

The Physiotherapist in Court

Editorial

There exist few healthcare personnel who feels happy in a Court of Law, the Physiotherapist included. However, it is essential for physiotherapists to familiarise themselves both with those aspects of the Law pertaining to their profession as well as to their possible incursions in the medico-legal field. Naturally, the Physiotherapist may face Court as a defendant, in a civil or even a criminal Court. Infringing the statutory regulations of state registration and professional discipline may be the cause. Such infringement may take many aspects such as duty of care, confidentiality, consent, record keeping and accessibility, health and safety issues and so on. A healthcare professional in the position of defendant facing liability or other charges, is not in an enviable position. However, more often than not, the Physiotherapist faces Court, in a professional capacity after being summoned by a plaintiff or a defendant in a civil case.

Involvement in the care of any patient may draw any healthcare professional into any Courtroom battles the patient may be facing. For example the patient as a plaintiff may be suing a car driver who hit him and caused suable damage. The physiotherapist may be asked as a witness to describe the long road to recovery involving so many physiotherapy sessions at such and such a price, etc. The Physiotherapist's role in such a case is purely to answer questions pertaining to his professional relationship with the patient.

Like all professionals, the Physiotherapist must attend Court in a calm frame of mind, and carrying any and all original files in which he has recorded his work with the patient. Such files must never ever be altered in the least way or for any reason, however innocent. Almost certainly they would have been photocopied and supplied to both plaintiff and defence. The Physiotherapist may be asked to explain certain points which were difficult to read or which may not make sense to a layman. Hence the Physiotherapist should have read the notes again well and be in a position to answer any questions pertaining to them. Nothing could be more humiliating than to be unable to decipher one's own scribbles.

Questions are likely to be asked by the legal defence teams of both sides, as well as by the judge, especially to clarify questions asked by one of the parties. The Physiotherapist must answer clearly, truthfully and with no worry about divulging information which transgresses confidentiality. Furthermore he must answer what is being asked and not what he thinks is being asked so he must listen carefully. He must restrain himself in making any case in favour or otherwise of his patient, with whom he may have bonded or developed empathy or pity. Such emotions are themselves to be guarded against in practice and certainly have no role to play in giving witness.

It is essential to be well prepared for the questions asked will relate to the treatment given and its results. Hence, details of dates, number

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of sessions and all related material must be available. It is important to recall and mention if asked as to how the patient was referred and what precise instructions for treatment were asked and by whom. Dates of initial referral, specific sessions and missed sessions should all be available. This is not an examination and there is absolutely no need to memorise anything but reference can and should be made to files, charts, etc. It is also important to leave nothing out from material which is pertinent to the question asked, but neither should one add to them. If pertinent facts from memory arise at the time of questioning, they can be added and stated that they are not in the notes but their relevance and remembrance make them noteworthy to be mentioned. One must make it clear that they are being recalled at the moment.

Since the Physiotherapist is not on trial, he should be quietly confident and make eye contact with whoever is asking the questions. Over-confidence, and worse arrogance, must be completely shunned. As should flippant or non- professional comments, even if the patient had been one to try the patience of a saint. A professional demeanour must always be kept, even in the face of a lawyer who is prodding. Verbosity must be avoided, with answers being to the point and neither should words be put in one's mouth. Statements with "I think..." should be guarded against for the Physiotherapist knows what treatment he gave and how the patient responded to it. The Physiotherapist's work may not have yielded the expected results and the facts must be described as they were noted. The Court is not there to judge results of one's treatment or one's ability as a physiotherapist.

Appearing as a professional witness in Court for the first time may be a daunting experience. Repeat appearances inculcate a sense of relaxation. The experience might even grow on one such that one comes to enjoy that half hour of being in the limelight. Of sorts!

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Conflict of interest

Authors declare that there are no conflicts of interest.