

# Foreword

This is an important and admirable book. It is thorough, lucid and extremely practical and is a manual of all that medical expert witnesses need to know about their proper role in the justice system, and about the law and practice in civil litigation.

The overwhelming majority of medical experts are aware of their duty to the court and many regard their understanding as sufficient for the role of expert witness. In this guide, the authors ask experts to go further, by understanding the expert's duty to the court in the context of both the wider processes of the civil justice system, as codified by the Civil Procedure Rules (CPR), and the legal principles upon which the civil law is founded. They argue that such an understanding enables experts to offer opinions that are more pertinent and more precise in dealing with the issues in dispute and are therefore more helpful to the court and the overriding objective of the CPR, 'to deal with cases justly'.

There is little doubt that medical experts are often faced with very difficult medico-legal issues to address and do their honest best to deal with these issues in a manner that complies with their duty to the court. However, many experts feel that there is a paucity of detailed guidance that they can refer to when dealing with such cases. This book offers an impressive level of detailed and practical guidance on how to deal with cases properly, from applying basic principles such as proof, breach of duty and causation through to extremely complex cases that involve both evidential and legal difficulty - cases in which medical experts need to possess a high level of technical skill in medico-legal practice. Throughout the text there are practical examples of helpful and unhelpful expert evidence when addressing such matters and these will no doubt prove to be an extremely useful starting point when considering the best way to report to the court.

## Foreword

The authors' purpose, brilliantly achieved, is to create a user-friendly guide to the perils and pitfalls of expert witness work, and to the ways and the means of making expert evidence most useful and most effective. It will I believe become the standard reference, and should be compulsory reading for all medical expert witnesses, and also for all lawyers who enlist, instruct and call them – in short it will be an invaluable resource for all who are concerned with medico-legal work.

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Giles Eyre and Lynden Alexander have written this excellent book with the aim of helping medical practitioners to write better medico-legal reports, in the form and with the clarity that lawyers and judges need.

It is not only a very practical guide to best practice in report writing, but it also sets out the law and the procedure which apply to personal injury, industrial disease and clinical negligence cases. The text is always expressed in clear and accessible terms and offers useful practical guidance on many of the difficult issues that arise in medico-legal practice.

Having just written my last medico-legal report, some thirty five years after the first - for the form of which I had to rely on advice from my then consultant's secretary - I welcome this book for the invaluable help it gives. How helpful it would have been at the start of my 'career' as an 'expert' to have been able to read and refer to it.

**Sir Roger Vickers, KCVO, FRCS.**  
**Previously, Consultant Orthopaedic Surgeon to St George's Hospital, London.**  
**Council Member, Medical Defence Union.**

# Authors' Note

## The Origin of “Foot-Wearing”

A holiday snap taken many years ago by Giles while in Mandalay, Burma, is the source for an informal technical term, ‘Foot-Wearing’. This term we have come to use when discussing extracts from medical expert reports that defy a proper legal interpretation.

### Kuthodaw Pagoda, Mandalay, Burma



## Authors' Note

Whilst most visitors to this particular temple complex are generally in awe of the sacred architecture, Giles found himself distracted by the sign at the entrance to the site. Intended to make clear to visitors unacceptable forms of behaviour, the sign became the subject of detailed lawyerly scrutiny and especially:

### **“Strictly Prohibited: Foot-Wearing”**

Giles found this prohibition a little worrying. Glancing down to his feet, he found, sure enough, definite signs of Foot-Wearing. Unsure as to the proper interpretation of the prohibition and wary of local sensibilities, he decided to tread carefully and to remove his shoes (though not his feet). The visit passed without incident, not least because he had neither bicycle nor umbrella.

At this point, an analysis of the context for this attempt at communication is valuable. What to Giles appeared to be a succession of bubbles, would, to a Burmese, have made clear the writer's interdict. To the translator, bridging the expanse between the language of Burma and the language of the native English speaker, the prohibition was also clear. However, for Giles, comfortable only in his native English, guesses or assumptions had to be made as he sought to avoid causing offence.

Time passes and Giles is now to be found in chambers reading his daily dose of medico-legal reports:

*'He should make a reasonable recovery from the effects of his injury over the next few years.'*

*'Although it is likely that there was some congenital weakness, the hernia was most probably the result of the heavy lifting in which he was involved.'*

*'30% of his current symptoms are the result of his underlying condition and would have been present in any event, while 70% are attributable to the injury sustained in the accident'*

*'The accident has made symptomatic previously asymptomatic degenerative disease. The period of acceleration is about 3 to 5 years. As a result of these symptoms he has been unable to work.'*

*'His heavy cigarette smoking may be aggravating the extent and severity of his episodic finger whitening. I cannot rule out the possibility that this may be contributing to the neurological symptoms that he describes.'*

Giles, in his role as a personal injury lawyer, finds these paragraphs as meaningful as 'No Foot-Wearing' when he was a tourist in Burma. These medico-legal paragraphs communicate to a lawyer that there is an issue to be considered, but beyond this, the interpretation relies heavily on guesswork. Yet, medical experts produce evidence of this quality on a daily basis without seeming to have any idea as to how defective this evidence actually is in medico-legal terms.

This poor standard of evidence has led to the frequent exhortation being made to medical experts (at least by Giles!) that in evidence, there should be “No Foot-Wearing!”

## **NO FOOT-WEARING!**

The medical expert must ensure that the medical evidence is expressed in language that a lawyer can understand, without the need to make guesses or assumptions as to its meaning or its application to the case.