



## Recommendations

# Forensic physicians as witnesses in criminal proceedings

The medico-legal guidelines and recommendations published by the Faculty are for general information only. Appropriate specific advice should be sought from your medical defence organisation or professional association. The Faculty has one or more senior persons from each of the three medical defence organisations on its Board, but for the avoidance of doubt, endorsement of the medico-legal guidelines or recommendations published by the Faculty has not been sought from any of the medical defence organisations.

### Professional witness versus expert witness

Forensic physicians are regularly asked to provide professional statements following the examination of a detainee or complainant. These statements will detail the clinical findings (as recorded in the contemporaneous clinical records) using language that can be understood by lay people. They may also include a limited opinion with respect to the significance of the examination findings e.g. causation of a bruise. Although it is expected that all forensic physicians should have had training in how to produce a factual statement, and have ongoing support with writing statements from an experienced forensic physician, the author of a professional statement is merely a witness of fact and does not have to have any experience or expertise with regard to the interpretation of the clinical findings. However, the courts will often need expert interpretation of the medical evidence and this task will fall to an expert witness.<sup>1</sup>

An expert witness is a person who is qualified by his or her knowledge or experience to give an opinion on a particular issue(s) to a court.<sup>2</sup> The BMA has produced detailed guidance on the role of the expert doctor.<sup>2</sup> The expert witness may, or may not, have examined the patient. However, in contrast to the professional witness, the expert witness will be entitled to consider all of the available evidence in advance of forming an opinion.

Before agreeing to act as an expert witness, or proffering expert evidence, the forensic physician should consider if s/he is properly qualified and experienced to do so. The FFLM believes that expert evidence should only be sought from forensic physicians who have a post-graduate qualification in clinical forensic medicine.

All medical witnesses must be familiar with and follow the advice in the GMC document 'Acting as an Expert Witness'.<sup>3</sup>

### Clarification of status

To avoid later confusion the FFLM recommends that all forensic physicians annotate their professional statements with "This is a professional witness statement of fact. I am able/unable to provide expert opinion evidence in relation to this matter/and would be happy to do so on supply of all relevant documentation".

If asked to consider other papers in a case prior to a trial the forensic physician should advise the police/CPS that this is the field of an expert witness. The forensic physician should then advise if s/he believes that s/he has the necessary qualifications and experience to be considered an expert in the case and, if s/he does whether s/he is prepared to accept the instruction. The forensic physician should then ask to see the defence statements/reports in ample time to provide an opinion before attending court.

If a professional witness is asked to consider an expert report at the trial s/he should decline to do so reminding the court that s/he is appearing as a professional witness and either is not suitably experienced or qualified to act as an expert in the case or that s/he will not have the opportunity to properly consider the paper in the context of the available literature.

### References

1. A Protocol between the Police and Crown Prosecution Service in the investigation and prosecution of allegations of rape. Crown Prosecution Service. [www.cps.gov.uk/publications/agencies/rape\\_protocol.html](http://www.cps.gov.uk/publications/agencies/rape_protocol.html) Accessed April 2008
2. British Medical Association. Expert Witness Guidance. British Medical Association. October 2007. [www.bma.org.uk/ap.nsf/Content/Expertwitness](http://www.bma.org.uk/ap.nsf/Content/Expertwitness)
3. General Medical Council. Acting as an Expert Witness. London: GMC, 2008. [www.gmc-uk.org/guidance/ethical\\_guidance/expert\\_witness\\_guidance.asp](http://www.gmc-uk.org/guidance/ethical_guidance/expert_witness_guidance.asp)