

POST MORTEM AND MEDICO-LEGAL WORK

Ref: HOSPITAL ADMINISTRATION MANUAL Vol. I (revised) CHAPTER XII

Post-mortem examinations and other medico-legal work form a very important part of the duties of Medical Officers working in different Government Hospitals and other Institutions such as dispensaries, primary health centers etc. Since this work is a vital link in the dispensation of justice, it goes without saying that careful attention and promptness is quite essential in dealing with it.

12.1 Distribution of Medico-legal Work - In hospitals a number of medical officers are available for doing medicolegal work. Their number would depend upon the size of the hospital. In other medical institutions like dispensaries there is only a single Medical Officer who is called upon to carry out the medico-legal work. This work has been entrusted to Zilla Parishads on an agency basis, and all Zilla Parishad institutions are supposed to carry it out. Similarly the primary Health Centers are expected to carry out all medico-legal work including postmortem examinations.

The medico-legal work is comparatively of a specialized nature. It should therefore be entrusted to Medical Officers who have knowledge about it or who have been trained to do so. The Government of Maharashtra has a scheme for training of Medical Officers in carrying out medicolegal work. (Please see Civil Medical Code Chapter 20).

Since the quality of medico-legal work has its repercussions on law proceedings and since occasions where strictures are passed by law courts on Medical Officers are not uncommon, the distribution of medico-legal work in a hospital assumes significant importance. On the other hand Government Medical Officers must accept that such work is an inescapable part of their duty. They should therefore strive to achieve efficiency in this work.

The Civil Surgeon/ Superintendent of a hospital should carefully distribute medico legal work according to the capacity of the Medical Officers. Some work may be simple and other difficult and complicated. Thus the work can be of different grades and it should be distributed accordingly. From this point of view the Civil Surgeon / Superintendent should classify the medico-legal work into minor and major and allot it to certain Medical Officers only. The important medico-legal work and especially the postmortem examination should be done by senior medical officers including himself, only especially those involving murder charges.

12.2. What is Medico-legal work? - The Medical Officers should be clear in their mind as to what constitutes medico-legal work. Cases sent by the police only do not constitute the whole quota of medicolegal work. Accident cases of whatever type reported to hospitals are to be treated as medico-legal even when there is no police yadi accompanying the patient. All cases of burns, tetanus, poisoning and suspicious cases are to be treated as medico-legal. It may often happen that cases at the time of admission may be purely surgical or medical etc. but later they may assume medico-legal importance on account of changed circumstances. Age certificates in many cases are of medico-legal importance. Deaths on the operation table or deaths, the cause of which cannot be certified are medico-legal cases.

Many times cases are brought to hospital or dispensary in gasping condition and they die before the Medical Officer (can completely examine them. On other occasion certain persons brought to the hospitals or dispensary are already dead. A separate register should be kept for such cases, showing the name, age, sex, the time and date of receipt of the patient and details as to who brought the dead body / address etc. Intimation may not be given to police authority in case the cause of death is definitely known from examination during life and there is no suspicion or any medico-legal complication, but such occasions are very rare in deed if at all and Police must be informed practically in all cases.

12.3. Intimation to Police - It will be seen that there is one set of Medico-legal cases wherein they are referred to the hospitals by police, while there are others in which the patient arrive at the hospital and the Medical Officer has to inform the Police. In larger hospitals a police constable is available round the clock and he takes cognizance of such medico-legal cases. Where there is no policeman the intimation may have to be given to the police in writing and receipt of intimation should be obtained. In addition if possible the police should be informed by telephone. A register should be maintained of such messages giving the name of the patient, the police authority to whom the message has been addressed, the time and date of sending the message and the buckle number of the police constable to whom the message has been given the office copy of the letter addressed to the Police should be pasted in the register. All this is necessary to avoid any future complaints that the information was not given to the police in time.

