From one to three judges will sit with a jury of 15.

Fatal Accident Inquiries

The procurator-fiscal investigates any sudden, unexplained or suspicious deaths. The purpose is not to find out the medical cause of death, but to rule out the possibility that a crime has been committed. The procurator-fiscal can take an informal statement from lay and medical witnesses, which can form the basis of oral testimony at any trial. There is no routine public inquest, although a Fatal Accident Inquiry may be held in certain circumstances. Fatal Accident Inquiries are presided over by a sheriff, who sits without a jury, and are more formal than a coroner's court. The procurator-fiscal would take you through your statement. Unlike an inquest, a Fatal Accident Inquiry can lay a degree of blame at an individual's door. The Sheriff will give a decision at a later date.

Becoming an expert witness

If you are interested in becoming an expert witness, and with the increasing number of negligence claims there are plenty of opportunities, it can be a rewarding area of work. However, this guide is not intended to provide advice on becoming an expert witness, and you will need to look into the issues in more depth if you are to perform this role effectively. You will need to ensure that you have the appropriate indemnity for this kind of work, for example, and it may be worthwhile undergoing some training. Expert witnesses have a responsibility to the court, not to one side or the other. Recent changes in procedural rules have made the role of an expert witness more demanding, with stricter guidelines on the format, content and timetable for producing reports.

Publications

The expert witness: a guidance note for BMA members, BMA – a helpful starting point if you are interested in becoming an expert witness. www.bma.org.uk

Good Medical Practice, Confidentiality, General Medical Council – advice from the GMC that clarifies your responsibilities to your patients. www.gmc.org.uk

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Publications

MPS produces a variety of publications offering useful advice on medico-legal issues. For more details, see our website, www.mps.org.uk.

What we can do for you

As a member, you can ask MPS for independent confidential advice on a wide range of medico-legal and ethical issues as often as you need to.

How to contact us

For general enquiries

Tel: 0845 605 4000

Fax: 0113 241 0500

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For questions about your MPS membership

For example if you change the kind of work you do.

Tel: 0845 718 7187

Fax: 0113 241 0500

E-mail: member.help@mps.org.uk

For medico-legal advice

Tel: 0845 605 4000

Fax: 0113 241 0500

E-mail: querydoc@mps.org.uk

In the interests of patient confidentiality, please do not include information in an e-mail that would allow a patient to be identified.

MPS website

Contains a wealth of resources and advice on medico-legal issues.

www.mps.org.uk

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MEDICAL PROTECTION SOCIETY

Access to health records by patients

Guidance for doctors on access to health records under the Data Protection Act 1998, and on access to the health records of deceased patients under the Access to Health Records Act 1990, or the Access to Health Records (Northern Ireland) Order 1993

Summary

The implementation of data protection legislation in early 2000 changed patients' statutory rights of access to their health records. The purpose of this guidance is to set out in some detail the legal requirements on doctors as holders of health records. This summary highlights the main points.

What records are covered?

All manual and computerised health records about living people are accessible under the Data Protection Act 1998.

Does it matter when the records were made?

No, access must be given equally to all records regardless of when they were made.

Who can apply for access?

Competent patients may apply for access to their own records, or may authorise a third party, such as their lawyer, to do so on their behalf. Parents may have access to their child's records if this is in the child's best interests and not contrary to a competent child's wishes. People appointed by a court to manage the affairs of mentally incapacitated adults may have access to information necessary to fulfil their function.

Are there any exemptions?

Yes, the main exemptions are that information must not be disclosed if it:

- is likely to cause serious physical or mental harm to the patient or another person; or
- relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient).

Must copies of the records be given if requested?

Yes, patients are entitled to a copy of their records, for example a photocopy of paper records or print out of computerised records.

Is it necessary for patients to make a formal application for access to see their records?
No, nothing in the law prevents doctors from informally showing patients their records or, bearing in mind duties of confidentiality, discussing relevant health issues with carers.

Can a fee be charged?

Yes, and the fee varies depending on the type of record and whether the patient wants copies of the records or just to see them.

To provide access and copies:

- Records held totally on computer: £10
- Records held in part on computer and in part manually: a reasonable fee of up to £50
- Records held totally manually: a reasonable fee of up to £50

To allow patients to read their records (where no copy is required):

- Records held totally on computer: £10
- Records held in part on computer and in part manually: £10
- Records held totally manually: £10 unless the records have been added to in the last 40 days when no charge can be made

What about access to the records of deceased patients?

The Data Protection Act 1998 only covers the records of living patients. If a person has a claim arising from the death of an individual, he or she has a right of access to information in the deceased's records necessary to fulfil that claim. These rights are set out in the Access to Health Records Act 1990 or Access to Health Records (Northern Ireland) Order 1993. The provisions and fees are slightly different from those in the Data Protection Act.

Data Protection Act

Factsheet

Information Commissioner

Promoting public access to official information
and protecting your personal information

What is the Data Protection Act (DPA)?

