

<b>Authorising Committee:</b>	Board
<b>Responsible Committee:</b>	Practice and Partnerships Committee
<b>Document Code:</b>	<b>PPG Developing reports and conducting independent medical examinations in medico-legal settings.</b>

### 1. Background

These guidelines have been developed by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to provide guidance to members who are undertaking independent medical examinations and report preparation, or who are preparing reports in other medico-legal circumstances. The guidelines establish a basic standard of practice and outline the role of the psychiatrist when responding to a referral request for a medico-legal report, patient interaction, report writing and adhering to appropriate professional standards.

### 2. Definitions

Medico-legal report preparation by psychiatrists requires adherence to the discipline of psychiatry in which scientific and clinical psychiatric principles and expertise are applied to legal matters in legal contexts. The principles and guidelines outlined are applicable for all medico-legal settings in Australia and New Zealand, including independent medical examination and report writing.

For the purposes of this document, an independent medical examination and report is a psychiatric assessment and report requested by a third party and provided by a psychiatrist not involved in any past or present therapeutic or other interpersonal relationship with the examinee.

In a number of circumstances, treating psychiatrists are required to prepare reports in medico-legal settings that do not constitute an independent medical examination by a psychiatrist. This includes psychiatrists working in rural and remote areas and civil and criminal jurisdictions where statutory requirements apply to the treating psychiatrist.

### 3. General principles

- 3.1 A medico-legal report is a written opinion by an expert on a medical matter arising out of legal proceedings before a Court, Tribunal or other decision maker. The purpose of the medico-legal report is to assist the relevant decision maker to come to an appropriate decision about the matters before it.
- 3.2 Psychiatrists must observe relevant Australian and New Zealand laws and regulations concerning medico-legal records, assessments and reports.
- 3.3 Psychiatrists undertaking medico-legal assessments and preparing reports for Court or a Tribunal must understand and comply with the applicable expert witness codes of conduct.
- 3.4 Although the psychiatrist may be retained by one party to a dispute in a civil matter or the prosecution or defence in a criminal matter, the psychiatrist must adhere to the principle of honesty and strive for objectivity.

3.5 It is the responsibility of a psychiatrist submitting a medico-legal report to provide the decision maker with the best opinion evidence. Accordingly, expert psychiatric opinion must always be given independent of the interests of any instructing party or parties.

#### **4. Treating psychiatrists provision of medico-legal reports**

4.1 The RANZCP recognises that treating psychiatrists may be asked or be required to provide medico-legal reports. This includes treating psychiatrists working in rural and remote districts or in jurisdictions where statutory requirements demand such reports. This does not constitute an independent medical examination and report by a psychiatrist. In this circumstance, the psychiatrist must state his or her role as a past or present treating practitioner.

4.2 Treating psychiatrists may be able to excuse themselves from providing a medico-legal report as the academic literature supports a range of views on the management of any conflicts of interest (Taylor et al., 2012). If the treating psychiatrist makes this decision, it is recommended that their patient/s are informed of this decision.

4.3 Treating psychiatrists responding to medico-legal report requests must clearly identify their role and must recognise and disclose to the referring agent / agency the extent and effects of any conflict between their patient's treatment and medico-legal needs.

4.4 The health interests and needs of the patient of a treating psychiatrist must always be paramount in responding to a request for a medico-legal report.

#### **5. Medico-legal report request process**

5.1 Psychiatrists should ensure that the referring agent / agency requesting the medico-legal report provides a written explanation of the medico-legal issue(s) to be addressed.

5.2 Psychiatrists should request that the referring agent / agency seeking the medico-legal report provides all information relevant to the medico-legal issue. This may include a request for relevant court-issued expert witness guidelines.

5.3 Psychiatrists should request that the referring agent / agency seeking the medico-legal report provides notification of any urgent time constraints for the provision of the report.

5.4 Psychiatrists should expect a written communication from the referring agent / agency requesting the medico-legal report prior to the examination, setting out who is responsible for the payment of fees and when they are to be paid. The psychiatrist may request pre-payment or may request payment in the event that the examinee fails to attend the scheduled examination. Fee agreements dependent upon a particular outcome are unethical.

#### **6. Interactions with patients<sup>1</sup>**

6.1 Prior to commencing any assessment, psychiatrists should clarify with their patients (or people being examined) their understanding of the referring agent / agency request for the medico-legal report.

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<sup>1</sup> The term patient is used in this guideline to mean the person being examined under the medico-legal examination or report.

