

CONDUCT AND DUTIES OF A DOCTOR IN THE WITNESS BOX

FM 1.5: DESCRIBE CONDUCT OF DOCTOR IN WITNESS BOX.

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When summons is served, he must attend the court punctually. As a rule, his evidence is taken at the appointed time.

Following are the do's and do not's in the witness box:

- ❖ Take all records and relevant reports that may have to be quoted in the box.
- ❖ Be well dressed and modest.
- ❖ Do not discuss the case with anyone in the court except the lawyer by whom you were asked to testify.
- ❖ Stand up straight, be relaxed, calm and not be frightened or nervous. Look people in the eye when you speak, for it gives the impression of honesty.
- ❖ Never attempt to memorize. The law allows refreshing your memory from copies of reports.

- ❖ Speak slowly, distinctly and audibly so that the typist can record your evidence.
- ❖ Use simple language, avoiding technical terms to the best of your ability.
- ❖ Address the Judge by his proper title such as 'Sir' or 'Your honor'.
- ❖ Be polite, pleasant and courteous to the lawyer. Do not underestimate the medical knowledge of the lawyers.
- ❖ Do not evade a question. Say 'I don't know' if it is so, for no one can be expected to know everything.
- ❖ Do not lose your temper. An angry witness is often a poor witness.

- ❖ Retain independence of your mind. A biased expert is a useless expert.
- ❖ Listen carefully to the questions. Do not hesitate to ask the questions to be repeated, if you do not understand it. Avoid long discussions.
- ❖ If you believe the question is unfair, look at your lawyer before answering. If he fails to object, turn to Judge and ask whether you should answer the question.
- ❖ Do not overemphasize replies to questions from cross-examining lawyers.

- ❖ Watch for double questions. The answer to each part of the question may be different.
- ❖ When asked to comment upon the competence of a colleague, avoid any insulting remarks. If you do not wish to make any statement, say that you have 'no opinion' or 'no comments'.
- ❖ Say 'In my opinion....', do not use phrase such as 'I think...' or 'I imagine...' Be prepared to give reasons for your opinion, if asked.

- ❖ Do not be drawn outside your particular field of competence. Avoid speaking on a subject in which you have little or no practical experience.
- ❖ Do not refuse to answer any question-a medical witness has no professional privilege.
- ❖ Do not volunteer any information beyond that is asked for in the question.



In giving evidence, the following principles should be remembered by a medical witness.

- ❖ When the summons is served, he must attend the court punctually and produce such documents or other articles as required by the court. He should dress himself properly, consistent with his dignity as a doctor. As a rule, his evidence is taken at the appointed time as the court realises the importance of his time and duties. However, if delay occurs in taking up his the public prosecutor that he is waiting.

❖ Before attending the court, he should refresh his memory about the facts of the case from his notes actually written should also be at the time of examination taken with him. Such notes may be inspected by the opposing counsel who may cross examine him on the same. He should make careful study of recent literature on the subject and prepare himself for the questions that he is likely to be asked.

- ❖ While in the premises of the court, he should avoid any indiscriminate talk or discussion of the case.

- ❖ When he is called in and takes his stand in the witness box, oath is administered to him by the court clerk who also takes down his name, age, occupation, and address. From then on, his evidence starts. While giving evidence, he should address the judge as "Sir" or "Your Honour". He should give evidence slowly and in a loud clear voice so as to enable the court clerk on one side to record his evidence (on the type writer) and the opposing counsel on the other side to hear what he is saying. Whenever practicable, he must restrict himself to simple words. For instance, it is better to describe an incised wound as a 'cut', a metacarpo-phalangeal joint as a 'knuckle', and a subconjunctival haemorrhage as a 'black eye'. Technical terms should be kept to a necessary minimum and explained if used.
- ❖ The answers should be brief and precise avoiding vague words like 'about' or 'approximately' whenever possible. As for example, while describing wounds which can be measured, actual measurements should be given. A range or approximation may be given only when it is not possible to be accurate, eg, while giving an opinion on 'age of a person, age of injury, or time since death'.

