

विद्या वितर्को विज्ञानं स्मृतिस्तत्परता क्रिया ।  
यस्यैते षड्गुणास्तस्य न साध्यमतिवर्तते ॥ २१ ॥  
विद्या मतिः कर्मदृष्टिरभ्यासः सिद्धिराश्रयः।  
वैद्यशब्दाभिनिष्पत्तावलमेकैकमप्यतः ॥ २२ ॥  
यस्य त्वेते गुणाः सर्वे सन्ति विद्यादयः शुभाः।  
स वैद्यशब्दं सद्भूतमर्हन् प्राणिसुखप्रदः ॥ २३ ॥

*The physician, who possesses the six qualities, viz.; knowledge, critical approach, insight into other allied sciences, good memory, promptness and perseverance, he can never miss the target, that is the cure of diseases. Any one of these, viz.; knowledge, intellect, practical experience, continued practice, success in treatment and dependence on an experienced preceptor is enough to justify the use of the word ' vaidya' by a physician. The one who combines in him all these good qualities deserves to be called "an excellent physician" who can give comforts to all living beings. [21-23]*

CARAKA SAMHITA, CHAPTER IX SUTRASTHANA (21-23)

## **APPENDIX**

Two chapters have been kept in Appendix for following reasons.

- (1) Chapter on "Psychiatrist as Witness" is not as per the standard format of CPG. It gives only the bullet points on the subject and brief answers to situations.
- (2) Chapter on "Management Guidelines for Anxiety Disorders in Children and Adolescents" escaped Publication in the IV volume on Clinical Practice Guide Lines on child and adolescent Psychiatry, hence being appended here for the use of readership.

Editors.

शास्त्रं ज्योतिः प्रकाशार्थं दर्शनं बुद्धिरात्मनः।  
ताभ्यां भिषक् सुयुक्ताभ्यां चिकित्सन्नापराध्यति ॥ २४ ॥  
चिकित्सते त्रयः पादा यस्माद्वैद्यव्यपाश्रयः।  
तस्मात् प्रयत्नमातिष्ठेद्भिषक् स्वगुणसंपदि ॥ २५ ॥

*Knowledge of the science of medicine is likened to the light for the purpose of illumination; one's own mental faculty to the eye (for the purpose of seeing things). A physician endowed with both of them, that is scriptural knowledge and his own intelligence does not commit mistakes during the course of his treatment of a patient.*

CARAKA SAMHITA, CHAPTER IX SUTRASTHANA (24-25)

मैत्री कारुण्यमार्तेषु शक्ये प्रीतिरुपेक्षणम् ।  
प्रकृतिस्थेषु भूतेषु वैद्यवृत्तिश्चतुर्विधेति ॥ २६ ॥

*Doctor should be sympathetic and kind to all patients, should be concerned with those who are likely to be cured and should feel detached with those who are towards death. These are the four disciplines for physician. [26]*

CARAKA SAMHITA, CHAPTER IX SUTRASTHANA (26)

# PSYCHIATRIST AS WITNESS

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## Matter for Discussion

### 1. Working of the Judiciary:

- Aim: To dispense justice
- Courts rely on:
  - Oral evidence of the witness
  - Documentary evidence

### 2. Indian Evidence Act

- i. Ordinary or Lay witness
- ii. Expert or Opinion Witness

### 3. Psychiatrist in a Court

- i. Lay witness in an event that the person may have witnessed
- ii. Professional witness where the Psychiatrist would have treated a given case or in some ways be involved in the case
- iii. Expert witness, being asked to opine in a case that may not be under personal care
- iv. As a defendant

### 4. Ordinary or Lay Witness

- A person who has:
  - i. Firsthand knowledge about a crime or an event through the senses like seeing, hearing, smelling, touching.
  - ii. Contribute in arriving at the truth of the matter under consideration

### 5. Eye Witness

- A person who has seen the event occur firsthand
- Such witnesses are often called before a court to testify in trials

### 6. Expert Witness:

The term seems to *imply both*

- Superior knowledge of an art or profession

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1. Chairman, 2. Convener

5<sup>th</sup> National Workshop, Forensic Psychiatry, Jaipur Aug. 28-29, 2008

- Practical Experience of an art or profession
  - i. Witness with *special skills*
  - ii. A person who is *trained* in a given science, techniques, language or foreign law
  - iii. Experienced by practice and observation in any science or trade.
  - iv. May not / *not required* to have witnessed the event as it occurred
  - v. Beware: Witness memory may get blurred or impaired with time. Hence refer to documents or justify the ability to recall details of an event that may have occurred long time ago.
  - vi. Expert witness is *permitted to refer* to text books, standard references or archives to substantiate the means of having arrived at the expert opinion
  - vii. Is summoned to assist the court and not take sides
    - This can cause clash of interests
  - viii. May be summoned by:
    - Prosecution
    - Defence
    - Judge or Tribunal
  - ix. Purpose
    - Technical *evaluation* of certain facts or actions
    - Provide the court with *complete knowledge* of the facts or actions that the court may be judging
  - x. Refrain from:
    - Any direct or intended comment on the probable outcome of the case

