

Foreword to the Second Edition

James Badenoch QC

Chairman Emeritus of the Expert Witness Institute

I said about the first edition of this book that no medical expert witness should be without it, and the same applies to this second edition. It is an essential and invaluable resource for all involved in medico-legal work as expert witnesses, whether dealing with negligence/causation or with quantum, and for the lawyers who enlist the experts.

The text provides a comprehensive update of the relevant law and procedure, with a clear exposition of the many changes in the Civil Justice System over the last four years, knowledge and understanding of which is essential to opinion evidence that meets legal requirements and fulfils its proper function in the litigation process.

The days of the “amateur” expert witness are gone. Lawyers who litigate claims, and the judges who hear them, demand increasingly high standards of enlisted experts, both in the practice of their professions outside the courts and in the opinion evidence they provide for the courts. The implementation of the “Jackson Reforms” has reinforced the importance of conformity with, and correct application of, the rules of court in each stage of litigation and in the production of evidence. The authors have responded by introducing a new chapter to explain and to emphasise the important current principles which govern expert witness work, and how these will apply to some of the practical issues which arise.

Avoidable errors in the litigation process can be very costly, and in an extreme case an aggrieved party may seek financial redress against an expert whose lapse

from the required standards has led to irrecoverable loss. The conscientious expert will find the chapters on legal principles and court rules an important aid to compliance, and so to avoiding a damages claim for an inexcusable mistake.

The text has been expanded in respect of expert report writing for all phases and aspects of a claim for damages: liability, causation and, in this edition, establishing and quantifying the loss. It provides for experts an enhanced understanding of how the lawyers use their opinions in the pursuit of the damages claim, and additional insight into the interrelation of evidence in different disciplines, with particular help on the crucial distinction between recoverable and irrecoverable (“in any event”) costs and losses.

Amongst their many additions, the authors have provided new guidance on reporting on causation, in particular in respect of future effects on the Claimant, have included recent important developments in the law of patient consent, and have now addressed reporting on mental capacity, all very welcome for experts who must tackle these difficult issues.

As in the first edition, the text illustrates key-points by giving examples of evidence that helps or hinders the lawyers and adds further emphasis by highlighting many of these points in stand-alone text boxes and in summary lists at the end of each chapter.

I am sure that readers, whatever their experience, will find this new edition an invaluable aid to legal understanding and to the enhancement of their practical skills as expert witnesses. It is accessible, interesting and informative, and will serve further to improve the quality of evidence they produce for the lawyers who instruct them and for the courts. I commend it most highly.

James Badenoch QC
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August 2015

Foreword to the Second Edition

Dr Jan Wise

Chair of the BMA Medico-Legal Committee 2004 - 2015

Expert practice has changed dramatically over the last 10 years, and as if mirroring the digital world, albeit at a slower pace, it continues to change.

Giles and Lynden have revised and expanded their book, keeping it up to date and nigh on indispensable to the medical expert. In some ways, their seven pillars of wisdom are the seven basic plots: the only stories that exist – the ones that every guide to report writing should cover – and they cover them well!

The authors identify the need to develop a ‘medico-legal mind’. Just as the diagnostic and clinical skills of a doctor are neither innate nor inherent - they are nurtured, developed, honed - so too are the technical skills of the expert. If the principles in this book are absorbed, applied and reflected on, then the growth of your report writing skills and of that ‘medico-legal mind’ will be greatly accelerated.

One common misconception is corrected early on – the authors remind the medical expert that the claimant is not his or her patient. Another area of clarity leading to significant change, one I am sure is not aimed at forestry conservation, is the drive towards shorter and concise reports. For some, this is a real challenge, one which is made easier with their guidance.

The authors cover the roles and duties of experts; proof; causation and acceleration; quantum and costs; and negligence. The section on ‘inconsistencies’ is writ-

ten in refreshing detail. They comment on the economic realities and pragmatics of litigation, shining a light on what is an opaque or unexplored arena for most.

In a fitting finale, as if Giles and Lynden had not provided enough worthy material to be digested amongst this feast of knowledge for the reader, is a comprehensive package addressing practical concerns, which often evade the budding medico-legal expert who has given insufficient consideration to the commercial aspects of the business of being an expert.

It is all very well producing a skilled report, complying with all the Court procedures, but if one has not established contractual terms and conditions or has failed to set oneself up properly the novice to the field will fail to flourish. Even those who are becoming long in the tooth would do well to review their own terms and conditions against the sample provided in the closing pages.

I have said before that cross examination is like being faced by a trained Rottweiler who wants nothing more than to discredit you. The foundation on which the 'edifice' of your opinion is presented is the expert report. Reading and applying the knowledge in this book will make that assault far less successful, making your report more 'earthquake resistant', and thereby enhancing your reputation. After more than two decades of report writing, this book proves to me that there is always something new to learn! In short, it is a must-have-manual for the new expert, a go-to-guide for the mature expert.