- ❖ There is a common misconception that the answers should be in the form of 'yes' or 'no'. Since the doctor must tell the truth and the whole truth, it is not always possible to do so if he restricts his answers to simple 'yes' or 'no'. He should qualify the answer or give an explanation when the answer is likely to mislead the court. Also, he should beware of going beyond facts which cannot be upheld.

- ❖ Medicine is a vast subject and if the witness does not know the answer to any particular question, he should say so at once so that his credibility is maintained.

- ❖ If a question is not clear or is ambiguous, he should ask for it to be repeated or clarified. If a quotation is read from a textbook which does not appear to him to be correct, he should ask for the book and not only read the context but also look at the date of publication before replying; medical science progresses rapidly and these advances are reflected in latest editions only.

❖ A medical witness should remember that although called by one party, his evidence should be impartial and reflecting his scientific position. He should freely concede any points which may tell against the party calling him. He should also be prepared to admit any alternative explanation of the facts which is reasonable when put to him, even if he had not thought of it earlier. A special quality which brings respect and regard to a forensic expert is fairness to the other side.

- ❖ When asked to express an opinion on observations made by another professional colleague, he should ensure that his views are in accord with the current scientific position and he should firmly and politely adhere to his conclusions. If the subject under discussion is open to different interpretations, he should say so and give reasons for his opinion.

❖ He should not lose his temper but should appear cool and dignified even if questions of an irritable nature are put to him. Below are examples of some such questions:

Q. Doctor, do you agree that Dr. XYZ is an authority on this subject?

A. I am here to offer what I consider as a fair criticism on Dr. XYZ's opinion and not to praise him unconditionally (if Dr. XYZ's speciality is your speciality, say so).

Q. Doctor, are you infallible?

A. No (diffidently), but I believe, I am correct in this instance (confidently).

Q. Doctor, I put it to you that the entry in your record is false and was made for certain purposes.

A. I deny both (calmly and firmly).

Q. Doctor, is not what you have told about the lapse of time between injuries and death a mere conjecture on your part?

A. Certainly not. It is my opinion based upon my findings and not a conjecture.

Q. Doctor, you are a friend of the plaintiff and you really want to see him win this case?

A. I am his friend and I want to see him win this case because I think he is right or else I would not be here.

There are some tricky questions. Here are four of them:

- (a) When a question is asked, "Doctor, is this all?, he should say, "That is all I remember at this moment".
- (b) "Doctor, are you getting paid to testify in this case?". The answer should be, "No, I am not getting paid to testify; I am only getting compensation for my time off work and the expenses (if any) incurred by me to be here".
- (c) "Doctor, have you talked to anybody about this case?". The best thing is to say frankly that he has talked to whomsoever he has attorney, witness, police, etc and that he was just So what the facts were.
- (d) "Doctor, how is it that in a you stated something and today you are stating something different with asked as respect to the same topic?". The answer should be. "I try to keep up to date with the latest advances" or "the context is different". a certain journal,

- ❖ The medical witness should remember that the court has no special medical knowledge and his sole purpose is to aid the court to arrive special decision by describing and explaining the medical aspects of the case and the conclusions which can be drawn therefrom. Hence, while in any case any witness cannot volunteer a statement, a medical witness can do so if he feels that justice is likely to be miscarried owing to the court having failed to elicit an important point.

❖ The doctor must remember that if a judge directs him to do so, he must answer any question. In India, professional secrecy is not recognized by a court of criminal law. Nevertheless, he should not volunteer these secrets but should divulge them under protest, to show his sense of moral duty, when pressed upon to do so. The information can be written and handed over to the judge.

When the evidence is concluded, this record, known as his deposition, should be read and signed by him after getting any corrections if need be, done by the court under its initials.

The medical witness should not leave the court until permission to do so is granted. If he so desires, the court will issue him a certificate of attendance to enable him to claim travelling expenses. Subsequent to discharge, the witness is liable to be called again if his evidence is found deficient in any respect or needs further elucidation

