



# Medical Expert Witnesses IOI

By Dr Tommy Tan

*The SMA Centre of Medical Ethics and Professionalism would like to thank Dr Tommy Tan for his guest contribution to this month's column.*

I have breakfast every Sunday morning with a good friend from my junior college days. After junior college, he went on to law school. He is now a well known lawyer in intellectual property laws. Interestingly, he is involved in the disciplinary committees of the Law Society and the Singapore Medical Council. During one of our recent Sunday morning breakfasts, he revealed that there are more complaints against doctors than against lawyers. I replied that it is not surprising considering almost everyone will come into contact with doctors, whereas most people have practically no contact with lawyers, except when they are buying or selling their homes.

The conversation carried on about doctors in courtrooms. Besides lawyers, police officers and people who work in the courts, doctors are the most likely persons to be called to the courts. They are either being sued, or are serving as witnesses of fact or as expert witnesses. Again, the reason is because we

have so much contact with people who see us for sicknesses and injuries, both physical and mental. Consider the number of road accidents every day. Road accidents are only a tiny bit of the myriad of human activities that leads to illnesses.

Thus, inevitably, one of our patients always ends up making a police report, filing a complaint or starting litigation. We will then have to write reports for them. The patient's lawyer would send affidavits and eventually ask us to be a witness in court.

Then my friend opined that doctors are afraid of going to court as witnesses, and I agreed with him.

What is the source of our fear of going to court?

I am a psychiatrist. So naturally my explanation has to be psychoanalytical, i.e., our past experiences are the source of our fears and anxieties. One such past experience is the...

*Viva voce!*

Even before enrolling in medical school in Singapore, I, like all potential medical students had to sit before a panel of three senior doctors, to assess my suitability to be a doctor. I left the interview, anxious for days, wondering if I was good enough to be a doctor.

Then came the gruelling examinations we had to take in medical school. Written examinations boded little anxiety for us, as we have gotten used to such examinations since the PSLE. However, the viva voce was not something we ever had experienced in our earlier schooldays.

With the exception of a few subjects for which the viva voce was compulsory, viva voce was reserved for the fortunate few who were distinction candidates and the unfortunate few who were considered "borderline" passes. I will always remember our collective sigh of relief when we discovered the viva voce had not befallen us for another year. For the fortunate or unfortunate few selected, the anxiety persisted for a little while more.

For these few compulsory viva voce, one or more pairs of eyes would be peering at you, trying to establish whether you were good enough for them. Doctor, are you sure what you are saying is correct? Have you considered the other differential diagnoses? Treatment? Prognosis? The permutations of anxiety-provoking questions were seemingly infinite. We would leave feeling distraught or happy depending on how we perceived our performance.

For some of us, the torment continued in postgraduate Medicine. Viva voce was no longer restricted to the selected few, but was now compulsory for all candidates.

Medical school inadvertently prepared us to be afraid of going to court. As doctors, we are quite comfortable writing medical reports. However, when we receive a call from a lawyer requesting us to be a witness in court, our dormant anxieties of viva voce are resurrected. "Oh no," our unconscious tells us, "I am going to be questioned. Will I pass?" Of course, for some people, it would be, "Will I get my distinction?"

The only preparation I had in medical school was when my good friend (who is now an ENT surgeon) and I snuck into the Subordinate Courts one afternoon, after lessons in our first year (at what is now the College of Medicine Building), and sat through part of what I remember as a coroner's hearing.

Subsequently, I only learnt how to cope with the anxieties of being in court through repeated exposures. Exposure therapy is good treatment for phobias.

I am still anxious when I go to court nowadays, although perhaps less so than my first time, which was when I appeared in the High Court before Justice TS Sinnathuray. I was very relieved that I did not need to take the stand that day. So there

was no need for my unconscious to judge my performance.

Occasionally, a medical colleague will ask me how to prepare to go to court. I usually give the following advice to relieve the resurrected anxieties.

First and foremost, you are not on trial (unless you are the defendant). You are only asked for the facts or for your opinion. You will not be punished or acquitted after the hearing.

You know more than the judge and the lawyers about the subject. This is unlike medical school viva voce when our examiners would usually know more than us.

Read your notes to refresh your memory.

Have a good breakfast if the hearing is in the morning. It may be a long wait. Meanwhile, have a moderate lunch if you are due for the afternoon; you do not want to feel drowsy.

Remember to bring all your notes. You may need to refer to them.

Bring a good book, preferably something unrelated to the case. You probably have to wait for your turn on the stand, so you will need something to distract yourself.

Bring a bottle of water. There is nowhere to drink if you are at the Subordinate Courts, unless your good lawyer friend invites you to its bar room (strangely no alcohol served despite its designation). There is a cafe on the ground floor of the High Court but it would be quite a hassle and somewhat uneconomical to patronise it just to quench your thirst.

Always make yourself comfortable before you go to the stand, i.e., empty your bladder. You will not know how long you will be on the stand.

Lastly and most importantly, be honest and frank about what you know. Do not go beyond your expertise. Do not speculate even if you are asked to. Stick to the facts.

And you can ask the honourable judge for a break if you need to go to the bathroom. **SMA**



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