

The Professional Role of the Doctor as Medical Examiner

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Doctors in their professional working lives can assume a number of different roles where patients are involved, such as: a therapeutic or healer's role as treating doctor to a patient; a forensic role in conducting medical procedures such as pre-employment medical examinations, certification of death or even certification of sickness (often called the medical certificate or MC); a role as scientist when involved in conducting clinical/medical research involving human subjects; and a role as educator when teaching medical students and trainees about clinical skills on patients.

The professional conduct of a doctor as a healer

Doctors assume a therapeutic role when patients seek their professional skills for diagnosis and treatment of a medical ailment. The doctor uses her medical knowledge, skills, clinical methods (tools), and experience in making a proper medical assessment. She then goes on to formulate the goals of therapy or a therapeutic plan, and with the patient's consent, proceed with the treatment.

The doctor in the therapeutic role has a legal and ethical duty to place the patient's medical welfare and interests above those of third parties and above her own personal interests. The doctor should not allow financial and other conflicts of interest to affect her clinical judgement. Consent obtained from the patient for treatment is usually implied, but explicit written consent would be required for non-routine or higher risk procedures such as surgery.

The doctor should continue to serve the patient and at all times provide appropriate access and be available when called to attend. The doctor at all costs should not abandon her patient unless an appropriate transfer to another equally competent doctor is completed. The doctor is expected, at all times, to be truthful (veracity), avoid deception, be faithful (fidelity) and trustworthy to her patient.

The professional conduct of a doctor as a medical examiner

Doctors often find themselves in the role of an examiner. A doctor assumes the role of a forensic examiner when she conducts a pre-employment medical examination or a foreign domestic worker's medical examination, or issues certification of mental capacity, fitness to drive/fly or fitness for work. Sometimes,

while the doctor is in the therapeutic role, she may have to suddenly switch from being a healer to that of an examiner; e.g., when the need to issue an MC arises. She is described as being a doctor with dual professional duties or obligations.

The doctor still employs the same medical knowledge, skills, clinical tools and experience to reporting in her role as an examiner. However, unlike a doctor who assumes a therapeutic role, the doctor who assumes the role of an examiner has to strike a balance between two or more competing interests – one which is that of the patient's welfare, and another, the interest of the persons who have appointed/instructed the doctor. The doctor as an examiner must exercise clinical judgement, and at all times be honest, trustworthy, objective and impartial.

The doctor issuing a sickness certificate

In the case of issuing an MC, the doctor has obligations to the sick patient in front of her; the patient's employer; the law (preparing a legal document under the Employment Act) and for society in general for trust placed on registered medical practitioners (RMPs). In many situations the law gives RMPs the sole right or monopoly to perform medical certifications of fitness or sickness, for which they are expected to charge a professional fee.

A doctor in such a role must make every effort to be objective and fair to all parties concerned. The doctor must not issue a false or unjustified certificate on the basis of a view that such a certificate would serve the patient's interests. At the same time, a company doctor or occupational physician should not make a judgement detrimental to the employee, just to support the interests of his employer, who may be paying the doctor. The party that bears the financial burden of a medical examination has no more rights or advantages in this process.

The doctor as a medical expert and expert examiner

A medical expert witness would not have been involved in the care of the patient in question, but possesses special medical knowledge and experience of a subject that enables her to give opinions and draw conclusions relevant to the case, to impartially and objectively assist the court or tribunal in its work. The expert witness is expected to articulate the standard of care in medical negligence cases, the standard of

professional conduct in disciplinary tribunals, and sometimes provide opinions on diagnosis and/or prognosis.

The role of an expert witness is to assist the court on specialist or technical matters within their expertise. The expert's duty to the court overrides any obligation to the person who is instructing or paying her; and she has a duty to act independently and not be influenced by the party who retains her.

The expert witness must be honest, objective and impartial when writing reports, when completing or signing documents and in all spoken and written statements. It is her duty to be independent and unbiased in the formation of opinions.

The expert is obliged to make sure that any documents written or signed are not false or misleading. She is expected to take reasonable steps to verify the information in the documents and ensure that important and relevant information are not deliberately left out.

The expert must make clear the limits of her knowledge or competence. She must exercise honesty and accuracy about experience, qualifications, publications and positions held.

The medical expert must not allow her personal views on age, colour, culture, disability, ethnicity, nationality, lifestyle, race, religion, beliefs, sex or gender, sexual orientation, or socioeconomic status to prejudice the evidence or judgement arrived at. All potential conflicts of interest must be declared early. She may continue to act as an expert witness only when the court decides that the conflict is not material to the case.

When a doctor is in the role of an examiner for cases of accident and injury or medical negligence, her role is akin to that of a medical expert witness, and she has a primary duty to serve the interests of justice and indirectly those of society. The scope of such a duty would have to be determined by the party requesting for the examination – e.g., diagnosis and/or prognosis of the patient, or an opinion or judgement as to whether the standard of care of previous treatment, management and/or medical procedures has been met.

