Subjective symptoms and objective evidence

What can the medical expert really prove?

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Overview

Three sources of medical evidence

1

Clinical history

What the pursuer tells the expert: the event, the symptoms, what they can and cannot do

2

Clinical examination

What the expert finds: swelling, wasting, movement, strength, sensation, special tests

3

Medical records

What was written down at the time: GP, A&E, hospital, imaging, occupational health

Expert opinion considers each, weights each and draws conclusions based on this weighting

What the pursuer tells us

What it offers

- The only source for pain, numbness and fatigue
- Mechanism of injury and timeline
- Effect on work, home and leisure
- Often the most important part of diagnosis in clinical practice

Limitations

- Recall fades and is rebuilt over time
- People look for a cause, and an accident is an obvious one
- Told months or years later, in the context of a claim
- Shaped by the questions asked, and by who is asking

? **Discuss** Is a pursuer who describes the onset differently to two experts lying, or just remembering?

Why histories are inaccurate

1

Memory is rebuilt

Details and dates fade. Each retelling fills the gaps, often around the most memorable event: the accident.

2

Looking for a cause

After an injury, people tend to underestimate earlier symptoms and put new ones down to the event.

3

The setting of the claim

The questions asked, who asks them and the wish to be believed all shape the account. Deliberate exaggeration is only one possible explanation.

An inaccurate history is often an honest one.

What the expert finds

What it offers

- Signs that do not depend on the pursuer's account: wasting, swelling, scars, deformity, callus
- Comparison with the other hand
- Patterns that fit, or do not fit, a known condition

Limitations

- A single snapshot, often years after the event
- Many tests depend on effort or on what the person reports
- Some special tests have poor reliability between examiners
- An artificial setting, with an anxious examinee

? **Discuss** Which findings would you treat as truly objective?

Demonstration

What a clinical test of grip strength tells us

It can suggest

- That effort was not maximal or not consistent
- That the result should not be taken at face value

It cannot show

- Why effort was reduced: pain, fear of pain, anxiety, misunderstanding, or deliberate exaggeration
- That a consistent low score is genuine
- How much pain the person feels

? **Discuss** If a pursuer produces three identical low scores, is this reliable?

What was written down at the time

What they offer

- Written before any claim, so not shaped by it
- Dates of first presentation
- Earlier symptoms and treatment of the same part
- Findings recorded by treating clinicians
- Original imaging

Limitations

- Written for clinical care, not for court
- Brief, coded and often templated
- Only record what the patient raised and the doctor noted
- Errors are copied forward from one entry to the next
- Can be incomplete or missing

Absence of a record is not evidence of absence of a symptom.

Interpreting records

GP record, 14 months before employment with the defender:
"Tingling R hand at night, ?CTS. Advised splint. Review if persists."
No further entries about the hand until after the accident.

? **Discuss** What does this entry establish? What does the silence afterwards establish?

? **Discuss** Does it matter whether the pursuer mentioned it to the expert?

What can the medical expert actually prove?

Evidence and judgement

The expert can

- Identify pathology
- Describe clinical findings
- Assess whether reported symptoms fit the injury
- Comment on consistency of effort and presentation
- Give a reasoned opinion on causation and prognosis

The expert cannot

- Measure pain directly
- Establish precisely how much pain someone has
- Determine whether a person is telling the truth

Credibility and reliability are for the court.

For the advocate

Questions to ask of an expert report

What does each opinion rest on?

The history, the examination or the records? Is that clear for every conclusion?

Were the records read?

Does the report deal with entries that do not fit its conclusions?

How is effort described?

Is "inconsistent effort" being used to suggest dishonesty?

Is the causation opinion reasoned?

Is any acceleration period explained, or simply stated?

Summary

Three things to take away

1

Know where each opinion comes from

History, examination and records are different kinds of evidence. Ask which one an opinion rests on.

2

Numbers need context

An objective measurement can still depend on effort. Inconsistency is not the same as dishonesty.

3

Records made at the time carry particular weight

They were written before any claim, but they are brief and can be incomplete, so silence in the record proves little.

Questions

What can the medical expert really prove?