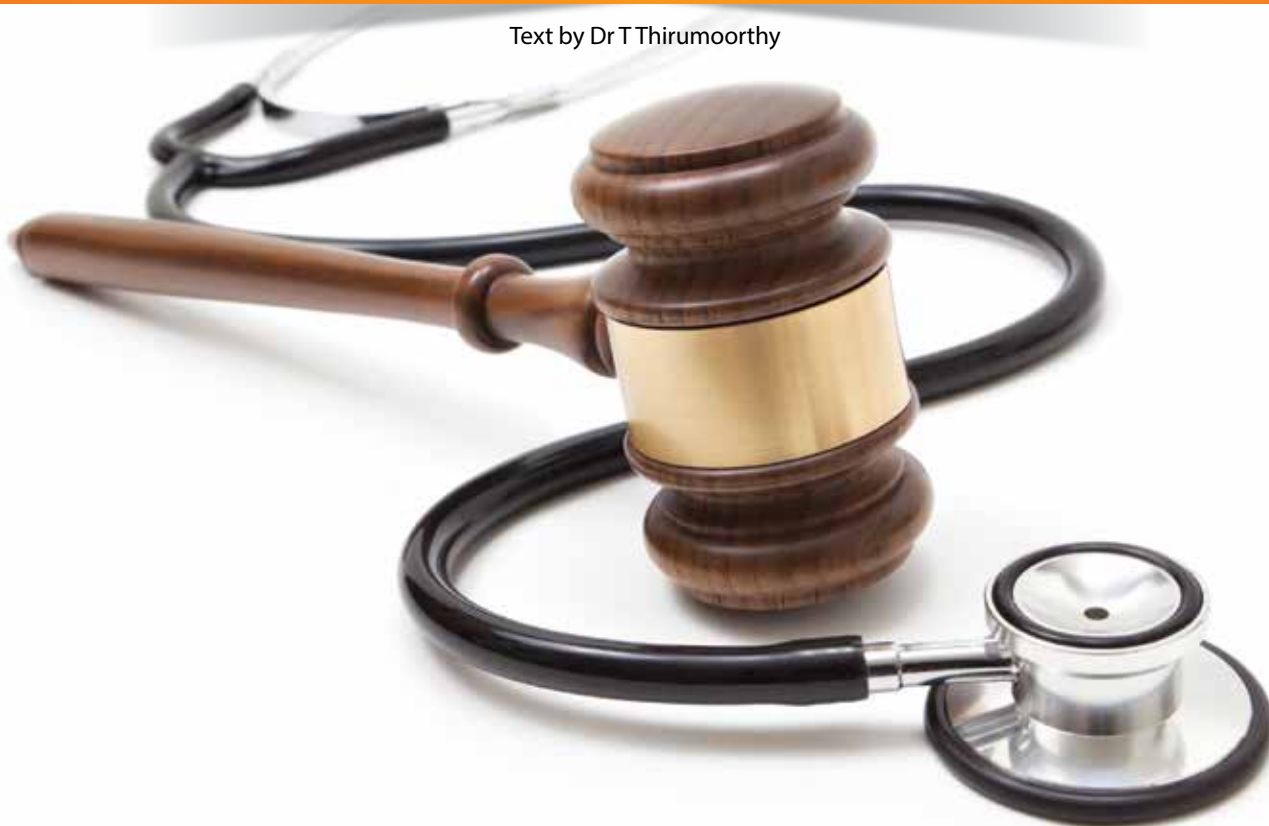


# WHY THERE IS A NATIONAL NEED FOR TRAINED MEDICAL EXPERT WITNESSES

Text by Dr T Thirumorthy



The evidence in a medical expert report and the testimony offered by a medical expert witness is often a critical component in arriving at an equitable, timely and fair decision in any medical dispute. This is applicable in the courts of law, especially for medical negligence cases, medical disciplinary tribunals of professional misconduct or even in the complaints committees and peer-reviews of hospitals and professional bodies. Expert witnesses provide independent assistance to the court or tribunal through unbiased opinion supported by good reasons and evidence, and founded on facts relating to matters within their expertise.

## Role of a medical expert witness

An expert witness possesses special knowledge and experience in a subject that enables the expert to give opinions

and draw conclusions relevant to the case to impartially and objectively assist the court or tribunal in its work. The expert witness is expected to articulate the standard of care in medical negligence and professional conduct in disciplinary tribunals, and give an opinion supported by good arguments and evidence as to whether the standards are met.

