SPECIAL ARTICLE

Preparation of statements by medical witnesses: the use of medical evidence in criminal prosecutions

S. A. SANDERSON

Crown Prosecution Service, South Tyne Branch Office, Washington, Tyne & Wear

The Crown Prosecution Service (CPS) is responsible for the prosecution of criminal charges which have been instituted by the Police. A great reliance is placed on medical evidence when deciding: whether there is sufficient evidence to prosecute; whether it is in the public interest to prosecute; and which is the right charge to prosecute.

Medical evidence is often an essential element in a criminal prosecution, particularly in relation to allegations of assault. The CPS is striving to reduce those occasions when it is necessary for a doctor to personally attend court to a minimum, and in certain circumstances may be able to rely on a statement prepared from records.

Experience tends to suggest that medical statements alone are not accepted by the defence when it is alleged either that there is some omission of a material nature from the statement, or that the statement cannot be understood because of medical terminology used.

The overwhelming majority of cases are, however, dealt with on the basis of a written medical statement being tendered to the court without the witness being required to give evidence in person (see Appendix 1).

The statement should be prepared by the doctor who carried out the examination. If that doctor is not available, the CPS may in certain circumstances, be able to rely on a statement prepared from records (see Appendix 2).

Therefore, what sort of medical information is the criminal lawyer looking for and how should it be presented?

The witness statement

Always include references to professional qualifications. Contrary to the general rules of evidence an expert on scientific matters may give opinion evidence upon an issue in a case (i.e. inferences which are drawn from perceived facts as a result

of knowledge and experience). Recent provision has been made to remove addresses from witness statements. Therefore, there is no longer the need for a doctor's address to be shown as 'care of' a police station. It is far better for a doctor to include an address and telephone number at which he can be contacted in any emergency given the protection of the new provision.

Recording the complaint

It is acceptable in a statement to record any complaint made by the patient. Such evidence of complaint may subsequently be edited as hearsay, either by agreement between the prosecutor and defence or by direction of the court. This part of the statement serves as an explanation of the relevant history given by the patient, and the basis upon which the medical examination was conducted.

Manner and condition of the examinee

It would be helpful to include observations on the patient's general manner and condition, for example the extent to which the patient was affected by alcohol.

Findings of the examination

All injuries found upon examination should be listed and where possible, illustrated by a diagram.

Where it is necessary to use a medical term it should be followed by an explanation in layman's language, bearing in mind that some of the intended audience will have a lack of medical knowledge.

The statement may have to be read to a Crown Court jury without the doctor being in Court to explain medical terminology.

Specific injuries

(1) Wounds

In legal terms a victim only sustains a 'wound' when all the layers of the outer skin are broken or there is a division of the internal skin, e.g. within the cheek or lip; therefore anything less should not be described as a wound. If possible, it should be indicated whether or not a wound is lacerated or incised.

At the time of the medical examination it may not be known whether the means by which the wound was inflicted will be disputed. Any observations a doctor may have, therefore, would be of assistance in assessing the circumstances of any

given case. Photographs of the injuries may not be available, therefore, clear indications should be given of the length of the wound (and depth, if known) and the number of any stitches inserted or other treatment given.

(2) Broken noses

With regard to broken noses, the statement should indicate the exact nature and seriousness of the fracture and the extent of any treatment required. If permanent disfigurement is likely this should be mentioned.

Compensation to victims

Recent legislation has required the courts to have greater regard to the issue of compensation payable to the victims of crime.

To help the court in making a compensation order, the statement should include all details of treatment given and, if possible, a prognosis as to the likelihood of a full recovery by the victim.

The Magistrates Association has published a guide for Magistrates indicating factors to be taken into consideration when deciding upon the level of any compensation to be awarded. For example, in the case of scarring they are advised to consider the position of the scar; the degree of permanency, especially when the scarring is on the face; and the age of the victim.

Conclusions reached as a result of the examination

At the end of the statement any opinion formed as a result of the examination should be expressed. The temptation simply to state that injuries are consistent with the patient's explanation should, however, be avoided, as it is for the court to decide the circumstances in which the injuries were received.

Whenever possible give an opinion as to the degree of force needed to inflict the injury found, for example: was the injury more consistent with either a kick or a punch; one or several blows; a sharp or a blunt instrument.

If it is not possible to give a satisfactory opinion on the cause then say so in the statement, it is far better to do this than express an opinion which cannot be maintained at a later stage of the case. Such opinions should be objectively based.

Signing the statement

Any amendments in the statement should be initialed before signing immediately after the last word in the main body of the statement and also the statutory declaration should be completed and signed. The statement must be dated.