12.4. Medico-legal correspondence - All the medico-legal case papers and correspondence are treated as on identical. The out-patient department medico-legal case-papers should be in charge of the R.M.O. under lock and key while the indoor medico-legal case-papers should be in charge of the sister in charge of the ward, also under lock and key, until the patients are discharged and thereafter with the R.M.O. When a medico-legal case attends for out-door treatment, the concerned case papers are to be sent to the doctor treating the patient along with a ward boy who will bring them back and give to the R.M.O. after the work is over. The O.P.D. case-papers are not been handed over to the patient as is done in respect of other ordinary case papers.

All correspondence arising in respect of medico-legal cases should be in the office of R.M.O. under lock and key. The medico-legal case papers of out-door and indoor patients as well as the correspondence arising there from should bear a stamp "M.L.C." and out-door and indoor registers should be maintained separately for medico-legal cases in addition to the usual O.P.D. and indoor registers. It therefore would be seen that a medico-legal case paper would bear a separate M.L.C. number in addition to the usual register number. It is convenient to refer to this M.L.C. number in all correspondence. Systematic filling and ready availability of medico-legal case papers and correspondence is very essential since the case papers are always required for attendance in court of law. It is common to find hospitals are being not able to find out the relevant medico-legal case paper at the time of attendance by a Medical Officer in the court of law and this creates a very undesirable situation. The case-papers and correspondence should be maintained month-by-month and year-by-year. Detailed instructions have been given in the Civil Medical Code as regards preservation of medico-legal case-papers and correspondence in Chapter No. 20 which may please be referred to.

12.5. M.L. Register - Every institution dealing with medico-legal work must maintain a "medico-legal register". This is also called variously as "Police register" or "Emergency Police Register" i.e. "E.P.R.". In this register a copy of all the entries on the case paper are made. The register also shows the serial number, the date and time of attendance, the buckle number of the police constable, the findings and how the patient has been treated. The register should contain a reference to the medico-legal case paper number. In the remarks column entry should be made regarding dispatch of letters and replies received etc. As a routine the Civil Surgeon/ Superintendent and or R.M.O. should scrutinize this medico-legal register every morning to find out whether proper entries have been made and correspondence properly attended to. They should also see if the necessary certificates have been issued to Police authorities.

12.6. The following records should be maintained in a Post. mortem room:

- (a.) Dead stock register of equipment and supplies.
- (b) Incoming and outgoing dead body register giving the time and date of dead bodies admitted to the morgue, identification date about the patient such as admitted into which ward etc., the time of handing over the body, and signature of the person receiving the dead body. In addition the relationship of the person receiving the dead body should be indicated.
- (c) Medico-legal register for medico-legal Post-mortem.
- (d) A register for consent in case of non medico-legal post-mortem examinations.

12.7. Duplicate Copies - All medico-legal records should be made available to Medical Officers attending the courts of Law. Duplicate copy of the in-door or out-door case-papers should be made and handed over to the Medical Officers along with the original. The reason is that in many cases the original is required to be handed over to the court. In such cases the hospital must have at least a duplicate copy on its record. In this connection attention is invited. Appendix 29.

12.8. Notes on Medico-legal Case-papers and Medico-legal Certificates - The medico-legal Case requires particular care by way of investigations, diagnosis and treatment. This does not mean that non medico-legal cases do not require much attention but it only points to the necessity of attention to these matters from a medico-legal point of view and their implications in a court of Law and dispensation of justice.

The notes on case-papers should be complete including notes about laboratory and X-ray or other investigations. Operation notes etc. The daily notes must be regularly written with reference to the progress of the case. The column of 'Provisional' and 'Final' diagnosis should be carefully filled.

Medical Officers should see that the case sheets are filled in all respects immediately after admission in the O.P.O. and indoor sections.

Prescriptions about treatment and notes about pre and postoperative cases should be carefully entered. All orders should be written and oral orders must always be substantiated by written orders. Entries about blood transfusions should refer to blood group, date and time of transfusion, quantity transfused and the result of transfusion.

