

Preparing Medico Legal Report in Clinical Practice

S. Naveen · M. V. Pradeep Kumar

Received: 13 June 2011 / Accepted: 31 May 2012 / Published online: 18 July 2012
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Abstract Doctors are frequently asked to prepare reports for a variety of medicolegal purposes including court proceedings, worker's compensation, and insurance reports. The aim of this article is to provide doctors with certain aspects of writing a medicolegal report and the common pitfalls to avoid. Due to sudden rise in the consumer cases against doctors, the legal authorities who do not have sufficient medical knowledge will take the help of the physicians to provide them with sufficient material and advice so as to sue the erring doctor or to protect the medical fraternity from frivolous complaints.

Keywords Medicolegal report · Expert opinion · Section 45 IEA

Introduction

In the modern world, expert evidence has come to play an important role in determining a casual link between the conduct and the harm suffered. When a physician receives a request for his or her help in assessing the care provided in a given case, his or her professional judgment is implicitly recognized. Due to increase in litigation cases against doctors, judicial adversarial adjudication takes the help of the medical fraternity to conduct a peer review and educate

them regarding the complexities of medicine. The role of an expert physician will have a serious impact on the plaintiff, the defendant, the legal system, and the society at large. The main objective of providing expert opinion is to educate those involved with judicial adversarial adjudication in a particular case. The litigation cases against doctors are assessed, tried, and adjudicated largely on the basis of opinions given by physicians on the standards of care provided by other physicians. In such types of lawsuits, the physician is often the primary target and the quality of the physician's care is often the key issue of the judicial action. The three-judge bench in *Dr. J. J. Merchant and others versus Shrinath Chaturvedi* [1] accepted the position that it has to be left to the discretion of the commission to examine experts if required in an appropriate matter. The Supreme Court in the case of *Jacob Mathew versus State of Punjab* [2] has given guidelines to be followed in cases on negligence against doctors.

Role of an Expert

The role of the expert is to educate those involved in the judicial system regarding the standard of care provided, taking into account all facts and variables relevant to the case including the practice setting. The authors have come across a number of cases of negligence to provide their valued opinion based on the facts of the case. The second author with a vast experience in the medicolegal field has provided expert opinion in various courts and also has drafted a number of opinions concerned with medicolegal cases. The ignorance of the judicial system toward the medical field was evident when the authors came across the questions put forward by the legal personnel in a number of cases. The general rule relating to evidence is that

M. V. P. Kumar (✉)
Department of Forensic Medicine,
Rajarajeshwari Medical College and Hospital, Kambipura,
Bangalore 560074, India
e-mail: pradi003@rediffmail.com

S. Naveen
Department of Surgery,
Rajarajeshwari Medical College and Hospital, Kambipura,
Bangalore 560074, India

witnesses give evidence on the facts of the case, while the inference to be drawn from these facts is a matter for the judge. If the witness offers an opinion, the function of the judge is usurped [3]. There are, however, exceptions to this rule. The opinion of experts is admissible where competency to form an opinion upon subject can only be acquired by a course of special study, and where the judge could not otherwise form an opinion. In the Indian legal system, an expert is defined under Section 45 of Indian Evidence Act [4]. Accordingly, expert opinion is expressed by a person having specialized knowledge in a particular field based on his/her training, study, and experience. The opinion must be wholly or substantially based on his/her expert knowledge. Expert witness can be appointed either by the consent of both parties or by the court. Their opinion is useful in both civil and criminal cases. The physician called on as an expert physician should devote sufficient time to examine all the material provided to him/her on a particular case. In *V. Kishan Rao versus Nikhil Super Specialty Hospital and another* [5], the Supreme Court concludes that expert opinion is required if the case is complicated enough to require the opinion of an expert or that the facts of the case are such that it cannot be resolved by the members of the forum. The Court makes it clear that in these matters no mechanical approach can be followed by these forums. Each case has to be judged on its own facts. It is unwise for the expert physician to depend only on the analysis of documentation undertaken by other experts involved in the case. If possible, the expert can ask for the examination of the patient as it may substantially differ from the facts noted in the documentation and shed a different light on the case.

