

The Doctor's Note

by John M Collins

We are all sadly familiar with the last-minute application for an adjournment backed by a doctor's note, on the grounds that the defendant, claimant or important witness is unfit to attend Court. Almost inevitably, the note in question is unsatisfactory or insufficient. It frequently takes the jejune form of "Mrs X is suffering from an anxiety state and is unfit to attend Court", and that is all.

In the past, most Judges have tended to give the party or witness the benefit of the doubt, and have put up with the uninformative character of the missives upon which they are expected to rely, but it is clear that those days are now over.

The signal was given by Norris J, two years ago, in *Levy v. Ellis-Carr* [2012] EWHC 63 (Ch). This was an appeal from a Chancery Registrar, who had refused an adjournment notwithstanding that the application for an adjournment had been supported by a doctor's note on behalf of Mr Ellis-Carr:

"The above named saw me today very distressed and upset because of multiple problems. My diagnosis is that he is suffering from anxiety depression. And he is prescribed medication for it. If his problem persists or gets worse, I will refer him to a consultant psychiatrist".

Notwithstanding that note, the Registrar refused an adjournment. The circumstances surrounding that refusal are of no general importance, but the comments of Norris J upon the report are of importance, since the Judge considered the matter as one of principle. That evidence, said the Judge:

"...falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in a trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the Court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The Court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence; even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case). The letter on which the Appellant relies is wholly inadequate".

The appeal was dismissed.

The Judge has there set out a list of matters which ought to be covered in the doctor's note.

- (1) It may seem elementary to require the doctor to be identified, but some of these notes do not even do that. They come from a multiple practice with an illegible signature.
- (2) Obviously, there should be some sort of record to show that the doctor has been treating this particular person and the note is not just as a result of a telephone call or some very brief visit.
- (3) All recent consultations have therefore to be listed.
- (4) There should be a clear statement of the precise condition from which the patient is suffering, together with details of the symptoms and extent to which and manner in which the patient is unable to attend Court or, in the opinion of the doctor, it would be most undesirable for the patient to attend Court, e.g. the patient has mumps, and is therefore consequentially infectious.
- (5) The doctor should go on to say how long the period of invalidity is likely to last, making it clear, either because of the precise description of the condition or the doctor's knowledge, when the patient is likely be fit to attend Court.

An important sentence in that judgment with regard to the doctor's note, is, "It is being tendered as expert evidence". That means that, in relation to such reports, one should bear in mind the rules and in particular Part 35 and the Practice Direction. That does not mean that for every application for an adjournment, the Court will require a full expert's report with all the customary trappings churned out from his computer. It does mean that the report should have form and shape and be quite clearly something which is based upon the doctor's knowledge and investigation, and not simply something which is, in reality, a repetition of the patient's complaint.

This is all very well, but the usual General Practitioner is rushed off his feet with patients coming into his surgery for a variety of reasons, and there is no time to compose a full report. I would suggest that solicitors should be pro-active in relation to this. Doctors, like, to an increasing extent, the rest of us, are very familiar with ticking boxes and inserting brief answers to guiding questions. In fact, those who habitually provide personal injury reports have turned it into what might favourably be described as a fine art. My suggestion is that solicitors should send a pro forma note to doctors by email to their computers, so that they can complete the form with, one might hope, all the necessary details. The document might take something of the following form:

Doctor:

.....

Address:

.....

Telephone:..... Email:¹

Patient's Name Date of birth

Address:

.....

Is the patient a patient of yours or your practice group? YES/ NO

If yes, for how long has he/she been such a patient?

Has he/she contacted you or your practice within the last six months? YES/ NO

If so, please give particulars of date(s) of consultation, condition(s) in respect of which you/ your group were consulted.

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From what condition is the patient now suffering?

Are you qualified, by training or experience, to give an opinion about that condition?
YES/ NO

When did the patient first consult you about this condition? [Date and time].....

How were you consulted? [In surgery/ by telephone/ otherwise (give details).....

Have you examined the patient in connection with the above condition? YES/ NO

If so, when did you examine the patient? [Date and time].....

Please give a brief description of the examination you carried out.....

.....

¹ This is because the Court may wish to seek clarification of the report, and email may be the most reliable method

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What are the patient's symptoms?

What treatment/ instructions did you give the patient?

Is the patient fit to attend at Court at [Place].....
on [Date and time]..... YES/NO

If no, why is the patient unfit?

For how long do you anticipate the patient will be unfit?

If the patient is fit to attend Court on the date and place given, has the patient any difficulties arising from the condition which may interfere with the patient's participation in Court proceedings?

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Have you any further comments you wish to make?

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Please give a summary of your qualifications and length of experience as a General Practitioner.

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Obviously, there may be cases where we would like to have a good deal more information. However, I would have thought that it should take the medical advisor no more than five minutes to complete the form. It is customary nowadays for a patient's details to be all on computer and none of the questions should involve any significant research.

John M Collins