Medical Officers must always remember that it is on the basis of case paper only, that they will be Able to give evidence in the court of law and to stand the rigours of cross examination. The notes are also absolutely essential for issue of medico-legal certificates.

All certificates in Medico-legal cases should be issued promptly. Before issuing the certificates it should be carefully verified if they answer all the queries raised by the Police Officer. The certificate should be complete in all respect so as to prevent unnecessary correspondence, which may result in delay in investigation as well as in giving of justice. Details of injury, their cause and age and sub Stance of X-ray and other reports if necessary should all be mentioned. The Civil Surgeon! Superintendent as well as the R.M.O. should make it a point to frequently check and find out if certificates have been dispatched in time or not. The contents of the certificates should be approved by the civil surgeon/ superintendent or by the R.M.O. before dispatch, The office copies of the certificates should be kept by the R.M.O. with himself under lock and key attached to the case papers. If the case-papers are in the wards these certificates should be attached to the case papers in the wards and should be under lock and key in charge of the sister.

In certain cases the nature of certificates which can be issued, is provisional in such cases it should be certified in the covering letter that the certificate is of this nature. Later on after further investigation, operation, or observation the complete certificate may be sent.

It is a common observation that the quality of medicolegal certificates is very poor and does not help the police authority. Particular care should therefore, be taken to issue complete and full certificates in time.

Whenever medical officers have occasion to issue medical certificates they should consult higher Medical Officers if necessary in case they have any difficulty. They should also study the relevant portion from a medico-legal book if necessary. Every institution dealing with medico-legal work must keep a latest edition of standard textbooks. Such as the following:

- a) Medical Jurisprudence and Toxicology by Dr. N.J. Modi.
- b) Medical Jurisprudence Taylor's Volume I and II.
- c) Text Book on Forensic Medicine and Toxicology by Sir Sydney Smith.
- d) post-mortem Appearances by Ross.

12.9. Postmortem Examination: The performance of postmortem examination requires attention to a number of details some important points need emphasis:

a) No dead body brought for postmortem examination at any time of day or night should be refused. It is found that Medical Officers ask police Officers to bring the body on the "next morning" when it is received during evening or night. In this connection it is clarified that at present Government of Maharashtra have allowed Postmortem examination to be made during night time if lighting arrangements are satisfactory. The important point to decide whether the examination can be done at night or in the morning is whether points of medico-legal significance are likely to be missed.

b) Post Mortem examination should be always considered as an urgent piece of work. It ought to be done as soon as possible leaving aside all other work barring that which is necessary to immediately save a patient's life. In a hospital or dispensary where the examination cannot be done at night, it should be done the very first thing on the next morning without attending to routine O.P.D., indoor patient's work etc. Medical Officers should appreciate the psychological background of relatives who are waiting for the body to be handed over. Secondly, in our country decomposition process advances rapidly due to weather conditions. This will affect the findings on postmortem examination. No delay is therefore permissible.

c) Some Medical Officers refuse to accept the dead body on the ground that it is from an area outside their jurisdiction. This is however, not correct. The Medical Officer should perform the postmortem examination in the first instance and make any representation in the matter if necessary later on.

d) Every Medical Officer allotted the work should carry it out without any argument or discussion. He may represent the matter to the Medical Officer In charge of the Hospitals later on if necessary.

e) No outsiders are allowed during autopsy except medical students undergoing training. Even if the cause of death is obvious from examination of a part of the body, all the part must be systematically examined as required by the standard postmortem examination form.

f) Before starting a postmortem examination the Medical Officer should read panchnama and the Police report carefully. If either of them is illegible the fact should be brought to the notice of the police. If the Medical Officer finds any major discrepancy between the injuries as described in the documents and as found out by him, he should cause a fresh Panchnama to be made by a Magistrate.

g) The postmortem report is written on a printed form and the various columns automatically invite the required answers. There should, therefore be no omissions. The important points to be kept in mind are as follows.

