

TESTIFYING IN COURT is a daunting task for many doctors. However, it is an important responsibility particularly in child abuse cases. This was proven in a study by Dr. Mariella Castillo, "Legal Outcomes of Sexually Abused Children Evaluated at the Philippine General Hospital Child Protection Unit" where the doctor's testimony is strongly associated with legal outcome as well as with consistently higher perpetrator conviction. The study also shows that once a doctor has testified, the decision-making by the judge is facilitated hence the cases are resolved faster.

This issue aims to make testifying in court less intimidating for doctors by giving tips on court preparation as well as answers to frequently asked questions in child abuse litigations.



Months (or even years) after evaluating a child who was abused, you received a SUBPOENA DUCES TECUM AD TESTIFICANDUM. What's that?

Subpoena duces tecum

- to bring all documents that are significant to the case

Subpoena testificandum

- to testify on the facts of the case

Child protection specialists are considered expert witnesses and not just fact witnesses when it comes to child abuse cases. What's the difference between a fact witness and an expert witness in these cases?

Fact witness

- the physician examiner who offers information regarding physical examination findings, test results done and treatment provided.

Expert witness

- renders an opinion to a reasonable degree of certainty as to whether an injury is consistent with abuse. The role of the expert witness is one of considerable responsibility. Accurate information should be provided the expert witness who then provides an objective and professional opinion regarding the case. Experts may also be asked to define medical terminology, describe anatomy and pathophysiology and essentially give a mini lecture on child abuse. It is the job of the expert witness to help the Court understand complex issues and to assist the judge and lawyers to have access to important information. Thus, even if one party pays for these services, the expert witness should not have any biases.

How can you prepare for a court appearance?

1. Document everything! Careful documentation is crucial in child abuse cases. Be accurate about the dates and reported occurrences as well as your observations. Remember that you will be called several months later and you should not rely on your memory during your court appearance.
2. Perform a thorough physical exam. Patient should be completely undressed to ensure that nothing will be missed. Be specific about descriptions of lesions. Note the size, shape, anatomic location and color of lesions.
3. Take photographs! Photographs should be mandatory in child abuse evaluations. Include a ruler within the frame as reference for physical findings. Do not forget necessary identification tags such as the patient's initials or case number, date photo was taken and photographer's name or initials. Be professional about this form of evidence; do not use your finger to point at lesions!
4. Prepare the case file, make summary notes and be familiar with the case. Review the medical records, including history, physical examination and laboratory results including x-rays, cultures, etc. Resist the temptation to add or change your notes if a mistake or an omission has been made. It is unethical to do so. If the issue arises, be forthright and explain your action on the stand.
5. Select and review literature pertinent to the case. Read up on published literature that may be paramount in deciding the outcome of the case. You will also be more at ease as an expert witness if you do this.
6. Learn from your colleagues. Have your case including your findings and interpretation reviewed by your peers. Seek experts who may be more familiar with certain issues in your case. Try and identify points that are likely to be raised in court. The more you know and if validated by your peers, the more relaxed you will be on the stand.
7. Make a photocopy of the essential papers e.g., final medical report, consent forms, referral forms.
8. Prepare and update your curriculum vitae. It would be easier for the prosecution to establish your credentials and qualify you as an expert witness after a review of your training and professional experience including your research, publications and lectures given, if any.
9. Ask counsel or other expert to help you with possible cross-examination questions.

REFERENCE :

1. Botash, Ann, M.D. Evaluating Child Sexual Abuse: Education Manual for Medical Professionals
2. Castillo, M (submitted for publication). Legal outcomes of sexually abused children evaluated at the Philippine General Hospital Child Protection Unit. 2003
3. Grossberg, R. Having your say in court, Contemporary pediatrics Vol. 14, no. 3. March 1997
4. Levine, A, et al. Ten tips for expert witness.
5. Wolfe, D.A, & Legate B (in press). Expert opinion on child sexual abuse: Separating myths from reality. Clinical Psychology: Science and Practice

You are now going to testify in court. Here are some important tips and reminders:

