



Guidelines for Medico Legal Certification with Review of Statutes

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Abstract

The term 'MLC' (Medico legal case) has been creating mayhem in the minds of millions of medical practitioners for years, and will continue to do for years to come. Even today, the term fails to find a place neither in the medical dictionary nor is defined specifically in IEA, IPC or CrPC. Obviously; there are no prescribed legal guidelines for preparing it without any impediment. Many practitioners lack the awareness to prepare a medico-legal report properly, because whatever knowledge they have is either borrowed from their senior colleague, or from the standard textbooks in forensic medicine. But, it is an inopportune that, none of the standard textbooks mention adequate guidelines to prepare a proper medico-legal certificate. We, therefore, through this article, will try to layout a general guideline, for prudently preparing a medico-legal report. Simultaneously, we will review the various Indian statutes concerning the intricacies thereof and explain the various trivia that may be questioned in a court of law out of erroneously writing such a report.

Keywords: *Medico legal case, Medico legal certificate, Consent, Police requisition.*

Introduction

Apart from one's routine and usual 'clinical' cases, a doctor may come across certain medico-legal problems at one time or the other during the practice of his profession. Invariably the doctors are apprehensive in dealing with such case as unfounded fear prevails. It is believed that an MLC (Medico Legal Case) implies unwarranted laws and regulations, attending court, harassment by the lawyers, and quizzing by the police personnel, etc. Because of these fear factors, they either try to avoid these cases or try to dispose of with them as soon as possible. In either of the ways, they do not properly understand the

implications of the case, and ultimately land up in making many mistakes which may get them into trouble in many ways. Unfortunately, in the matter of professional liability, medical profession differs from other occupations for the reason that, a doctor, in particular, is conclusively presumed to know the law, and is dealt with as if he did know it, because in general he can and ought to know it.

Medico-legal case

It may be a medical case with legal implications or a legal case requiring medical expertise. In the former, where the attending doctor, after eliciting the history and examining the patient, thinks that

some investigation by the law enforcement agencies are required regarding the causation of such ailment or injury; and to establish or fix responsibility in accordance with the law of the land, informs the concerned authorities and makes the case an MLC. Here the responsibility to label any case as an MLC rests solely upon the attending medical practitioners, and accordingly he informs the police. However, it must be emphasized here that, it is not only his discretion to term it as MLC, rather, he sometimes is duty bound to do so according to section 39 CrPC,¹ which says that “every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under certain sections of the Indian Penal Code shall, forthwith give information to the nearest Magistrate or police officer of such Commission or intention. If he fails to do so because of any reasonable excuse, the burden of proving such excuse shall lie upon the person so aware. In the absence of reasonable excuse, he shall be dealt under sec 176 of IPC, which states that “Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both”.² In case, a doctor furnish false information in regard to a crime, he is held liable under section 177 for furnishing false information, or furnishing an information as true, knowing or believing it to be false.³ Therefore a doctor must be careful enough while labelling a case as MLC, to avoid further complications.

Alternatively, an MLC may be a legal case, which needs some medical opinion. According to section 45 of Indian Evidence Act, when the court has to form an opinion upon science, the opinion upon that person especially skilled in such branch of science are relevant facts; and such a person is called an expert.⁴ Sometimes, the opinion of a

doctor becomes so much important that, facts, not otherwise relevant, become relevant if they support or are inconsistent with the opinion of a doctor when such opinions are relevant.⁵

In either of the cases, it is the duty of the doctor to examine the case and give his opinion regarding the same, which will be useful as an evidence during a trial to solve any point in dispute.⁶ All the Medico legal certificates are potentially legal documents.⁶ Hence, it is pertinent for the doctor to be careful and diligent while preparing the same. As this is primarily meant for the law enforcement agencies for further investigation, and for the court for a trial, it will be dealt/ interpreted/ analyzed by the persons without any medical background. Therefore, it has to be simple, direct and with legible handwriting⁷ and as far as possible, complicated technical terms should be avoided. Many a times, the doctors are called upon by the courts only to explain these terms which could have been avoided by the use of simple terms.

General Principle

Any certificate usually consists of three part, viz. preamble, body and conclusion. Preamble contains general information viz., name, address, identity of patient like age, sex, identification mark or signature and consent. In addition, it also contains the place and date of examination and name and designation of doctor. Body of the certificate contains findings of general and specific examination and laboratory investigation. The conclusion part includes doctor's inference and opinion based upon observation-diagnosis corroborated with laboratory investigation and/or other findings. It must be certified with name, qualification, registration number signature, and official seal of the examining doctor.

