

## Preparing Staff to Give Evidence

### OVERVIEW OF ISSUE

The experience of being questioned or being asked to provide evidence for medico/legal and professional regulatory body proceedings can be unnerving for anyone, often resulting in anxiety and ineffective testimony. Risk Management/legal counsel guidance and preparation of staff can help to reduce anxiety and allow staff to think clearly and provide accurate and thoughtful responses to questions. Helping staff to anticipate questions involving their own knowledge of facts and circumstances surrounding an event, as well as about the contents of health records, patient logs, billing records, incident reports, policies/procedures/guidelines, medical and non-medical equipment, notes and staff training records will assist in their preparation for the proceeding.

### KEY POINTS

- Answering a question that you don't completely understand can result in an erroneous or misleading response.
- An erroneous or misleading response can further complicate the proceedings or defense of a legal claim.

### THINGS TO CONSIDER

#### Authority of Request

Staff may be required to give evidence in a number of medico/legal and regulatory body situations, including: lawsuits in which staff and/or the healthcare organization is a defendant (e.g. at an examination for discovery); other court proceedings in which the staff member is summoned as a witness; before Regulatory College's Disciplinary Committee as part of a disciplinary proceeding; Coroner's Inquests; Police Investigations; or hearings before the Consent and Capacity Board. When staff or a member of the management team receives a request to give evidence in a medico/legal proceeding, they should be directed to the healthcare organization's risk management/legal counsel to allow for consistent management of the process and to receive support.

#### Preparing Staff

Healthcare risk managers or legal counsel can support staff by carrying out the following in advance of a proceeding.

- If the staff member is a party to the legal proceeding (e.g. defendant in a lawsuit) ensure that they have had an opportunity to obtain legal guidance as to the nature and scope of their involvement in the legal process and as it relates to their personal interest.
- Spend the time necessary with the staff member to prepare them for the proceeding; helping them understand the scope of the investigation and what may be at stake (e.g. College investigating another individual's actions) or that they may be involved at various stages of the proceeding.
- Review the health record and any other records that are relevant to the proceedings and allow time for the staff member to re-familiarize themselves thoroughly with the content.
- Inquire if the staff member has any personal notes related to the issue.
- Review the evidence the staff member will be expected to provide including anticipated questions. Note that there may be questions that are expected but are not asked during the proceedings and this is okay, there is no way of predicting all the questions that may be asked.
- Discuss how the staff member should present their professional education and credentials and consider whether a current resume would be of help.
- Review with the staff member that not everything that is done gets documented. There may be questions about gaps or inaccuracies in, or the proper interpretation of documentation. The staff member can rely on their memory (if they recall the situation otherwise, they can refer to the documentation or respond in terms of their usual practice e.g. this is how change of shift report is done.) Avoid speculating or guessing.
- Confirm the exact date, time and location where the staff member will be required

## Preparing Staff to Give Evidence

to attend. If the staff member is driving it is helpful to confirm where they are able to park prior to their arrival.

### Possible Organizational Support

- Depending on the type of proceedings, the healthcare organization may have risk management, legal counsel or the staff member's manager accompany and/or represent the staff member at the proceedings.
- The hospital's healthcare risk manager or delegate will bring records and other material that may be required at the proceedings.

### Tips for Staff When Testifying

#### In Preparation:

- Dress in a professional manner.
- Arrive at least 30 minutes before the time appointed.
- Arrive well rested.
- Allow time for logistical issues (travel considerations) and take care of any commitments (e.g. daycare arrangements). This will make it easier to stay focused and in control.

#### During the Proceeding

- Staff may be asked to swear or affirm the truth of their evidence in the proceeding.
- Always tell the truth in a direct and straightforward manner. Don't guess. If you do not remember something, then simply state "I don't remember or I can't recall at this time", or if you don't know say "I don't know". Again don't guess and don't try to guess the lawyer's 'hidden agenda'.
- There may be a court reporter or in the case of testifying with police, a videotape from which

transcripts of the testimony will be made. Speak slowly, and clearly. Be direct and where possible use language that will be understood by the court.

- If your lawyer raises an objection, they should listen to the objection and follow the instructions that are given to them.

#### Answering Questions

- Refer to documents if they will assist them in giving a proper answer.
- You should remain calm and not lose your temper. Some questions or the manner in which they are asked may make you feel like credibility and professionalism is in question. Try not to react to this.
- Listen carefully to the question and wait until the question is completed before answering. Answer the question that is asked. Pause for a moment before answering to organize the response.
- If you do not understand a question, ask for it to be repeated or rephrased. Alternatively restate the question as you understand it and state: "If you are asking me, then my answer is ..."
- Take your time when answering a question. You may find it calming to repeat the question quietly to yourself before answering and it may help to ensure that you understand the question before responding.
- Answer only the question that is asked; do not speculate or volunteer information or make speeches. If the question requires a yes or no response, then supply that. You do not need to elaborate.
- Avoid volunteering information which has not been requested.



## REFERENCES

- Borden Ladner Gervais LLP. (2008). [So you are being sued - now what?](#)
- ECRI Institute. (2008). Preparing staff for depositions. Healthcare Risk Control. Executive Summary, Risk and Quality Management Strategies. 11, 2.
- Canadian Nurses Protective Society. (2007). The nurse as a witness. InfoLaw. 5, 1. [The Nurse as a Witness](#), InfoLaw. 5,1.
- Ontario Ministry of Attorney General. (2018). Criminal law. Information for witnesses.
- Quinley D. (2009). Raising your right hand. Preparing for the adjuster's deposition. *Claims Magazine*.
- The Canadian Medical Protective Association (2016). [Medical-legal handbook for physicians in Canada](#).
- Taylor, K. (N.d.). Giving evidence: A guide for prospective witnesses. Borden Ladner Gervais LLP.