(i) *Column NO.5.*- The Medical Officers should not write the words "as per the Inquest Report". They should write a summary of the important facts and mention the injuries as mentioned in the Panchnama and confirmed by them.

(ii) *Column No. 9.*- The remark against this column should not be ;nil; and a thorough search must be made. It is improbable not to find any identification marks.

(iii) *Column No. 9.*- The state of teeth should not be described by a "dash" It should be stated how many teeth are present in the upper as well as the lower row and their condition, i.e. shaky etc .

(iv) *Column No. 10.*- Rigor mortis should always be described in detail i.e., whether present in the whole body or in parts.

(v) *Column No. 12.* - Details of signs of decomposition should be mentioned.

(vi) *Column No. 17.*- A detailed description of injuries should be given as regards their exact site as from fixed bony points, length, breadth, depth and character; it is advisable to attach a diagram of the injuries. All injuries should be carefully measured and noted individually though numerous in number. Conclusion about the cause and age of injuries should always be mentioned Medical Officers cannot answer this point in a court of law without any record. '

(vii) *Column No. 18.*- It should always be mentioned whether the injuries are ante or postmortem.

(viii) *Weights* of all organs as required according to the postmortem form should be taken and noted.

(ix) If blood is present in any part of the body cavities its approximate quantity should always be mentioned.

(x) There are often tears and injuries on internal organs. Medical Officers should always mention the dimensions namely, the length, breadth and depth. In case of hollow viscera, it should always be mentioned whether the injury is through and through or not.

(xi) *Column NO.21.*- Remarks should be always passed about the state of digestion of the stomach contents, if any.

(xii) *Condition* of the hair, clothes, nails, mouth, tongue, genital Organs and general appearance of the body is at times not mentioned. Attention should be paid to this.

(xiii) *Medical Officers should not avoid postmortem examination because the bodies are decomposed* .The examination should be done with the same care and precision as in a fresh body. They also cannot refuse to do the postmortem examination at the site whenever called upon to do so. If they have any complaints in this respect they can make them after doing the postmortem examination.

12.10. Preservation and Dispatch of Viscera and Other Samples -Instructions have been given in Chapter NO.13 of the Civil Medical Code regarding dispatch of viscera to the Forensic Science Laboratory. Preservation of viscera is no panacea to solve all difficulties. The provision for such preservation should not influence the postmortem examination, in such a way as to detract from the importance of carrying out each step of the postmortem examination carefully.

All viscera requiring to be stored in the hospitals should be preserved in proper containers in steel cupboards, which should be kept in the post mortem room. These cupboards may also profitably stock any other samples from the wards like vomits, stomach wash etc., the cupboards should be properly locked and sealed.

While sending viscera to the forensic Science Laboratory the Medical Officer should fill in all the details otherwise the Laboratory has to return back the samples. This will cause undesirable delay.

In this connection attention is invited to circular Memo No DHS/6076/44IDHSIII/76, dated 4" February 1976 Appendix 30.

12.11. Cause of Death- The Medical Officer must do this utmost to arrive at the cause of death or the probable cause of death. For this he must take into consideration all the findings. The cause of death is to be based only on the basis of findings and not on extraneous factors. A certificate should be given on the police constable in charge of the body immediately after the postmortem examination is over in the following form:-

“This is to certify that postmortem examination has been held on the body of the deceased _____ today, between ____ to ____ hours. The cause of death / the probable cause of death as derives as derived from the postmortem examination is as follows:-

Signature of medical Officer,
Performing the postmortem examination.

Name of the Medical Officer.
Time and Date

Signature of Police constable should be taken on duplicate copy of the certificate

12.12. Postmortem Reports ~The Medical Officer must send a detailed postmortem report to the police authorities within,24 hours. At the time of performances of postmortem examination, the original postmortem report should be completed by the Medical Officer in his own handwriting in the postmortem examination room itself.