## 7. Expert

- Non-testifying Expert:
  - Hired by a contesting party to evaluate facts of the case. The expert helps the attorney to prepare a case, without testifying in the court
- Testifying Expert
  - The expert appears in the court to testify before the judge, under oath that the expert will speak the truth and nothing but the truth and seek help from God. ('so help me God')

## 8. Summons

Issued by the Registrar or the Prothonotary of the Court

- To appear as witness before a particular court (number of the court room or name of the judge), for a given case, at a specified date, time and venue.
- Recipient must acknowledge receipt of the summons
- Must note the date and time of receipt while signing acceptance
- If the time is *unsuitable* or too *short a notice*, mention that on the summons at the time of receiving the summons and seek a fresh date either in writing or after person appearance.
- Prepare to testify
- Attending the court is mandatory except in rare emergencies that should be conveyed to the

court (registrar of the court)

#### 9. Summons May not be honored

- Only under exceptional circumstances like:
  - Personal indisposition
  - Professional priorities
  - Personal preoccupation
- Whatever the reason for non-appearance must be conveyed to the court in proper time and seek the Court's permission
- This would delay but not obviate appearance in the court

#### 10. Preparing the testimony

- Understand whatever that is expected through the testimony
- Collect and study all the relevant documents
- Differentiate between facts of the case and derived opinions
- Anticipate the likely questions
- Be prepared with the replies
- Inform the patient or the respective lawyers about the summons (an etiquette, not mandatory)
- Documents for presentation should include data given by the patient preferably verbatim, care givers including the source, investigations, joint consultations, referrals and opinion derived including reasons of deriving the opinion
- The concerned documents should not be altered or tempered after receiving a summons.
- The documents should be presented at the time of appearance before the court
- The Court may make the documents available to both the parties

#### 11. Appearance in Court Expert Witness – what to expect

- Aim: Assist the court in dispensation of justice
- Role:
  1. State the facts and give opinion
  2. Order of examination of witnesses
    - a. Examination in chief by the party that would have summoned the expert
    - b. Cross examination by the opposing lawyer if the advocate so desires
    - c. Re-examination by the first party.

#### 12. Practical Tips

- General
  - Find the address and means of reaching the court
  - See the court
  - Hear the counsel's opening sentence

- Listen to other witness
- Personal
  - Dress sensibly
  - Be familiar with the court papers
  - Re-read your certificates and reports
  - Re-read the opposing party's reports
  - Identify strengths and weaknesses of the case
- Examination in Chief
  - Explain the jargon (technical terms, definitions of medical terms – if asked)
  - Take it slowly
  - Address the judge
  - Watch the Judge's pen, ( do not interrupt if he is writing something, presuming the judge is making notes from your testimony)
- Remember
  - Answer the judge
  - Do not carry on an argument with counsel
  - Do not let the counsel get under your skin
  - Concede gracefully where appropriate
- Do Not
  - Exaggerate
- Beware
  - The hypothetical question (suppose.....)
  - The compound question (multiple issues)
  - The false assumption question (e.g. have you stopped beating your wife)

### 13. Demeanor and Etiquette

- Dress appropriately
- Stand up when the judge enters the court and leaves the court
- Stand up when your name is called out
- Speak up: Loud (be audible), clear, avoid using technical terms, (explain the event rather than abbreviations or technical terms)
- Shut up: Be brief, to the point, avoid explaining unless asked to explain, (garrulous witness get trapped, if there is silence in the court, the expert is not expect to break it)
- Watch the judges pen. If the judge is making notes, wait and adjust the pace of your talk to facilitate the judge's task
- Stick to what is known to you
- Do not hesitate to say if you do not know what ever is asked

- Courts respect a witness who is frank and honest
- The opposition would try to irritate, disrespect and prove you wrong. Keep your cool and be truthful
- A witness who loses cool or is not truthful, usually regrets the experience.

#### 14. Psychiatrist's testimony :When, Where, Why (Situations)

1. Issues pertaining to Mental Health Act
  - Admission, Discharge, Guardianship
2. Criminal
  - Competence to stand trial
  - Criminal responsibility
  - Assess risk of suicide, homicide, disruptive or antisocial behavior
3. Civil
  - Marriage, divorce, annulment, maintenance, custody of children,
  - Adoption, guardianship
  - Testamentary capacity
  - Contracts
  - Organ donation,
  - Fitness for employment, rehabilitation,

#### 15. Evidentiary value of the testimony of an Expert Witness

1. Court verdict is not bound by the expert's testimony.
2. Experts witness, if summoned by either of the contestants, may be interpreted as a biased witness. The testimony may then be perceived as frivolous and not of much value.

#### 16. Immunity of an Expert Witness

- No immunity for evidence given to the court (contrary to the conventional belief)
- Liability of an expert witness for negligence and perjury.
- Conflict of Role
  - Testifying in a court is against the principles of confidentiality and Oath of Hippocrates.
  - Client may be cautioned about client's interests and confidentiality