

# Out of Hours

## Law note:

### giving evidence in court

For most doctors, courts are unfamiliar territory. They're inhabited by lawyers with strange ways of working, and judges who can derail careers. GPs get involved in a range of hearings from time to time, including inquests into patients' deaths, clinical negligence cases, patients' criminal cases, and employment tribunals. Here's what I tell doctors who have to go to court.

*Find out why you are required.* First, find out what the case is about, and why you're being asked to give evidence. Are you being criticised? At many inquests, there's no suggestion that anyone's done anything wrong; at others, the coroner or deceased person's family may have tough questions for you.

*Speak to your defence organisation.* This is always a good idea and, if there's any possibility that you'll be criticised, you really must give them a ring. Discuss whether you need legal representation. The GMC publishes helpful guidance called *Acting as a witness in legal proceedings*.<sup>1</sup> Read it.

*Get support from friends and colleagues.* These are often stressful situations. If something's gone wrong, most of us beat ourselves up about it, whether or not we're to blame. But you need to be firing on all cylinders when you stand up in court. We all make mistakes. If it's an inquest and your conduct may be called into question, you're meant to tell the NHS Performers' List people within 7 days<sup>2,3</sup> — not a well-known requirement.

*Research and preparation.* Do your homework. Study the relevant medical records. Discuss the case with colleagues whom you trust to tell you uncomfortable things kindly. Make sure your medical knowledge is up to date in relation to anything that may come up.

Get hold of all the relevant records. You'll normally be expected to disclose them — to have provided copies — whether you want to or not. If, in the witness box, you start referring to documents that haven't previously been disclosed, you'll almost certainly have to cough them up, and you may ruffle feathers.

Remember that your duty to the court overrides duties you may owe or feel towards anyone else, including patients

and colleagues. You need to be 'honest, trustworthy, objective, and impartial'.<sup>1</sup> The moment it looks like you're trying to help someone out, including your patient, your evidence becomes much less impressive. Best to be forthcoming about anything relevant, even if it's inconvenient.

*Be prepared.* Block out enough time from work. Don't let running late add to the stress. Give yourself time to gather your thoughts. Consider taking a friend or colleague. Wear a suit — it's expected. Find out, beforehand, where the court is, what time to arrive, where to go in the court building, whom to meet, and where you can get lunch. When you arrive, make sure your lawyer (if you have one) or the court usher (if you don't) knows who and where you are.

Expect any timings to be as much use as a politician's manifesto. If you're meant to be there for 10 am, don't be surprised if you start giving evidence the next day. If you're told your bit will take 10 minutes, it may take 2 days. At some courts you may spend long hours in cramped, unventilated waiting rooms, sitting awkwardly close to patients and their families, so take a good book. Hearings are often adjourned, for all sorts of reasons: you might be told, after several hours of waiting, that you're going to have to come back in 2 months' time. Last-minute settlements or agreements that mean the hearing is no longer required are common (though not in inquests). It's a rare clinical negligence case that gets all the way to a trial. Find out if you can observe the court's proceedings while you wait; you'll get a feel for how it works. But check: sometimes you shouldn't be in court until you give your evidence.

*Giving evidence.* When you go into the witness box, take a deep breath and relax. You'll first be asked to do the 'truth, whole truth, nothing but the truth' thing. Decide beforehand whether to swear on a religious book (tell the usher beforehand if it's something other than the Bible) or affirm (the secular version).

What to call the judge? In Crown and County Court matters it's usually 'your honour'. In the High Court, 'my lord' or 'my lady'. In most other courts you're likely to see, including coroners' courts for inquests, it'll be 'sir' or 'madam'. If in doubt, ask someone. Don't worry if you get this

#### ADDRESS FOR CORRESPONDENCE

**Adam Sandell**

Captain French Surgery, The Gillinggate Centre, Gillinggate, Kendal, Cumbria LA9 4JE, UK.

**E-mail:** [drf@adamsandell.com](mailto:drf@adamsandell.com)

courtroom silliness wrong — people do all the time.

Inquests are investigations, and are different from most court hearings. The coroner (inquest judge) will ask you questions first — probably taking you through your statement, if you were asked to provide one. Then you'll be asked questions by the 'interested persons' or, if they have them, their lawyers. If bereaved family members (the commonest 'interested persons') are there, they may ask questions. It's usually easier if the family is legally represented: unrepresented grieving relatives understandably often ask strange or confusing questions. Needless to say, answer all questions as honestly, carefully, and sensitively as you can. If you have a lawyer, he or she will be the last person to ask you questions.

Non-inquest hearings are almost always adversarial: a fight about who wins and who loses. The lawyer who wanted you there will normally ask you questions first. This is called examination-in-chief: the questions will be open and non-leading, and are designed to get your evidence out. Then the lawyer for the other side will cross-examine you, using leading questions designed to test or undermine your evidence. Your lawyer may then re-examine you, but only on things that have come up during cross-examination. The judge may butt in at some point, but many will leave the questioning to the lawyers.

