Called to court? Tips for testifying

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As a psychiatrist, you could be called to court to testify as a fact witness in a hearing or trial. Your role as a fact witness would differ from that of an expert witness in that you would likely testify about the information that you have gathered through direct observation of patients or others. Fact witnesses are generally not asked to give expert opinions regarding forensic issues, and treating psychiatrists should not do so about their patients. As a fact witness, depending on the form of litigation, you might be in one of the following 4 roles[1]:

- **Observer.** As the term implies, you have observed an event. For example, you are asked to testify about a fight that you witnessed between another clinician's patient and a nurse while you were making your rounds on an inpatient unit.
- **Non-defendant treater.** You are the treating psychiatrist for a patient who is involved in litigation to recover damages for injuries sustained from a third party. For example, you are asked to testify about your patient's premorbid functioning before a claimed injury that spurred the lawsuit.
- **Plaintiff.** You are suing someone else and may be claiming your own damages. For example, in your attempt to claim damages as a plaintiff, you use your clinical knowledge to testify about your own mental health symptoms and the adverse impact these have had on you.
- **Defendant treater.** You are being sued by one of your patients. For example, a patient brings a malpractice case against you for allegations of not meeting the standard of care. You testify about your direct observations of the patient, the diagnoses you provided, and your rationale for the implemented treatment plan.

Preparing yourself as a fact witness

For many psychiatrists, testifying can be an intimidating process. Although there are similarities between testifying in a courtroom and giving a deposition, there are also significant differences. For guidelines on providing depositions, see Knoll and Resnick's "Deposition dos and don'ts: How to answer 8 tricky questions" (Current Psychiatry. March 2008, p. 25-28,36,39-40).[2] Although not an exhaustive list, we offer the following practical tips for testifying as a fact witness.

Don't panic. Although your first reaction may be to panic upon receiving a subpoena or court order, you should "keep your cool" and remember that the observations you made or treatment provided have already taken place.[1] Your role as a fact witness is to inform the judge and jury about what you saw and did.[1]

Refresh your memory and practice. Gather all required information (eg, medical records,

your notes, etc.) and review it before testifying. This will help you to recall the facts more accurately when you are asked a question. Consider practicing your testimony with the attorney who requested you to get feedback on how you present yourself.[1] However, do not try to memorize what you are going to say because this could make your testimony sound rehearsed and unconvincing.

Plan ahead, and have a pretrial conference. Because court proceedings are unpredictable, you should clear your schedule to allow enough time to appear in court. Before your court appearance, meet with the attorney who requested you to discuss any new facts or issues as well as learn what the attorney aims to accomplish with your testimony.[1]

Speak clearly in your own words, and avoid jargon. Courtroom officials are unlikely to understand psychiatric jargon. Therefore, you should explain psychiatric terms in language that laypeople would comprehend. Because the court stenographer will require you to use actual words for the court transcripts, you should answer clearly and verbally or respond with a definitive "yes" or "no" (and not by nodding or shaking your head).

Testimony is also not a time for guessing. If you don't know the answer, you should say "I don't know."

You should explain psychiatric terms in language that laypeople would comprehend

References

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Manic symptoms
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different manic or hypomanic symptoms in the same patient.

Racing thoughts without increased energy or activity occur frequently and often go unnoticed.[7] They can be mistaken for severe worrying or obsessive ideation. Depending on the severity of the patient's racing thoughts, treatment might include a mood stabilizer or antipsychotic. All 5 DSM-5 diagnoses listed in the ***Table***[5] (***page 41***) may include this symptom pattern, but do not specifically mention it. A diagnosis or specifier, such as "racing thoughts without increased energy or activity," might help clinicians better recognize and treat this symptom pattern.

The next DSM could include the varying durations of different manic/hypomanic symptoms in the same patient

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