



Guidelines for Medico-Legal Reports

1. INTRODUCTION

Workers' compensation claims, personal injury claims and other litigation often require co-operation between the medical and legal professions. The Medical Board of Queensland, in consultation with other relevant stakeholders, has developed guidelines which will improve communication between all parties and assist the efficient settlement of claims.

Requests for the provision of medico-legal reports have become common. However there appear to be some misunderstandings about the nature and purpose of consultations for medico-legal purposes.

The Board has observed an increase in the number of complaints relating to medico-legal consultations and reports. The nature of issues raised in these complaints includes:

- the doctor didn't listen
- the doctor didn't properly examine the patient or consider written material provided
- the doctor was abrupt or rude
- the doctor questioned the patient's honesty or made derogatory remarks
- the doctor's report was factually incorrect
- the doctor had a pre-conceived opinion as to the existence or otherwise of their condition

The Board believes the guidelines contained in this policy document will assist in overcoming some of the concerns.

2. TREATING vs NON-TREATING DOCTORS

Many patients do not have a clear understanding of the nature and purpose of a consultation for a medico-legal opinion. It is important that the differences in the roles of the treating and non-treating doctors be explained to the patient by solicitors and independent experts prior to the commencement of consultations.

While some complaints appear to be based solely on disagreement with opinions stated in reports, it is apparent that others relate to communication issues. It seems that many patients do not fully understand the difference between a consultation for medico-legal purposes and an ordinary consultation with their usual treating practitioner.

The Medical Board supports the position statement of the AMA which states that whilst there is an ethical obligation on the treating doctor to assist the patient by providing a factual report (including the patient's condition, injury, diagnosis and prognosis), the treating doctor is under no obligation to provide an opinion on a medico-legal issue.

The non-treating doctor acts as an independent expert witness. The non-treating doctor is asked to give an opinion on the facts of the case, usually on the basis of an examination of the patient and/or on written material provided by the legal adviser.

3. TREATING DOCTORS

Solicitors should make requests in writing for reports from treating doctors enclosing an original consent form signed by the patient. A reasonable time frame for receipt of the report should be negotiated between the solicitor and the treating doctor and included in the written request. Solicitors should advise treating doctors of the purpose of the report, the nature of the legal action and that the report may be viewed by independent experts.

As noted above it is the role of the treating doctor to provide a factual report (including the patient's condition, injury, diagnosis and prognosis), not an opinion. However, the treating doctor may provide an opinion if he or she wishes to do so.

4. INDEPENDENT EXPERTS

4.1 Requests for Reports

Appointments should be made by solicitors and followed-up by written confirmation. The written confirmation should include a full explanation of the purpose of the report including:

- the nature of the legal action;
- the examination required;
- the matters required to be addressed in the report; and
- any existing written material for consideration.

A reasonable time frame for receipt of the report should be negotiated between the solicitor and the doctor and included in the written request. Failure by a medical practitioner to provide a report within an agreed period could be interpreted as unsatisfactory professional conduct.

It is important for solicitors to ensure that patients take any existing diagnostic records, such as x-rays, to the appointment. A medical practitioner should advise the solicitor and patient prior to the appointment if he or she considers it likely that an invasive procedure will be necessary to provide an opinion.

4.2 Consultations

At the commencement of consultations, doctors should explain:

- that a medico-legal consultation is different from a normal consultation;

- the process of the doctor's consultation including whether there will be a physical examination, whether supporting documentation will be considered and, if so, when it will be considered;
- that questions asked during the consultation are not intended to be offensive in any way but are necessary for preparation of the requested report;
- that the doctor cannot discuss the legal action with the patient and
- that the report will be sent directly to the solicitor; and
- that they are unable to provide diagnostic or treatment advice to the patient.

When taking a history it may be prudent to read it back to the patient to check if anything has been missed.

Doctors should be considerate and courteous to patients at all times.

4.3 Reports

- e reports should be prepared to provide the details requested in the solicitor's written communication;
- reports should include a list of material which has been considered by the doctor;
- comments and statements made by patients should be comprehensively and accurately recorded;
- statements of opinions should be clearly identified as opinions and be supported by reasons and, if possible, references such as reputable trials and studies;
- offensive or judgmental statements such as "this man is n dole bludger" should be avoided. Assessments should be couched in clinical language.

5. PAYMENT OF FEES

A fee, or the basis for calculation of a fee, should be agreed between solicitors and doctors at the time the appointment is made. Cancellation fees, if applicable, should also be agreed.

Solicitors should unreasonable for a doctor to withhold provision of a report until payment or a guarantee of payment has been received.

References

AMAQ Medico-Legal Guidelines
 AMA Position Statement: Guidelines for Doctors Acting as Expert
 Medical Witnesses
 Medical Board Bulletin article "Complaints Related to Reports by
 Medical Practitioners", Issue 9, July 1998.