The Data Protection Act 1998 seeks to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information.

The DPA gives individuals certain rights regarding information held about them. It places obligations on those who process information (data controllers) while giving rights to those who are the subject of that data (data subjects). Personal information covers both facts and opinions about the individual.

Anyone processing personal information must notify the Information Commissioner's Office (ICO) that they are doing so, unless their processing is exempt. Notification costs £35 / year.

The eight principles of good practice

Anyone processing personal information must comply with eight enforceable principles of good information handling practice.

These say that data must be:

1. fairly and lawfully processed
2. processed for limited purposes
3. adequate, relevant and not excessive
4. accurate and up to date
5. not kept longer than necessary
6. processed in accordance with the individual's rights
7. secure
8. not transferred to countries outside European Economic area unless country has adequate protection for the individual

The six conditions

At least one of the following conditions must be met for personal information to be considered fairly processed:

1. the individual has consented to the processing
2. processing is necessary for the performance of a contract with the individual
3. processing is required under a legal obligation (other than one imposed by the contract)
4. processing is necessary to protect the vital interests of the individual
5. processing is necessary to carry out public functions, e.g. administration of justice
6. processing is necessary in order to pursue the legitimate interests of the data controller or third parties (unless it could unjustifiably prejudice the interests of the individual)

Sensitive data

Specific provision is made under the Act for processing sensitive personal information. This includes racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health condition, sex life, criminal proceedings or convictions.

For personal information to be considered fairly processed, at least one of several extra conditions must be met. These include:

- Having the explicit consent of the individual
- Being required by law to process the information for employment purposes
- Needing to process the information in order to protect the vital interests of the individual or another person
- Dealing with the administration of justice or legal proceedings

Rights under the Act

There are seven rights under the Data Protection Act.

1. The right to subject access
This allows people to find out what information is held about them on computer and within some manual records.

2. The right to prevent processing
Anyone can ask a data controller not to process information relating to him or her that causes substantial unwarranted damage or distress to them or anyone else.

3. The right to prevent processing for direct marketing
Anyone can ask a data controller not to process information relating to him or her for direct marketing purposes.

4. Rights in relation to automated decision-taking
Individuals have a right to object to decisions made only by automatic means e.g. there is no human involvement.

5. The right to compensation
An individual can claim compensation from a data controller for damage and distress caused by any breach of the act. Compensation for distress alone can only be claimed in limited circumstances.

6. The right to rectification, blocking, erasure and destruction
Individuals can apply to the court to order a data controller to rectify, block or destroy personal details if they are inaccurate or contain expressions of opinion based on inaccurate information.

7. The right to ask the Commissioner to assess whether the Act has been contravened
If someone believes their personal information has not been processed in accordance with the DPA, they can ask the Commissioner to make an assessment. If the Act is found to have been breached and the matter cannot be settled informally, then an enforcement notice may be served on the data controller in question.

Criminal Offences

A number of criminal offences are created by the Act and include:

Notification offences
This is where processing is being undertaken by a data controller who has not notified the Commissioner either of the processing being undertaken or of any changes that have been made to that processing.

Procuring and selling offences
It is an offence to knowingly or recklessly obtain, disclose or procure the disclosure of personal information without the consent of the data controller. There are some exceptions to this – for example, where such obtaining or disclosure was necessary for crime prevention/detection. If a person has obtained personal information illegally it is an offence to offer or to sell personal information.

Electronic Communications
The Privacy and Electronic Communications (EC Directive) Regulations 2003 cover, amongst other things, unsolicited electronic marketing communications.

Unsolicited marketing calls should not be made to individual subscribers who have opted out either directly or by registering with the central stop-list, the Telephone Preference Service (TPS), or to corporate subscribers (e.g. companies) who have objected either directly or by registering on the Corporate TPS.

Unsolicited marketing faxes should not be sent to individuals without their prior consent or to any subscriber who has objected, either directly or by registering on the Fax Preference Service (FPS).

Unsolicited marketing emails or SMS should not be sent to any individual subscriber who has not consented unless the email address or phone number was collected in the context of a commercial relationship.

Wholly automated marketing calls, i.e. where a recorded message is played and the recipient does not speak to a human being, can only be made where the subscriber concerned (whether individual or corporate) has consented.

The role of the Information Commissioner's Office

The ICO has specific responsibilities for the promotion and enforcement of the DPA.

Under the Data Protection Act**,** the Information Commissioner may:

- serve information notices requiring data controllers to supply him with the information he needs to assess compliance.
- where there has been a breach, serve an enforcement notice (which requires data controllers to take specified steps or to stop taking steps in order to comply with the law).

Appeals to these notices may be made to the Information Tribunal.

Additional Information

Additional guidance on the Data Protection Act is available on our website at www.informationcommissioner.gov.uk

To contact our helpline please telephone 01625 545 745.

To contact our press office please telephone 020 7282 2960.

Please read the following article:

Referral Letters and Written Reports. *The Chiropractic Report*. 6(2), 1-6. January 1992.