The other copies can be typed, The original should be kept by the Medical Officer with himself and one typed copy duly signed should be sent to the police One copy should in addition be sent to the Civil Surgeon of the district. The original may have to be produced in the court of law. It is therefore advisable to 'keep one extra typed copy so that if the original is handed over to the court of law one copy can remain with the hospital.

Any erasures, additions and alterations should be avoided as far as possible but if there are any, they should be initialed. The original postmortem report must be full and not sketchy. A regular printed form' should be used for preparing it.

12.13:- Scrutiny by Civil Surgeon – After receipt of copy , of the postmortem report the Civil Surgeon Should go through it carefully and make the necessary comment on the back of the report for which a space is provided. These notes should be passed on to the concerned Medical Officer at once. The Medical Officer after receipt of the remarks by the Civil Surgeon will have to reply to the points raised by the Civil Surgeon. He may also have to make the necessary modification in the record or conclusions.

12.14 Supervision - The Civil Surgeon and the RMO must guide the oilier Medical Officers in conducting The postmortem work. They should visit the postmortem room especially in homicide cases and guide and check to see that the examination and recording is being done properly.

12.15. Finger Tips and Bones - Whenever the bodies are not identified, it is the duty of the Medical Officer to preserve fingertips: This can be done by dissecting the terminal phalanx. Occasions arise, when Bones require special examination, and medical officers should be aware that they have to be sent to Professor of Anatomy for such an examination.

Photographs of body or bones should be taken by Police but X-ray examination where necessary must be arranged by the Medical Officer.

12.16. Other Additional Information - Our standard postmortem examination form does not contain the following columns but Medical Officers should add the following information in a separate note:-

- (i)Height of the body wherever possible;
- (ii) Colour of hair,;
- (iii)Weight of the body, wherever possible.

The Medical Officers should also keep the following in mind:

(a) Where indicated, appropriate specimens may be taken for histological and bacteriological examination.

(b) In cases of death suspected to be due to uremic or diabetic coma, take a specimen of C.S.F. for chemical analysis.

(c) In cases where analysis of blood is necessary for alcoholic contents, cadaveric blood should be collected from the femoral artery or the heart

(d) Diaphragm - Note the level of diaphragm right and left, in infants where ascertaining of breathing is important.

(e) Mediastinum and Thymus -In case of obscure sudden death where the thymus appears enlarged, weigh it and submit a section for histological examination.

(f) Adrenals. -In case of sudden death from obscure cause, examination of suprarenal glands should not be overlooked.

12.17. Negative and Positive Findings- The Medical Officer should remember that it is essential to record on the post-mortem report not only positive findings but also negative findings with reference to the various columns. Negative findings should not be indicated by a - For example if Rigor mortis is absent the word "absent" should be written rather than indicate the absence by a " ___ ".

12.18. No Discussion - The findings should not be discussed by the Medical Officer with unauthorized persons, but may do so with the investigation Officer and higher Medical Officers for the sake of guidance.

12.19. Supply Of Reports To Private Parties - Requests are often made by private parties for supply of postmortem examination report. The reports are confidential documents and cannot be supplied. The Interested parties may be asked to approach the Police authorities or the concerned Magistrate.

12.20. Postmortem Rooms - This term generally refers to both (a) Mortuary and (b) Postmortem room. However the object of these two differs. After death of a patient, or when a dead body is received, it is sent to a place called Mortuary. It is kept here in proper condition until it is disposed of. It forms a part of a complex, the other part being the Autopsy Room or "Postmortem Room where the Actual Autopsy is performed.

There is a type design prepared by the Architect to Government of Maharashtra for Mortuary Block and Post-mortem examination Room. It consists of a Mortuary Block with racks for dead bodies, write up room for Medical Officer and Record Room and a post mortem Examination Room with two Drainage Boards and two Large Sinks. A waiting room for relatives and Police is a good addition. Otherwise the relatives have to wait in open anywhere; a very depressing site. A dressing room for bodies and a room for Morgue Attendant are desirable.

It has been estimated that in a hospital, there is one death per bed per year and the size of Mortuary should be based on this estimate.

