

# SUGGESTIONS TO WITNESSES

~~You may be called to testify in court in response to subpoenas for records or as a witness to events.~~ *HIPAA COMPLIANT COURT ORDERS OR FAIR HEARINGS*  
Here are some practical hints and suggestions on what to do and how to do it well when you are asked to serve as a witness.

## Before You Testify

1. If you are going to testify concerning records, become familiar with them. You should know what the records contain and be able to refer to them easily if you must do so while you are on the witness stand. If you are not generally familiar with your company's procedures for making and keeping these records, find out. You may be asked to authenticate them as records made and kept in the regular course of the company's business.
2. If you are going to testify concerning some event that happened months, or even years, before, try to refresh your recollection. Return at least once to the place where the event occurred. Close your eyes and try to picture the exact scene; note the location of physical objects and approximate distances, for you may be asked about these things. If you gave a written statement, ask to see it. Talking with friends or coworkers who were there may help to recall details that you had forgotten. But do not try to develop a common story. Remember: your testimony must state what you recall, not what somebody else told you.

## On Your Day in Court

1. Dress neatly, but do not overdress. Your normal business attire is probably about right.
2. If you have received a subpoena, take it with you. It may prove useful, for example, if you are not sure in which courtroom the trial is being held.
3. When you arrive outside the courtroom, if you do not know the attorney who has subpoenaed you, ask for him and introduce yourself. If the trial is in progress and you must wait for a recess, it is usually best to remain outside the courtroom.
4. The attorney will probably want to discuss your testimony with you, which is a proper thing to do. If you are producing company records, however, do not turn them over to

the attorney until the judge orders you to do so, unless the attorney for the company is there or you have been told to do otherwise.

5. Avoid any undignified behavior such as loud laughter from the moment you enter the courthouse. Smoking and gum chewing are usually permitted in the corridors but not in the courtroom itself.

## When You Are on the Stand

1. When you are called as a witness, stand upright while taking the oath. Pay attention and say "I do" clearly, so that all can hear. Try not to be nervous; there is no reason to be.
2. While you are on the witness stand, you are sworn to tell the truth. Tell it!
3. Talk to the members of the jury, if there is one. Look at them most of the time and speak to them frankly and openly as you would to a friend or neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily.
4. Speak in your own words. There is no need to memorize your testimony beforehand; in fact, doing so is likely to make your testimony sound "pat" and unconvincing. Be yourself.
5. Listen carefully to each question and make sure you understand it before you start to answer. Have the question repeated if necessary. If you still do not understand it, say so. Never answer a question that you do not fully comprehend or before you have thought your answer through.
6. Answer directly and simply, with a "yes" or "no," if possible, only the question asked; then -- stop. Do not volunteer additional information that is not requested. Otherwise, your answer may become legally objectionable under the technical rules of evidence and may also cause you to appear biased. If, however, an explanation is required, say so. Sometimes an attorney will try to limit you to a "yes" or "no" answer. If that happens, simply say that you cannot answer the question "yes" or "no." Usually the judge will let you explain, but in any event, the jury will get the point.

7. The court and jury only want the facts that you yourself have observed, not what someone else told you. Nor are they interested in your conclusions or opinions. Usually you will be unable to testify about what someone else told you, and only "expert" witnesses are allowed to give their conclusions and opinions.
8. When at all possible, give positive, definite answers. Avoid saying "I think," "I believe," or "In my opinion" when you actually know the facts. But if you do not know or are not sure of the answer, say so. There is absolutely nothing wrong with saying "I don't know." You can be positive about the important things without remembering all the details. If you are asked about little details that you do not remember, just answer that you do not recall.
9. Do not exaggerate. Be wary of overbroad generalizations that you may have to retract. Be particularly careful in responding to a question that begins, "Wouldn't you agree that...?" Note also that statements like "Nothing else happened" are dangerous; after more thought or another question, you may remember something else. Say instead, "That's all that I recall," or "That's all I remember happening."
10. If your answer was wrong or unclear, correct it immediately. It is better to correct a mistake yourself than to have the opposing attorney discover an error in your testimony. If you realize that you have answered incorrectly, say "May I correct something I said earlier?" or "I realize now that something I said earlier should be corrected."
11. Stop instantly when the judge interrupts you or when the attorney objects to what you say. Do not try to sneak in an answer.
12. Usually, a witness should not ask the judge for advice; it is his attorney's job to object to any improper questions. When, however, you appear in court without an attorney, as frequently happens when records are relevant to a dispute between other parties, it is permissible, if a question seems clearly improper, to ask the judge if you have to answer it. Do not abuse this privilege, however, as it will make you appear evasive.
13. Always be polite even if the attorney is not. Do not be an argumentative or sarcastic witness. Remember, the attorney has a big advantage: he can ask the questions.
14. The honest witness has nothing to fear on cross-examination. Some of the rules set forth above may make more sense, however, if you understand what an attorney tries to do on cross-examination. If your testimony has not been harmful to his case or if he thinks that questioning you further will prove fruitless or counterproductive, he may waive cross-examination or ask a few perfunctory questions. If, however, your testimony has been damaging to his client, the opposing attorney will want to argue to the jury that they should not believe you. To make that argument, he wants to make it appear that you are a liar or that you do not know what you are talking about. In either case, the usual approach is to try to get you to say things that the attorney can show are not completely true. He will then argue to the jury: "Since the witness lied or was wrong on this point, his entire testimony is unworthy of belief." Here are a couple of "trick questions" that attorneys will sometimes use:
  - a. "Have you talked to anybody about this case?"  
If you say "No," the jury will think that probably you are not telling the truth, because a good lawyer always talks to his witnesses before they testify. Simply say that you talked to whomever you did -- the lawyer, the police, or anyone else.
  - b. "Are you being paid to testify in this case?"  
The lawyer hopes that your answer will be "Yes," suggesting that you are being paid to say what the lawyer who called you wants you to testify. Your answer should be something like: "No, I am not getting paid to testify. I turned the subpoena fee over to my employer, and I will receive my usual salary."
15. Testifying for a substantial length of time is surprisingly tiring and can cause fatigue, crossness, nervousness, anger, careless answers, and a willingness to say anything in order to leave the witness stand. If you feel these symptoms, strive to overcome them, or ask the judge for a five-minute break or to allow you to have a glass of water.
16. Now read these suggestions again. Some of them will mean more the second time through.