

Expert Reports

– *The Brief, the Preparation and Legal Considerations*

By Dr Bertha Woon

IN GENERAL, reports are requested from experts when there is a question of a doctor's liability in terms of breach of duty of care, or role in the chain of causation of an unfortunate event. Occasionally, expert reports are sought to ascertain the prognosis of a given condition and options for treatment. However, this article will only deal with the former situation.

Doctors called upon to write expert reports experience at least two different types of emotions. Some are elated as it means that they have "made it" in their chosen specialties. Others, loathe to be confrontational, sense dread because such reports can become part of somebody's arsenal to attack fellow colleagues in court.

Since doctors are asked to produce expert reports only when they become experts, this subject is rarely discussed in medical school or specialty training. One can consider it a black hole in our education. Therefore, the Medical Protection Society and SMA Centre of Medical Ethics & Professionalism have been conducting courses to empower doctors in this regard.

General considerations before accepting instructions

Firstly, be clear about who the party instructing you is. A proper letter of instruction normally comes from a named lawyer(s) in a law firm, and should include details such as:

1. Brief facts of the case
2. Purpose of the report
3. Specific questions for you to answer
4. Time frame within which you should complete your report
5. Structure of the report
6. Supporting documents and evidence
7. Clear remuneration arrangements

Before you respond, determine that the above points have been met and then consider if you are the right person for the job. It is vital to be self-aware if you have the appropriate expertise for a particular case.

Next, ascertain if there is any conflict of interest. Merely knowing someone does not constitute one.

The most salient question after this is whether you have enough time. Court cases require strict adherence to timelines as part of civil procedure. If you are asked to complete a report by a certain date, meeting that deadline is very important. If you cannot do it within the time frame, be upfront about this so that the lawyers can approach another expert instead. Also note that your involvement does not end with the submission of your report. You may be called upon to be an expert witness in court at a later time. You will need to be on standby for approximately a week or get cover for your duties if necessary.

Most doctors are uncomfortable with asking for remuneration. Consider the cost of your time that is needed to prepare a well-written report and to be on standby. Court cases tend to drag on, and instructions can become more complicated and more questions can arise as time passes. Remember to factor all these in.

Preparation

A proper expert report has to comply with the requirements of Order 40A Rule 2 of the Rules of Court, and follow Form 58 of the Supreme Court Practice Directions. What all this means is that you, the expert, have a duty only to the court, regardless of the party that pays you. You have to give an independent expert opinion that is confined to the material issues and within your expertise. If your opinion is qualified or provisional, say so. Do inform the court of any change in your opinion in a timely manner should new information come to light.

Format and content

1. Submit a written, signed and sworn affidavit.
2. Always include your updated curriculum vitae and qualifications. This gives weight to your opinions.
3. Follow your instructions to the letter and answer to the point, based on the issues and summary of facts you are given and the documents in your possession that your opinions are based on.
4. Give your opinions and state if they are qualified or provisional. Confine your opinion to what is asked of you regarding the material matters in dispute and matters within your expertise. Identify points that are outside of your expertise and suggest alternative sources of expert opinions where possible.
5. Present your range of opinions and supporting reasons in a succinct manner. Substantiate your opinions with evidence from all the records, statements and literature that you have relied upon. Always provide all relevant literature references in full.
6. Summarise your conclusions.
7. End the report with statements of belief and of your duty to the court:
 - “I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear that

they are and I believe them to be correct, and that the opinions I have expressed represent my accurate and complete professional opinion,” and

- “I also confirm that in preparing this report, I am aware that my primary duty is to the Court and not the person(s) from whom I have received my instructions or by whom I am paid.”
8. Stylistically, remember to number your paragraphs. To save time, it is best to ask your instructing lawyers for a template onto which you can type.

What not to write

Be careful not to include comments such as “Dr ABC is my friend”, or make judgements such as “the patient’s version of the events is barely credible” or “Dr XYZ is clearly negligent”. It is the judge’s responsibility to make judgement and the expert’s duty to give an opinion.

Other issues

Sometimes, the court will direct discussions regarding issues requiring review, to establish which points are agreed or disagreed upon. The content of such discussions are not referred to at trial without the agreement of all parties.

Also, be aware that there is a requirement for privilege regarding communications between the expert and the client or the client’s solicitors, whenever there is a reasonable prospect of litigation or where the dominant purpose of seeking legal advice is in anticipation of litigation. Furthermore, documents that are disclosed during court proceedings may only be used for the action.

Note that your expert report, produced for a stated purpose in a particular trial, may not be used for any other purposes.

Accountability

Be careful when writing your expert report. Someone who makes false declarations in an expert report may be criminally liable for fraud or perjury, and may be subject to disciplinary proceedings by the Singapore Medical Council for misconduct. Additionally, an expert who gives negligent opinions may lose expert’s immunity. Wasted cost orders can also be made against the party that caused a trial to be prolonged unnecessarily.

I hope the above does not deter any of you from writing expert reports, but will instead provide you with good guidelines for preparing one. ■



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