Ground floor is the best location for a Mortuary Block and Post Mortem Room. It should have a suitable exit leading to a loading area protected from the view of patients and public.

The facilities and equipments in these rooms will depend upon the type of hospital and its size, for example, whether teaching or non-teaching, how large etc.

Cold storage arrangements should be available in District and Teaching hospitals. The cold room temperature should be 4°C. The floor of Post-Mortem room and Mortuary Block should be stain proof and easily washable. Sufficient light must be available in the section. Drains with abundant water supply should be provided.

A Morgue attendant and sweeper are essential by way of staff. Their number depends upon the type and size of the hospital but their services should be available round the clock. In the write up room there should be a couple of chairs and a table for Medical Officers to write the notes. The doors and windows should be strongly protected by bars and they should be fly proof. The necessary wire netting should be provided. Electric fittings in the postmortem rooms are

usually out of order. Examinations can be done at night and as it is necessary to guard the dead bodies there should be adequate light arrangements. When dead body is kept on the postmortem table for an appreciable time before the actual examination, should be covered by a semicircular wire dome of full length. All these precautions are necessary to avoid mauling by stray animals like cats, dogs, and bandicoots etc.

It is quite essential to keep the postmortem room as well as its surroundings absolutely clean. Broken bottles, dirty rags etc. should not be allowed to lie scattered around, the postmortem room. The Postmortem room should be located at a convenient distance from the hospital out of sight of other sections and should be surrounded by a wall.

12.21. Transport of Dead Bodies -Whenever dead bodies are to be transported from any section of the hospital to the postmortem room, push ambulance should be used ..These are just like stretchers on wheels with a semi.-circular cover above. It is more decent to use these ambulances rather than carry the dead bodies covered by a piece of cloth on open stretchers.

12.22 Guarding of Dead Bodies -A good watch should be kept on the dead bodies in the postmortem room. If it is. a medico-legal case, the Police could be taking adequate precautions. In other cases, a member of the hospital staff should be entrusted with the duty of keeping a watch by frequent visits. The day and, night watchman should also play their part.

The postmortem room should always be locked and the key should be with the Resident Medical Officer or a responsible Medical Officer.

12.23. Public Relations - The Medical Officers are frequently pressed by relations and influential members Of the general public, social workers, etc., persuading them not to perform postmortem examination on dead bodies. This is easy to understand because postmortem examinations are very offending to the relatives. The Medical Officer has to use a great amount of tact in not allowing undue pressures to influence his decisions. Sometimes, he has to face large excited and angry crowds. The Medical Officer should be prepared for all this and should deal with the situation without any anger or rancor. He should explain to the public, why the examination is necessary. The Medical Officers must also be prepared to explain why postmortem examination cannot be done at night in case there is no adequate lighting alt argument. They should complete postmortem examinations with least possible delay in order to enable the relatives to take charge of the dead body at the earliest possible moment.

12.24. Other Medico-Legal Work, History Taking and Notes - The Medical Officers should make It a point to take a detailed history regarding how a particular injury or injuries were received. The details Of how the injuries were received, with what implement, and how exactly the patient fell down, on what side etc. are important from both the medical and legal point of view. In case the patient is conscious, it should be invariably mentioned:

"Patient states he was hit with stick" or "patient states he was injured in a motor accident"
etc.

Where the patient is unconscious, the Medical Officer should mention as follows:-

"Brought by Police or relatives (whose names should be noted) for treatment of injuries said to have been caused by a knife or stick etc. or in a railway accident."

If the Medical Officer writes what is stated by the patient or the relative, it is a useful addition from the medical as well as the legal point of view. Certainly a Medical Officer will be better able to diagnose injuries especially internal from such details. The Medical Officer should give a detailed and accurate description of all injuries together with their classification like incised, contused, etc. The dimension should be mentioned. It is also necessary to mention the probable cause and age of the injuries. This should be recorded on the case-paper itself on the spot, irrespective of whether this information is going to be called for by the police or not.

