

GUIDANCE TO EXPERT WITNESSES INSTRUCTED TO PREPARE A REPORT FOR THE GOC

Purpose

1. The purpose of this guidance is to assist persons who have agreed, or are considering agreeing, to act as an expert witness for the GOC in a Fitness to Practise case being brought by the GOC against a registrant. It should always be read alongside the particular written instructions that you are sent in any individual case in which you are acting or being asked to act.

The role of an expert

2. As an expert you are being asked to provide the Fitness to Practice (FTP) Committee with an independent, unbiased opinion on the standard of care provided to the patient(s) by the registrant. Even though you have been instructed by the GOC, your duty is to the FTP Committee. The GOC is not instructing you to promote its point of view; rather, it is seeking an objective opinion from you.
3. You are not being asked to decide the facts of the case (see below).
4. In some cases your involvement will end once you have provided the GOC with your report; in others you will be asked to attend a hearing and give live evidence. It is to be expected that when giving evidence your conclusions will be challenged.

Conflict of Interest

5. You will be asked by the solicitor instructing you whether you are aware of any conflict of interest which will prevent you from writing a report. Given the relatively small number of practitioners within the optical professions it is possible that you will have had some contact with the registrant on whom you are being asked to report. It is important that you notify those instructing you of any information which connects you to the registrant, even if you feel that this would not cause a conflict. The decision as to whether there is a conflict should be made in conjunction with the solicitor instructing you.

Your experience

6. If you feel that your knowledge, experience, qualifications or professional training are not appropriate to the questions being asked of you, you should make this known at the earliest opportunity. It is vital that you do

not stray outside your area of competence and that any doubts on this issue are resolved before you write your report.

7. The vast majority of complaints received by the GOC relate to clinical matters; therefore it is important that you make clear when you receive your instructions (and also within the body of your report) how much of your time is spent in clinical practice with a broad description of the type of work you carry out.
8. If a particular question asked by those instructing you falls outside of your expertise you should make this clear within the body of your report. This could also occur at a hearing; should that happen, you should make sure that the FTP Committee is aware that you are being asked questions outside your area of competence.

Format of Reports

9. The format of your report is entirely a matter for you, but the following structure is often employed:
 - CV;
 - Relevant expertise;
 - Summary of the instructions, including the questions upon which an opinion is sought;
 - Documents seen;
 - Any documents, evidence, information or assumptions which are material to the opinions you express or upon which your opinions are based;
 - The facts;
 - Any assumptions upon which the report is based;
 - The principles to be applied;
 - Any limitations or qualifications that need to be made;
 - The calculations, analyses, or other documents referred to;
 - The conclusions;
 - Comments upon the other side's case (where appropriate);
 - Statement of truth;
 - Appendices.
10. You should always use formatting such as paragraph numbers, page numbers and headings.

Statement of Truth

11. Your report must be verified by a Statement of Truth in the following form:
"I believe that the facts I have stated in this report are true and that the opinions I have expressed are correct."
12. There should also be a statement at the end of the report that you have understood your duty to the Fitness to Practise Committee and that you have complied with that duty.

What you are being asked to consider

13. The purpose of the report is to consider the conduct or performance of the registrant and to determine whether it has fallen below the standards of a reasonably competent practitioner.
14. Therefore you should identify the rules and standards ordinarily required to be followed by a registrant in the particular circumstances. You should not consider what an expert in the field would do; rather you are considering accepted professional practice in the particular circumstances. Additionally, you should not base your report on what you would have done.
15. When writing your report, you should identify:
 - a) The actions of the registrant, taking into consideration accounts provided by all parties involved;
 - b) What the relevant standards are / what is expected of a registrant;
 - c) Have those standards been breached?
 - d) If so, how have those standards been breached?
 - e) What impact did this breach have on patient care?
16. Finally, taking into account all the acts and omissions of the registrant, what is your opinion as to the standard of care provided to the patient? It should be reiterated that you are considering the registrant's actions against the standard of the reasonably competent practitioner.
17. Please take care to answer all the questions posed by those instructing you.

Facts and assumptions

18. You should state within the report those facts and assumptions upon which your opinion is based. You should address material facts which could detract from your concluded opinion.
19. Where there are facts in dispute, then you should give conclusions based on each party's asserted set of facts. You should refrain from preferring one set of facts to the other unless you consider that you are able to do so; you should then set out your reasoning for preferring one set.
20. If there is a range of opinion on the matter you are reporting on, you should summarise that range and then give your own opinion, explaining why you hold it.
21. Where you are being asked to consider a series of examinations undertaken by the same registrant, you should look at the examinations in sequence; your comments should be made within the context of a course of treatment rather than considering each examination in a vacuum. For instance, where you are considering the registrant's actions at appointments on 1 January and 3 March 2007, you should, when considering the standard of care at the March appointment, take into account any what investigations were and were not carried out at the January appointment.
22. Where an action or omission is remarked upon or criticised by you, you should provide detail as to why you do so. Simply stating that "this action / omission was unacceptable" is not adequate. You always need to say why you are critical of an aspect of the registrant's performance or conduct. You should bear in mind in writing your report that it will be read by lay persons as well as those with optometric or dispensing optics training.
23. Where specific questions are posed these should be answered even if you find you are repeating what is said in the body of your report.
24. If your opinion is not properly researched because you consider that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
25. If, after exchange of reports, or upon hearing the registrant's evidence you change your view on your conclusions, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the FTP Committee.

Further reports

26. If you receive further questions from the GOC, you should provide a supplementary report. The further questions are likely to arise following receipt of your initial report and perhaps receipt of a report on behalf of the registrant. Your opinion should not be swayed by any views you perceive the GOC to hold. The opinions expressed should always be your own.

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