- 6.2 In cases where the medico-legal report has not been ordered / requested by a Court, Tribunal or other decision maker, psychiatrists should give careful consideration to the ability of examinees to give their consent to participate in the assessment.
- 6.3 Psychiatrists conducting an examination for medico-legal purposes should inform the examinee that their primary role is to provide a report to enable decision making by a Court, Tribunal or other decision maker.
- 6.4 A preliminary orientation of the examinee at the outset of the consultation should be conducted. The psychiatrist should explain the purpose of the consultation, the form of the interview, the arrangements made for a person's privacy, and the availability of breaks and/or refreshment.
- 6.5 Psychiatrists must always explain the limits of confidentiality to the person being examined. Psychiatrists must indicate that medico-legal report contents are not confined to the usual standard of a patient-treating doctor clinical interview. Psychiatrists must also explain conduct and confidentiality requirements to any additional attendees at the assessment such as a lawyer or translator.
- 6.6 An independent medical examination conducted by a psychiatrist is a human interaction between a medical professional and an individual who may be suffering from a mental illness. The examination does involve a doctor patient relationship and it is essential that psychiatrists maintain a professional manner, listen carefully and demonstrate neutrality and courtesy throughout the interaction. The principle of duty of care applies through medico-legal assessments.
- 6.7 A psychiatrist seeing a person referred for an independent medical examination and report should not provide routine treatment for that person. Emergency treatment should only be provided where no reasonable alternative exists and immediate referral should then be made to a treating health professional for ongoing care.

## **7. Report writing**

- 7.1 A psychiatrist providing a report should clearly state the source of the request for the medico-legal report such as the referring agent / agency that has led to the consultation.
- 7.2 Psychiatrists must disclose all sources of information provided by the agent / agency requesting evaluation and any other parties.
- 7.3 The professional opinion of a psychiatrist must be confined to their field(s) of expertise and the report should not offer expert opinion on diagnosis and treatment outside the discipline of psychiatry and its sub-specialties. Psychiatrists must present their qualifications accurately and precisely.
- 7.4 Psychiatrists should use their discretion in regards to how much is explicitly considered in the body of the report based on what is necessary and relevant to include. Relevant areas could include aspects of patient history, mental status examination, diagnosis and case formulation, physical examination and functional assessment.
- 7.5 The medical report prepared by a psychiatrist must list all information considered by the psychiatrist in undertaking the assessment. Opinions concerning causation generally require a wide range of data sources. The psychiatrist must state what further information (if any) would be useful to enhance the comprehensiveness of the opinion.
- 7.6 Reports should be professionally presented, include correct punctuation, grammar and spelling and explain the meaning of any technical terms used. Opinion must be clearly delineated from factual and clinical data and the clinical reasoning leading to the expert opinion must be properly explained.

When the symptoms are not consistent with any diagnosable psychiatric disorder, this should be clearly stated.

- 7.7 All psychiatric opinions must be founded on psychiatrists' clinical experience and knowledge of relevant, peer-reviewed literature. Psychiatrists should identify their degree(s) of certitude attached to relevant aspects of their opinion.
- 7.8 Psychiatrists must never alter a medico-legal report at the request of any party, including their patient. If a factual clarification is requested or additional information is provided that results in a varied or contrary opinion, psychiatrists must produce a supplementary report that clearly identifies the existence of the original report and the nature of any change(s) (i.e. of fact or opinion).

## **8. Professional standards and relationships**

- 8.1 When preparing medico-legal reports or undertaking independent medical examinations, psychiatrists must follow ethical and professional standards of behavior as set out in the Australian *Good Medical Practice: a code of conduct for doctors*, New Zealand *Good Medical Practice* and the RANZCP *Code of Ethics*.
- 8.2 In relation to the diagnosis, treatment or management of a particular person being examined, the psychiatrist's opinion must be in professional and respectful language.
- 8.3 Any comment concerning a difference of opinion with a colleague should be confined to matters of substance and expressed in professional terms. Psychiatrists preparing medico-legal reports must not make personally disparaging or unprofessional comments concerning other psychiatrists, other professionals or their expert opinions.
- 8.4 In expressing a professional opinion in the context of a medico-legal report, psychiatrists should not offer opinions outside their specific field of expertise. All such opinions must be within the bounds of reasonable medical certainty and the generally accepted knowledge-base of the profession.
- 8.5 Psychiatrists must never undertake medico-legal assessment of a person who has been, is currently or will likely be, in a material personal or business relationship with the psychiatrist, their spouse or other close relative.
- 8.6 Continuing medical education is a fundamental responsibility of all psychiatrists. Opinions in independent medical reports provided by psychiatrists should be based on contemporary scientific standards.
- 8.7 Psychiatrists must use their best endeavours to identify and disclose actual and potential conflicts of interest.

## Further reading

American Academy of Psychiatry and the Law, Ethics Guidelines for the Practice of Forensic Psychiatry (2005).

Medical Board of Australia, Good Medical Practice: A Code of Conduct for Doctors in Australia (2014).

Medical Council of New Zealand, Good Medical Practice (2013).

Taylor, P J, Graf, M, Schanda, H and Vollum, B (2012) The treating psychiatrist as expert in the courts: is it necessary or possible to separate the roles of physician and expert? *Criminal Behaviour and Mental Health*, 22, 271-292.

Royal Australian and New Zealand College of Psychiatrists, Code of Ethics (2010)

## Disclaimer

This information is intended to provide general guide to practitioners, and should not be relied on as a substitute for proper assessment with respect to the merits of each case and the needs of the patient. The RANZCP endeavours to ensure that information is accurate and current at the time of preparation, but takes no responsibility for matters arising from changed circumstances or information or material that may have become subsequently available.

## REVISION RECORD

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