12.25. Identification Marks - It is advisable to write one or two identification marks of the party examined.

Medical Officers must be aware that whenever they are called in the court of law to give evidence they are always asked the question whether they remember to have examined a particular party. The Medical Officer says 'Yes' but they may be vague in their mind. Identification marks have thus a legal significance, as actual verification can be done in the court. Signature of the patient or left hand thumb impression of the patient would also be very useful for subsequent identification.

12.26. Accessory Examination. It is often necessary to refer the medicolegal cases for X-ray examination or laboratory examination. Those facilities are often lacking in the institution where the cases are examined first and they have then to go to some adjacent hospital. Upon receipt of such requests, hospitals should carry out these examinations very promptly. In respect of medicolegal cases, it is customary to prefer radiograms to screening reports as x-ray plates are positive proof and accepted as evidence in the court of law. The x-ray plates should be carefully marked with the name of the patient. The detailed x-ray report as well as the laboratory report, if any should be properly recorded on the case paper immediately on its receipt and the time and date of the receipt should also be entered on the case paper.

12.27. Fire Arm Injuries - Generally, the experience of Medical Officers regarding Fire Arm Injuries is scanty. And yet it is necessary before giving evidence in a court of law to be able to answer different types of questions regarding fire-arm injuries. The Medical Officers must have a thorough knowledge about the characteristics of wounds of entry and exit, distance of the firearm from, which it might have been fired and the types of internal injuries possible due to various fire-arms. They should also have workable knowledge of different types of fire-arms. For this purpose they should take the help of Police authority, if necessary, in understanding the various problems.

12.28. One Instrument can be used in More Than One Way - It is worth remembering that injuries may be caused by a particular instrument in different ways, for example, a spear may not necessarily be used with its apex for stabbing purposes. It is perfectly possible for a spear to be used with its edge as an active weapon and in that case the injury will be different from the usual injury. Medical Officers should, therefore, remember that one instrument capable of being used in different ways.

12.29. Examination of Female Cases - The Medical Officer has to take particular care in examining female cases which is often required for rape, recent delivery and abortion, etc. There

is often a great difficulty on account of absence of a lady doctor. The examination should always be done after taking the party's consent in front of a witness and in the presence of a female.

12.30. Lunacy Cases - Cases are referred to district hospitals for observation with a view to ascertain whether there is lunacy or not. Some of the hospitals have got observation cells for the lunatics while others have not got them. Even the cells wherever provided are inadequate. The question arises as to where to keep these alleged lunatics for observation. In many cases, they are kept in the adjoining sub-jails or jails. The point is that these difficulties recommendation should not be allowed to come in the way of daily observation and recording of notes. Many of these alleged lunatics are cases arrested on criminal charges and the Medical Officer's opinion is quite important.

Genuine lunatics admitted in observation cells are helpless and unable to take care of themselves. Unscrupulous prisons may take undue advantage of their helplessness and a careful watch should, therefore, be kept to see that there is no harassment or molestation.

12.31. Dying Declaration - Ordinarily, any evidence to be acceptable must be given by the person who makes the statement, but the dying declaration is exception to this, as the declaration made by the deceased person relating to the cause of his death, may be proved by the person to whom the statement is made. This statement is valid irrespective of whether the person concerned was under expectation of death or not. The dying declaration can be oral or written and no oath is necessary. It is not necessary that the accused person should be present at the time. It is also not absolutely necessary that a Magistrate be present. As a rule, a Magistrate should be present but in exceptional cases, the Medical Officer can himself take the dying declaration, if dictated by the circumstances. The declaration should be taken in the language in which it is made. If it is continuous statement, well and good. Otherwise, the questions and answers should be reproduced faithfully. There should not be an extraneous person around and there should also be no prompting to the person making the declaration. If the person making the declaration survives, it loses its value, as a dying declaration but it is still useful as a supporting statement, in case that person is examined.

