

Giving evidence



MPS



Putting members **first**

Advice correct as of June 2014

In any legal or medicolegal context, the key task required of every factual witness is to assist the Court, Inquest, Tribunal, Enquiry, etc with evidence that is:

- Factual – ie, no opinions or guesses
- Accurate – eg, refer to (and read out) relevant contemporaneous records
- Relevant – keep answers brief and focused on the precise information requested.

Steps must always be taken to ensure that all the contemporaneous records are available at the hearing where possible, in accordance with statutory provisions. Having this corroborating material close by for reference as necessary will ensure that the witness's evidence remains reliably factual, accurate and relevant.

Ten steps to a successful performance in the witness box

1. Expect to be kept waiting before the case starts, and before you are subsequently called to give evidence. Take plenty to do and to read, as waiting time passes quickly if you are able to use it creatively and productively.
2. After taking the oath, take your time.
3. Listen carefully to each question, and pause before you answer.
4. Do not try to guess if there's any particular motive behind a question. You are on oath and therefore your sole concern is to answer questions truthfully.
5. Always face the Judge/Coroner/Chairman when answering questions, as s/he is the Court to whom you are giving evidence.

6. Watch the Judge/Coroner/Chairman's pen and be ready to pause during your answer if his/her note-taking is having trouble keeping up with your evidence.
7. If you don't understand a question, you must say so. The questioner must do the hard work by thinking of a different way to phrase their question.
8. If you need to see a relevant document to ensure that your answer to a particular question is fully accurate and truthful, tell the Court straight away.
9. Resist any temptation to 'fence' or argue with the lawyers - their job is to ask questions on behalf of clients, but the best witnesses remain neutral with no 'axe to grind', seeking only to assist the Court with accurate factual evidence.
10. As a general rule, keep answers short. If a simple 'yes', 'no' or 'I don't know' is the accurate truthful reply, then that is the answer that the oath obliges you to give. If more detail is needed, more questions will be asked.

NB. Remember, take as much time as you need for each answer. A conscientious witness will pause for as long as necessary before speaking, to ensure that they are giving evidence that really is 'the truth, the whole truth and nothing but the truth'.

*If you are asked to provide an opinion on any clinical matters (not legal matters, eg, liability) you should confine your answer to matters within your own expertise.

Further information

- Malaysian Medical Council, *Medical Records and Medical Reports* 2006 – www.mmc.gov.my