Requests for medical examinations or medical reports, signing a legal document or providing evidence must be completed without unreasonable delay.

The doctor in certification of death

The certification of death is a privilege and important duty solely accorded to RMPs by society and the law. It is of major public health and safety concerns that unnatural deaths are appropriately recognised, investigated and measures taken to prevent the avoidable causes. At the same time, when death has occurred as a natural life event, undue medicalisation and difficulty should not be placed on families, thus preventing them from completing the funeral rites.

The certification of death carries with it a serious duty and significant responsibilities in its execution. The appropriate knowledge, skills and attitudes are necessary to fulfil this responsibility. When called to do such certification of death, the practitioner must have reviewed the past medical history and recent medical illness. She must then proceed to perform

a forensic examination, looking out for evidence for unnatural death. She needs to understand the difference between the cause of death and the mechanism or mode of death, and must discern and make appropriate clinical judgement as to the relevant contributory cause of death.

Doctors must be aware of their responsibilities under the Coroners Act. The Coroners Act 2010 requires all doctors to be able to recognise when deaths need to be reported to the Coroner. Reportable deaths are listed in the Second Schedule of the Coroners Act and deaths for which an inquiry must be held are listed in the Third Schedule of the Act.

The doctor must carry out her duties with due skill and diligence and be comprehensive and objective in carrying out the work. She must not proceed to certify death when she does not possess sufficient knowledge of the patient's illness and circumstances surrounding the death. False or inappropriate declarations could lead to serious legal and professional repercussions.

The doctor certifying death has also to understand the stress and difficult situation that the bereaved family is undergoing. A doctor visiting a grieving family must be sensitive to the needs and mood of the family. She has to exhibit the appropriate professional demeanour and conduct. To do so, she must acquire the skills and attitudes in expressing appropriate empathy to all concerned while carrying her duty effectively. Death in a family is always a serious and impactful event whether it was expected or sudden. A good professional demeanour enhances the family's trust and confidence in the medical profession.

Consent in the professional role of medical examiner

An examining doctor must explain to the patient the purpose of the examination and obtain his explicit and informed consent before proceeding with the examination. The doctor has to ensure that there is no evidence of coercion or misrepresentation. In her role as a medical examiner, prior to the examination, the doctor must explain to the patient the scope of the process of the examination. The information is to be provided on the nature of examination (e.g., whether it is physical, extent of invasiveness of any procedures to be undertaken, or whether it would involve imaging studies) and also on the purpose of the report. The scope of a doctor's duty as medical examiner would usually not cover providing therapy and/or follow-up treatment to the patient.

The standard of consent has to be higher than that in the therapeutic relationship as it is not supported by medical beneficence – the medical report or expert opinion issued by a doctor in an examiner's role may or may not benefit the patient's health or his legal proceedings. The consent obtained must be written and the process of consent documented.

It would be appropriate to discuss whether the patient would receive a copy of the report by the commissioning party. In the usual role of an independent medical examiner for the purpose of providing an independent report to a third party,

the doctor is expected and entitled to furnish her report directly to the third party who had commissioned it without providing the patient or examinee with a copy. The third party reserves the right to use the report as it deems fit.

Confidentiality in the professional role as an examiner

Medical confidentiality and privacy must be observed and preserved. No confidential information should be disclosed to others than to the parties to proceedings, unless by consent or obliged to do so by law or are ordered to do so by a court or tribunal.

However, during the course of the examination, if the doctor discovers a finding or fact which would be of medical significance to the patient's present or future health and which the patient is unaware of, the doctor has a duty to inform the patient. The doctor should ensure that the patient is informed in a timely manner so as to prevent harm to the patient's health and well-being. If an infectious disease is found, the doctor must exercise her legal responsibilities as required of her under the Infectious Diseases Act.

Conclusions

The doctor is expected to be truthful, objective, impartial and trustworthy when performing the duties as an independent medical examiner; writing medical reports and when completing or signing medical certificates and other documents.

The doctor is expected to exercise due diligence, professional competence and skill to make sure that any documents written or signed are not false or misleading. This means that reasonable steps should be taken to verify the information in the documents and that relevant information is not deliberately left out.

Doctors who are required to be medical examiners in difficult and complex medical work like medical experts must undergo special training and acquire appropriate skills. Where there is doubt or concern about her duties and responsibilities as a medical examiner, the doctor is expected to seek advice and guidance from appropriately trained senior colleagues, medical defence organisations or professional associations.

In carrying out the duties of a medical examiner, the professional ethical principles of respect for persons (respect for autonomy and welfare), confidentiality, informed consent, professional competence, avoidance of conflicts of interest and veracity are to be upheld. False or inappropriate declarations, and any failure or neglect of professional responsibilities would lead to serious legal, ethical and professional repercussions. **SMA**



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