

## Appearing as a Court witness

Thank you for your enquiry. Please find below responses to questions SPA members frequently ask about appearing as a Court witness.

This information is to be used as a guide only and is not a substitute for legal advice. If you require specific advice, you should speak to a lawyer.

If you hold Professional Indemnity insurance with Guild you can contact them for additional information.

If you have further questions please do not hesitate to contact the National Advisor – Private Practice (Christine Lyons) by emailing [privatepractice@speechpathologyaustralia.org.au](mailto:privatepractice@speechpathologyaustralia.org.au) or Senior Advisor Professional Issues (Christina Wilson) by emailing [sapi@speechpathologyaustralia.org.au](mailto:sapi@speechpathologyaustralia.org.au)

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### ***What do I do if I have been asked to appear as a Court witness?***

Many health professionals find the process of being involved in court proceedings to be very stressful.

The following general principles may help to alleviate some of that stress:

- If you receive a subpoena to attend court to give evidence, you are required by law to attend. The subpoena will set out the details of the date, time and place at which you must attend to give evidence.
- When giving evidence, be precise and concise with all your answers. You should not volunteer any more information than the question requires. Stick to the point and stick to your own areas of expertise. Expect to be cross-examined on your qualifications and CV, as well as on the evidence you give to the court.
- A barrister may attempt to discredit the knowledge or skills of a professional as a way of discounting evidence that might otherwise work against the case they are trying to present. So, the key is to say things that you are qualified or experienced to comment on.
- You may ask the magistrate or judge for guidance if you are concerned about how to address a particular question.
- You will have an opportunity to refer to the medical record and other relevant documents while giving evidence. If you take additional notes to the court with you, there is a risk that they will be taken from you by the court and provided to both sides.
- In some matters, you may be subpoenaed to only produce certain documents, usually a patient's clinical records, to the court, without the requirement to attend to give evidence. You must carefully read and comply with the instructions set out in the subpoena. In particular, you must ensure that you send the documents directly to the court, rather than to any solicitor. You should also inform the person (usually the patient) about whom the documents relate that they have been subpoenaed and will be provided to the court.

### ***What do I charge if I appear as a Court witness?***

It is important to remember that time equals money. That is, in order to attend a court proceeding, you will be taken away from your practice and therefore your capacity to earn is affected.

Unless specified by a compensable body's fee schedule (e.g., WorkCover), your costs to appear in court will usually be linked to the length of time it takes to attend court, and the loss

of earnings by you appearing in court. This includes the waiting time that may be involved, as in some cases you can be kept waiting for half a day, and then not be called to give evidence. Either way, your time has been taken up and you must therefore be compensated for this. You may be asked to substantiate or provide evidence of your costs.

If subpoenaed, the party that issues the subpoena will provide to you a nominal payment to attend. If you appear as an expert witness, it is likely that your costs would be taken into account as part of any settlement or judgment. Therefore, in these cases, you are more likely to receive your costs in full. In any event, you should inform the solicitor or client how much it will cost for you to appear in court, including all transfers, accommodation, transport, meals, travel insurance, waiting time and actual court attendance in advance. It is also reasonable to expect payment of a cancellation fee if the court proceedings are postponed or cancelled, given that you have limited or reduced your earning capacity to attend court. **If you cannot reach agreement on payment of your costs with the party who has subpoenaed you to attend court, you may apply to the court for an order for that party to pay an amount in respect of your loss or expenses reasonably incurred in complying with the subpoena.**

### ***What should I avoid?***

There are a number of common pitfalls to avoid:

- do not breach your patient's confidentiality
- do not act as an advocate for one party or the other
- do not provide an opinion beyond your expertise
- do not alter your records or any report you have prepared at the request of your patient or a third party. If you receive further information or you have made a mistake, address any error or discrepancy by providing a supplementary report or making an appropriate supplementary entry in the relevant record;
- remember that you may be cross examined on your records or report – you should only write what you would be prepared to say under oath in court.

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