Whatever the purpose of the report, the expert should remember that opinion should be clearly differentiated from the facts on which the report is based. The opinion is the expert evaluation of the significance of these facts, together with a conclusion, which should include specific recommendations relevant to the issue in hand and, if appropriate, an assessment of risk or dangerousness and prognosis for the future. It is important to remember that negative findings are of much value to the judicial process as positive ones.

Who Can Issue an Expert Opinion?

The first and foremost thing to be looked into is that the expert physician should have relevant clinical expertise and familiarity with the issues in order to discharge the responsibility. It is inappropriate for those physicians who obtained their relevant qualifications recently to provide opinions on an event that occurred many years ago without declaring this potential discrepancy and without learning the practice patterns and standards of care existing at the time of the event as it takes many years for the litigation case to be tried

in a court of law. Likewise it is also inappropriate for the physician who has stopped practicing in providing expert opinion in a recent case as the modality of diagnosis, treatment, and the standard of care may vary to a substantial degree. The best opinion that can be taken into account is the one provided by a physician with similar qualifications and practicing under similar circumstances.

The individuality for providing expert opinion differs from case to case. The lawyer for the plaintiff or the defendant may ask an individual physician to provide an opinion or the judge may ask an institutional head to provide an expert opinion. When the head of a medical institution is called on to provide an opinion, he/she in turn has to form a committee of experts and one among them should be a medicolegal expert who can draft and analyze the matter under purview taking medical, legal, and ethical issues into consideration. The medical superintendent or the director of the medical institution should chair the committee. Each fact of the case should be analyzed by the experts individually pertaining to their field of expertise and finally arrive at an opinion.

Structure of the Report

It is important to bear in mind that a medicolegal report is usually addressed to laymen who are not experts themselves. Although lawyers and judges who frequently deal with medical matters gain knowledge of medical terminology, it can often be inaccurate and no assumptions should be made. The report should be clear, understandable, with little application of technical words and professional jargon as possible [6].

It is often seen that the committee experts provide opinions in a single line without mentioning the list of documents which were scrutinized in order to conclude. The institution should have a format that enlists all the particulars required in a given case. The authors have tried to enlist the required particulars for providing an expert opinion.

1. The experts should identify themselves as a physician in good standing and are registered practitioners. The year of certification in their specialty with the Medical Council of India should be stated; identify any additional subspecialty interest and qualification.
2. The experts should state what their type of practice is at the time when the particular case under review occurred and what it is at present.
3. The experts should state the number of years of experience in field of their expertise.
4. The experts should state their affiliation to the hospitals and universities.

5. The experts should state that their clinical practices are relevant with the elemental facts under review of a particular case.
6. The committee should itemize the information provided to them to be reviewed.
7. The committee or the expert should provide a synopsis of the facts contained in the documentation using objective, nonslanted language.
8. The experts should identify the issues pertaining to the standard of care of possible relevance to the clinical outcome.
9. For each issue identified in the report, the committee should opine whether standard of care was met.
10. If certain facts are missing or required any other additional information at the time of drafting the report and if the expert opinion is subject to change if other facts under query are provided, they should state clearly in the report.
11. The experts should provide reason for the basis of opinion with appropriate reference: a standard textbook, specific review article, and guidelines, widespread clinical practice in the expert's jurisdiction or personal experience [7].
12. The experts should not stray beyond their expertise to provide an opinion on matters about which they are unable to demonstrate special qualification or experience.
13. The expert should provide the opinion in an unbiased manner.
14. The report should be comprehensive without being unnecessarily wordy and over-inconclusive. Its length should be dictated by the complexity of the matter under consideration. It is important to be clear at the outset what the issues in a particular case are. If the report has been requested from an outside agent, read the requesting letter from time to time to ensure that the issues are well in mind while writing the report and to check that they have been clearly addressed.
15. The expert giving opinion in a medicolegal case should be ready to be cross-examined by the defense lawyer in the court of law. Calling the expert to the court to give evidence on the opinion provided by him/her is a matter to be decided by the judge.

Once the report is ready, the experts should sign mentioning his/her designation, seal the cover, and it has to be sent to the requesting party at the earliest. The confidentiality of the report has to be maintained by the authority signing the opinion.

Conclusion

The correct format allows for completeness, uniformity, and consistency in the preparation of expert opinions given in medicolegal cases. The proper drafting of the opinion outlines the different elements that should enable lawyers and the court to assess the weight of the opinion, its factual basis, and the reasons for opinions expressed.

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