The standards or opinions articulated by an expert witness must withstand the scrutiny of logical analysis, be internally consistent and consistent with advances in medicine, for the expert witness to be accepted as being reasonable, responsible and respectable. In legal jargon, this is called the Bolitho test of reasonableness. When there is a range of reasonable opinions, the expert is obliged to consider the extent of that range in the report and to acknowledge

any issues that might adversely affect the validity of the opinion provided. In other words, for the report to be accepted by the court, the expert must have considered all sides of the issues and not just the one that favours the instructing party.

The expert's duty to the court overrides any obligation to the person who is instructing or paying the expert. This means that the expert has a duty to act independently and not be influenced by the party who retains and pays him/her.

## Need for education and competence

Writing a medical expert witness report is a highly disciplined and skilled task with accepted and prescribed formats. In addition to writing a good

report, medical expert witnesses may be required to appear in court to give oral testimonies and be cross-examined to verify facts and defend the expert reports. An effective medical expert witness needs to be trained, experienced and competent. Giving oral testimonies or “being put on the stand” can be a nervous and anxious experience, especially for the unprepared. The medical expert witness training courses create a safe and guided learning experience, with simulations in expert report writing and the delivery of oral testimony and cross-examination in court.

Untrained, unskilled and incompetent expert witnesses could mislead the courts or tribunals to an inappropriate conclusion or make dispute resolution complex, wasteful and costly. In the absence of good local medical expert witnesses, the courts have to depend on foreign medical experts to articulate the professional standards. The dependence on foreign medical experts who may not be aware of or sensitive to the local context and culture of medical practice here could be sub-optimal for all parties concerned in the dispute.

### Benefits of education and training

Doctors who have completed the medical expert witness training acknowledge having discovered a vast new area of knowledge in medico-legal medicine and experienced a safe hands-on experience in writing reports and giving oral testimonies. In fact, many of them found improvement in their clinical practice and the documentation of their case notes. Doctors who

become experienced in serving as medical expert witnesses find the work challenging in terms of time and effort, but at the same time intellectually rewarding as it improves their medical knowledge and clinical reasoning skills. In addition to serving the cause of justice and the needs of society, medical expert witnesses are appropriately remunerated financially.

Some doctors are concerned about the legal liability involved in being a medical expert witness. Medical defence organisations regard providing expert opinion as an integral part of professional duty and practice. It is prudent to verify this and keep the membership with medical indemnity organisations current. Good communication between the medical expert witness and the instructing lawyer is the key to getting the issues and scope clear and right. A medical expert witness acting in good faith, exercising reasonable skill and diligence in drafting the expert opinion, is always the best defence to any negligence claim.<sup>1</sup>

### A need to be filled

As our society continues to develop and educational level of the public improves, there is a commensurate increase in expectations of the performance and behaviour of doctors, and a demand for greater transparency and accountability of both the medical profession and healthcare institutions. The uncertainty in and complex nature of medicine, together with the rising cost of healthcare, contributes to greater medico-legal disputes between patients and families on one side, and medical practitioners, healthcare professionals and hospitals on the other.

In such disputes, the interests of the patients, public, hospitals and profession are best served when clear, comprehensive and objective expert witness reports and testimonies are made available to the courts of law and disciplinary tribunals. Well-researched and well-written medical expert witness reports often clarify the facts and lead to an early negotiated settlement outside the adversarial, stressful and expensive arena of the courts and disciplinary tribunals. Competent and mindful medical expert witness reports play a key role in less adversarial alternative dispute resolution processes.

Excellent medical expert witness training courses have been organised by SMA and the Academy of Medicine, Singapore, under the leadership of the Singapore Academy of Law and in partnership with The Law Society of Singapore and the State Courts of Singapore. Medical professionals across all specialties should take advantage of such exceptional opportunities. ♦

Dr Thirumoorthy is the immediate past director of the SMA Centre for Medical Ethics and Professionalism and he is playing a supportive role in the development of the Office of Professional Affairs of the Academy of Medicine, Singapore.



### References

1. Miller K. How safe are expert witnesses? *Casebook. Medical Protection Society* 2005; 13(2):25-6.