1. Requisition by the police/ magistrate/ court

Requisition means a request or demand in the form of an application to a doctor issued by the police/ a magistrate or a court, for examination and opinion regarding a point in dispute. It is a

pre-requisite before proceeding for examination of the case. However, when a case comes to the doctor for treatment, he should proceed to treat the patient, and inform the police/ magistrate regarding the case at the earliest. During the course of treatment he should record the findings and the evidentiary material. Only after receiving the requisition he can submit the report to the investigating authorities. In any case, this report should never be handed to the examined party. As with any legal document, confidentiality should be the rule rather than exception.

2. Date and time of examination

Mentioning the date and time of receipt of requisition and of examination is essential for any medico-legal examination and reporting. There should not be any undue delay between the two. Any delay should be substantiated with proper and reasonable explanation. Many of the findings of examination are known to alter with time. For example, the colour of a bruise changes almost every day till it heals. Similarly, during the examination of a victim of sexual assault, the findings will change significantly with passage of time. Unless the date and time of examination of the case is mentioned, it will have a negative bearing on the case.

3. Consent

No consent needs to be obtained in most of the cases forwarded from the court as the court/ law enforcement authorities give the consent on their behalf. So also is the case in medico legal autopsies, where the law gives the consent. However while examining the victim (especially when female) the written informed consent is mandatory. It must be emphasized that even to touch a person without his/her consent constitutes assault. According to Section 14 of the Indian contract Act, consent is said to be free when it is not caused by Coercion (Sec15), undue influence (Sec 16), fraud (Sec 17), misinterpretation (Sec 18) and mistake (Sec 19).⁸ While examining the female victims, the presence of a female attendant

is strongly recommended. Along with the signature of the victim in the consent form, signature of the female attendant should also be taken. This will also serve as the witness's signature for consent.

4. Identification of the person to be examined

The parameters by which one can identify the person in future should be mentioned. The most suitable ones are the identification marks on two different locations preferably in the exposed parts of the body. Here the chance of impersonation in future will be minimized. Signature or thumb impression can also serve as additional identification points. A duly attested passport size photograph may be annexed with the certificate to make it more authentic. Instances are there where one person will be subjected to examination, impersonating the real culprit.

5. History

History of the case as furnished by the police and as alleged by the accused/ victim, should be read and noted down carefully, before proceeding with the examination. This will serve as a guide of the examination.

6. Examination

Apart from general and specific examination all the details asked by the police/ court should be carefully examined. Otherwise, depending on the situation, the doctor should proceed with the examination.

7. Collection of evidence

This is particularly important in sexual assault cases as well as in cases of poisoning, where it is the sole responsibility of the doctor to collect all the relevant evidences pertaining to the case, properly pack the material, seal and label, and hand over to the accompanying police personnel for onward transmission to the concerned FSL/ other laboratories along with the requisition. This requisition issued by the doctor should mention the details of the evidentiary material, the site

from where collected, the method of preservation and the tests/ investigations required. Chain of custody has to be maintained. After handing of the material, the doctor should keep the proof in form of the recipient's signature in order to avoid future complications including denial by the police or parties.

8. Opinion

The opinion of the doctor should be purely based on the facts or the findings of the examination, and the findings of the laboratory examination and the FSL report; all considered together. It should never be biased or influenced by the history. This is the part of the report which the police or the court concerns most. This is also the part of the report which is invariably challenged during the cross examination. Hence, it is obligatory for the doctor to take all precautions for furnishing the same. The opinion should be as direct as possible and the complicated medical terms and jargons should be avoided. When it is not possible for the doctor to give his opinion based on the examination alone and he has to wait for the laboratory results; he can give a preliminary opinion. After obtaining the laboratory or FSL results, he can furnish his final opinion.

9. Certifying the examination and opinion

Immediately after writing the opinion, the doctor should put his signature and date along with his/her name, designation, and seal, along with his registration number. The later is now mandatory as per the MCI guidelines.⁹

10. Date and time of dispatch

As a general rule, all the reports should be handed over to the police/ court within 24 hours from the time of examination. Any delay should be substantiated with reasonable explanations. This will not only avoid unwarranted cross examination, but also will add to the credibility of the doctor. Sometimes the applications for bail plea are granted depending on the doctor's opinion. Therefore, as far as possible, the doctor

should take all precaution for issuing of the certificate within 24 hours of the receipt of requisition.

11. Record

All the MLC reports should be prepared in duplicate. The doctor should also retain a copy of the report along with a copy of the requisition letter for his own reference. All the details of the case should be entered in a register specifically meant for this purpose (MLC register).

References

1. Code of Criminal Procedure 1973, Section 39.
2. Indian Penal Code 1860, Section 176.
3. Indian Penal Code 1860, Section 177.
4. Indian Evidence Act, 1872, Section 45.
5. Indian Evidence Act, 1872, Section 46.
6. Indian Evidence Act, 1872, Section 3.
7. The Tribune, Chandigarh, India, dated 16-02-2011.
8. Indian Contract Act, 1872, Sec 14- 19.
9. Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.