*Pace yourself.* Listen carefully. Think before answering. Speak clearly and slowly. The judge will probably be taking notes; if you have a long answer, watch the judge's pen for your cue as to when to start the next sentence. If there's a jury, be especially careful that everyone can hear you.

Avoid jargon. Explain any medical terms you can't avoid. Draw on your expertise where appropriate, though don't be pompous or arrogant. This always looks dreadful. But if, like many GPs, you're a self-effacing sort, do stick up for yourself when you should. You may be the only person around who can. Don't stray outside

# Out of Hours Books

your expertise. And don't try to be a lawyer.

Don't let anyone make you say something you don't think is right; you're unlikely to be able to go back into the witness box later. Be charming to everyone, including the other side's lawyer. The attitude to strike is respectful, modest expertise. Sympathy, concern, and humility are never wrong.

Doctors are usually treated with great respect by judges and court lawyers. But not always: the wind will shift the moment you start being slippery.

If you get flustered, breathe, have a drink of water, and collect yourself. If you need a break, ask the judge: you'll almost certainly get one and no one will mind. But you won't be allowed to discuss your evidence with anyone, including your own lawyer, while you are in the middle of giving it.

*Finally.* Afterwards, expect to feel deflated. Things never go quite as you expect. You won't have said exactly what you intended and you may have had a bit of a mauling. There may be no one around for a debrief, and some lawyers aren't good at the human stuff that you and I do for a living. You'll probably feel exhausted: don't expect to be much use for the rest of the day. But you've done it: well done.

**Adam Sandell,**

GP, Cumbria, and Barrister, Matrix Chambers, London.

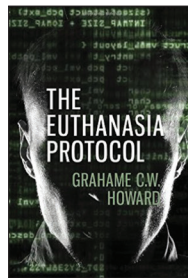
DOI: 10.3399/bjgp15X687565

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2. National Health Service [Performers Lists] (England) Regulations 2013 (SI 2013/335) [as amended], regulation 9(2)(h) and (j).
3. National Health Service [Performers Lists] (Wales) Regulations 2004 (SI 2004/1020) [as amended], regulation 9(1)(i).

## The Euthanasia Protocol Grahame CW Howard

*Troubador Publishing, 2015, PB, 336pp, £10.99, 978-1784620950*



### PERFECT HELL

It must have been great fun writing this novel — targets and protocols, common sense outlawed, individuality discouraged and no question of using discretion. It might sound like just another day in the life of a foot soldier in the NHS. And as a retired clinical oncologist, surely Grahame Howard must have been inspired by the crumbling edifice that is the NHS. But the world portrayed here is not the NHS: it is a country where the protocol is king and the population has lost completely the ability to think for itself.

*The Euthanasia Protocol* occupies a middle ground between the teen fiction of *The Hunger Games* (Suzanne Collins) and the Harry Potter novels (JK Rowling) and the classic novels *Nineteen Eighty-Four* (George Orwell) and *Brave New World* (Aldous Huxley).

The young hero, throughout most of the book simply known as 'boy', has been rejected by a protocol-driven society because, for whatever reason, he does not exist on the national database and therefore is deemed not to exist. He meets 'the old man' by chance. The old man stands gazing through the windows of the local euthanasia practice, wondering whether to sign up for the voluntary programme. Together, they embark on a great adventure.

This is their story. It's a gripping tale, simply written, where the bad guys are only a shade more ridiculous than the politicians and officials we read about every day in our newspapers.

But there is a serious message here. The average age of the population is increasing. Medical science helps us all live longer; we're no longer dying of the things that used to kill us. Imagine the state offering to pay people to end their lives rather than paying to prolong life at whatever cost?

Living in a world driven by protocol, where people can no longer think for themselves, may not be too far from reality. Machine-driven protocols already help us decide what car insurance to buy — but just wait until there's a protocol to tell us how to live and when to die.

**Josie Inwood,**

Self-employed gardener married to a GP.

**E-mail: [josie.inwood@gmail.com](mailto:josie.inwood@gmail.com)  
@josieinwood**

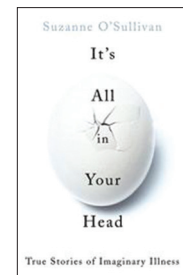
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## It's All In Your Head: True Stories Of Imaginary Illness

**Suzanne O'Sullivan**

*Chatto & Windus, 2015, HB, 336pp, £16.99, 978-0701189266*



### IMAGINED ILLNESS, REAL PAIN

In the mental atlas of medicine held in many doctors' minds, the region containing psychosomatic illness will simply be marked 'here be dragons'. This book, written by a consultant neurologist at the National Hospital for Neurology and Neurosurgery, London, tries to change that by taking this diverse array of conditions out of the footnotes and into the limelight. Engagingly written, occasionally evangelical in tone, this book aims to make patients and professionals alike feel more comfortable with the concept that psychological factors may not cause disease but they *do* cause illness, disability, and heartache every bit as real as that caused by physical conditions.

Using a series of fascinating case studies as a framework, Dr O'Sullivan skilfully weaves the historical understanding, and misunderstanding, of functional illness into a series of narratives that are moving and thought provoking. She makes deceptively simple work of explaining the work of such historical titans of medicine as Freud,