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August 2015

Foreword to the First Edition

This is an important and admirable book. It is thorough, lucid and extremely practical and is a manual of all that medical expert witnesses need to know about their proper role in the justice system, and about the law and practice in civil litigation.

The overwhelming majority of medical experts are aware of their duty to the court and many regard their understanding as sufficient for the role of expert witness. In this guide, the authors ask experts to go further, by understanding the expert's duty to the court in the context of both the wider processes of the civil justice system, as codified by the Civil Procedure Rules (CPR), and the legal principles upon which the civil law is founded. They argue that such an understanding enables experts to offer opinions that are more pertinent and more precise in dealing with the issues in dispute and are therefore more helpful to the court and the overriding objective of the CPR, 'to deal with cases justly'.

There is little doubt that medical experts are often faced with very difficult medico-legal issues to address and do their honest best to deal with these issues in a manner that complies with their duty to the court. However, many experts feel that there is a paucity of detailed guidance that they can refer to when dealing with such cases. This book offers an impressive level of detailed and practical guidance on how to deal with cases properly, from applying basic principles such as proof, breach of duty and causation through to extremely complex cases that involve both evidential and legal difficulty - cases in which medical experts need to possess a high level of technical skill in medico-legal practice. Throughout the text there are practical examples of helpful and unhelpful expert evidence when addressing such matters and these will no doubt prove to be an extremely useful starting point when considering the best way to report to the court.

Foreword to the First Edition

The authors' purpose, brilliantly achieved, is to create a user-friendly guide to the perils and pitfalls of expert witness work, and to the ways and the means of making expert evidence most useful and most effective. It will I believe become the standard reference, and should be compulsory reading for all medical expert witnesses, and also for all lawyers who enlist, instruct and call them – in short it will be an invaluable resource for all who are concerned with medico-legal work.

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Giles Eyre and Lynden Alexander have written this excellent book with the aim of helping medical practitioners to write better medico-legal reports, in the form and with the clarity that lawyers and judges need.

It is not only a very practical guide to best practice in report writing, but it also sets out the law and the procedure which apply to personal injury, industrial disease and clinical negligence cases. The text is always expressed in clear and accessible terms and offers useful practical guidance on many of the difficult issues that arise in medico-legal practice.

Having just written my last medico-legal report, some thirty five years after the first - for the form of which I had to rely on advice from my then consultant's secretary - I welcome this book for the invaluable help it gives. How helpful it would have been at the start of my 'career' as an 'expert' to have been able to read and refer to it.

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Council Member, Medical Defence Union.

Foreword to the Second Edition

This second edition brings the book up to date with the very many changes that there have been in the law and practice in the field of injury litigation since June 2011. Those changes include the many and varied amendments to the CPR and the practice directions, the so-called 'Jackson Reforms' so far as they may impact on injury litigation, the changes in the Pre-Action Protocols and the extension of the 'low value claims' process, and the replacement of the 'Protocol for the Instruction of Experts giving evidence in civil claims' with the Guidance for the Instruction of Experts in civil claims'. We have also addressed sequential reports and concurrent evidence, and introduced new sections dealing with an expert's terms of appointment and addressing issues of mental capacity, as well as considering what is meant by 'expert' in the light of a recent GMC 'fitness to practise' panel's decision. Additional examples of good report writing have been included. And we have added as Appendix 8 tabulated guide to the sources of the rules applicable to experts (CPR, PD, Guidance) cross referred to the applicable section of this book.

The first edition proved popular not only with medically qualified experts and lawyers but also with care and therapeutic experts – the 'quantum experts' – and we have included a section setting out the basics of the law in relation to that area of reporting. Sales outside England and Wales to other countries with a common law system of justice has demonstrated a lack of any equivalent guide in those countries (although we are not planning a translation for francophone Canada as yet).

It is very pleasing to receive all the feedback that we do from users of the book who tell us that they have found for the first time an explanation for much that they are required to provide in their expert reports, an understanding of what it is that lawyers need from them, and perhaps most important of all, the way to

Foreword to the Second Edition

provide that information to the satisfaction of the lawyer and the court. We share with you [above?] some of the comments we have received. Both beginners and experienced report writers have been spotted carrying their dog-eared copy of the book, with coloured flags and annotations - we apologise to those, because this new edition will provide them with a good deal more information and examples, as well as updating the law, so that they will need to move their markers to the new edition. We do not apologise however for this improved edition which will provide all those clinicians providing expert reports for civil litigation with a handy manual and guide to which they can refer at all stages of their work.