Once the statement has been properly completed it may be possible to avoid

the need, to attend court to give oral evidence. If the doctor is required he will be informed as soon as possible.

What happens if you have to go to court

The Police, on behalf of the CPS, contact witnesses once they are required to attend court personally. The CPS cannot control the listing of cases and it is always difficult to predict when a case will be heard.

On arrival at Crown Court, make your presence known to the Court Usher and ask to be directed to the Police Officer in the case or the CPS Law Clerk. They may be able to indicate the length of time before you will be called to give evidence, and give advice on what you should expect to happen in court.

In a Magistrates Court, there is often no Law Clerk available so instead ask for the Police Officer or the CPS Lawyer, although the Prosecutor may be in court dealing with other cases.

Giving evidence

The Court Usher will lead you to the witness box and ask you to take the oath. Your replies should be addressed to the Judge or Magistrates. The CPS Lawyer or Counsel acting for the Prosecution will normally ask you to explain the contents of your witness statement, and possibly to answer points which the defence may have raised. The Prosecutor may also show you a photograph album prepared by the Police and ask you to relate the injuries to the photograph. It is harder to foretell what the defence advocate will ask but experience suggests that defence questioning relates to:

- (1) whether or not there is something important missing from the statement;
- (2) the explanation of medical terminology; and
- (3) the opinion to be drawn from the perceived facts of your examination.

The Court will make the final decision having had the benefit of hearing your evidence tested by the defence.

Expenses

The Police Authority will pay any fees in respect of the witness statements made at Police request. Expenses incurred through attending Court are met by the CPS. A Witness Expenses Form should be included with the witness warning. If not, ask the CPS representative at Court for a form. Expenses are dealt with by a centralized cashier office which will normally send a cheque within 14 days.

APPENDIX 1

Suggested model draft statement

Name: (Prof. Qual.)
 Age: (Over 21).
 Occupation:
 Address: (Tel. No.)

I am a Senior House Officer employed at
 Hospital. I qualified as a Doctor in
 and hold the following qualifications
 On (time, date, place) I examined
 The patient complained of
 I noted that the patient was (drunk/had been drinking/clothing dishevelled/was uncooperative etc.).
 List all injuries –
 (wherever appropriate use medical terms followed by a laymans explanation).
 I have prepared a body chart which I have attached hereto and marked 'A'. (On the body chart endorse
 'This is the body chart marked 'A' referred to in my statement [signed and dated].)
 (Describe treatment/recovery prospects etc).
 In my opinion the injuries are consistent with
 (If appropriate comment on degree of force necessary to inflict the injury.)
 Signed

This statement consisting of ... pages each signed by me is true to the best of my knowledge and belief
 and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully
 stated in it anything which I know to be false or do not believe to be true.

Dated
 Signed

Suggested model draft statement prepared from records

Name: (Prof. Qual.)
 Age: (Over 21).
 Occupation:
 Address: (Tel. No.)

I am a Consultant I qualified as a Doctor in
 and hold the following qualifications
 I have examined the hospital records in relation to
 (insert patient's name).
 (named patient) was examined by on
 (time, date, place).
 I have prepared the statement because

 The patient complained of
 It is noted that the patient was (drunk/had been drinking/clothing dishevelled/uncooperative etc.).
 List all injuries –
 (wherever possible use medical terms, followed by a laymans explanation).
 I have prepared a body chart which I have attached hereto and marked 'A'. (On the body chart endorse
 'This is the body chart marked 'A' referred to in my statement [signed and dated].)

(Describe treatment/recovery prospects etc).
In my opinion the injuries are consistent with
.....
(If appropriate comment on degree of force necessary to inflict the injury.)
Signed

This statement consisting of ... pages each signed by me is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated
Signed

Note

The circumstances in which the Prosecution may rely upon a statement based on medical notes prepared by another doctor are as follows: –
(1) The document was created by a person in the course of his profession and the information contained in the document was supplied by a person who has or may reasonably be supposed to have had personal knowledge of the matter dealt with;
(2) That the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
(3) That the person who made the statement is outside the United Kingdom and it is not reasonably practicable to secure his attendance or;
(4) That all reasonable steps have been taken to find the person who made the statement but that he cannot be found.

If the person preparing the statement has any personal knowledge of any matters falling within the above grounds, this should be included in his witness statement e.g. the named doctor is no longer employed within this hospital and his present employment is not known to me or the named Doctor has retired abroad etc.

It will then be a matter for the Police to make further enquiries to adduce further evidence to ensure the admissibility of a statement prepared relying on records only.