1. Bring the necessary documents and make a photocopy of the essential papers including your curriculum vitae.
2. Bring your medico-legal terminology handbook.
3. Dress up properly.
4. Address the judge as "your honor".
5. Listen carefully to the entire question prior to responding. Ask the attorney to repeat or clarify any questions that do not make sense.
6. Answer loudly and slowly.
7. Answer the questions simply, unless asked to explain further. Be balance and accurate, don't exaggerate. Stick to the facts that you know and be clear about the source of your knowledge.
8. Avoid medical jargon. Avoid gobbledeygook.
9. If an attorney objects to a question, do not speak until the judge rules on the objection.
10. Do not volunteer information. Say, "I don't remember" if you do not recall a specific event. If the answer to a question is "Maybe" and the lawyer demands a simple "yes" or "no," explain your answer first to avoid any misinterpretation before giving a Yes or No.
11. If the question is beyond your area of expertise, let the court know this. Never give an opinion in an area you have no expertise.
12. Don't allow yourself to be manipulated into a partisan position by the lawyer or others. It is not your job to win or lose the case. Remember your role is to make available your knowledge and expertise to assist the Court in interpreting the facts in complex issues.
13. Be yourself.
14. Don't lose your cool. Ignore inflection and innuendo, avoid getting angry and keep a professional demeanor even if you are wrongly challenged. Be calm.

What types of questions can be asked of a medical expert witness in direct examination?

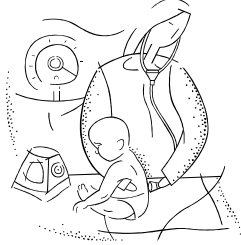
The prosecuting lawyer usually asks open-ended questions. He or she usually would introduce the doctor's qualifications and have the doctor qualified as an expert witness. The doctor is then asked how he or she became involved in the case. The facts of the medical examination are then presented. Lastly, the prosecuting lawyer would ask a summary of the information including hypothetical questions regarding abuse.

You evaluated a 6-year-old girl who disclosed “*fingering*” by a neighbor. Examination revealed some redness of the vestibule. The prosecutor may ask, “Doctora, in your expert opinion, is this finding compatible with sexual abuse?”

You should answer, “Yes”

What follows after a direct testimony?

This is the most challenging phase for an expert witness! Cross-examination follows a direct testimony. It is the chance of the defense attorney to clarify your statements to the advantage of his client and to raise doubt about the expert’s testimony. There is no specific line of questioning. Good defense attorneys will skip around topics, sometimes catching the witness off guard. You can sometimes appeal to the judge if the question requires more explanation than a yes or no answer.



In the case of the 6-year-old above, you may expect the following questions:

Doctora, can this finding be consistent with not washing properly?

You should answer: Yes.

Doctora, can this finding be considered normal?

You should answer: Yes.

Do not fret. In this case, you were not asked to give an opinion regarding the occurrence of sexual abuse in this case. Do not volunteer information that you were not asked. The prosecutor will be able to revisit any possibly misinterpreted questions on re-direct examination.

Do I need to ask for professional fees as expert witness?

Expert witnesses should not ask for fees that are disproportionate to the fees normally paid for this kind of work.

In summary:

“The role of the expert in court is to present scientific theory and knowledge clearly, objectively, and cautiously, in a balanced manner that has considered alternative explanations for the presenting symptoms and does not usurp the court’s role and function.”⁵ And if you follow the above guidelines, your court appearance may not be as traumatic and will greatly contribute to the welfare of the child.

SCHEDULE OF ACTIVITIES		
Feb 19, 2pm	Court Exposure (Expert Testimony – Dr. Bernadette J. Madrid)	Regional Trial Court 14, Cebu City
Feb 19, 6pm	RTD 1– Testifying in Court (Lecturer: Atty. Katrina Legarda)	Marriott Hotel, Cebu City
Feb 20, 1pm	Peer Review	Vicente Sotto Memorial Medical Center
Jun 25, 1pm	RTD 2 – Rape Kit	Davao