12.32. How to record Dying Declaration - Preferably, dying declaration should be written down by the injured person. If this is not possible, it may be taken down in the form of questions and answers. There should be no leading questions. There should be no police Officer near about. After taking down the declaration it should be read over to the person who may sign it or give his left hand thumb impression. The magistrate and two witnesses should attest and forward it to the concerned Court. If a Medical Officer takes down, he signs it and is witnessed. It should be in the language of the accused.

If the person is not able to speak, the signs made by him, in response to questions are admissible in Evidence.

Medical Officers have to certify before a Magistrate can take down the dying declaration that the patient is capable of making it and understanding questions put to him. Medical Officers should take great care in giving the opinion. They should make a thorough examination and express their opinion fearlessly. The opinions have often become matters of argument subsequently. Whenever confronted by a choice between recording a dying declaration and treatment. the obvious choice is for giving the necessary treatment In fact this applies to all matters of medico-legal formalities vis-a-vis treatment to save a life.

12.33. Evidence in Court of Law - It is important for the Medical Officer to realise that giving proper evidence in the Court of law is necessary not only for projecting a good image of the medical department but also in the interest of law, order and justice.

A person suffering from an injury may secondarily get tetanus infection as the result of which the patient may die. The original injury may also be a severe one. The Medical Officer is called upon to give an opinion in the court of law, as regards whether the injury was primarily fatal. In this case the Medical Officer has to consider whether the injury, though severe by itself, could have given rise to fatality and whether it was not the secondary infection by tetanus bacilli that caused the fatality. The Medical Officer's opinions so important in this case that the life of person may well depend upon it. If the wound was not primarily fatal, the charge against the accused is mitigated. If a contrary opinion is given, the charge would be very serious. The important classification of injuries, besides that given above, is-

- a) Wounds which are necessarily fatal.
- b) Wounds, sufficient in the ordinary course of events to cause death.
- c) Wounds likely to cause death.
- d) Grievous hurts, and
- e) Simple hurts.

According to the rules of evidence, an ordinary witness is not supposed to state his conclusions but only facts. In the case of Medical Officer, however, he is considered as an expert witness and therefore, there is a great amount of significance attached to the opinion given by him.

Medical Officers should not presume that the magnitude of the importance at their evidence parallels the magnitude of injuries. Even very ordinary injuries may be of very great medico-legal significance. An Instance in this connection is worth citing:-

A person was stabbed in the neck and he received deep punctured wound, which injured the Internal Maxillary Artery. The injured person was brought to the Casualty department, where the Casualty Medical Officer examined him and being a serious case immediately admitted him in the surgical ward. There he was examined by the houseman incharge of the ward. The patient died within a few minutes and an autopsy was performed by another doctor. This case went to the High court in due course of time and All the three doctors were called", There fending counsel was very keen to establish that the injury to the deceased had occurred in a scuffle. The casualty Medical Officer was examined first. The defending counsel let loose a barrage of questions in different words, the meaning of which was one and the same, i.e." whether there were any other injuries like abrasions etc: on the deceased, besides the punctured wounds. The casualty medical officer stuck to the fact that there was only one injury and also to the opinion that there could not have been struggle as far as medical evidence showed. This opinion was consistently given in all the replies to the various questions from the defending counsel. In spite of strenuous efforts, the counsel could not dislodge the Medical officer from his opinion. Subsequently, the houseman was put in the witness box. The houseman also opined that; as far as medical evidence showed, there was so scuffle. Later on, he was asked a number of questions, which were very leading and evoked the reply' yes '. The Medical Officer failed to realize their significance. Ultimately, the counsel asked the following questions to which the answer given was 'yes ' in both cases.

1) Doctor, is it not a fact that the injury 'was very Severe and fatal?

2) Does it not show that there was a terrific struggle?

This doctor had himself originally stuck to the opinion that there could not have been a struggle, as far as medical evidence showed, and now he admitted that there must have been a terrific struggle. The presiding judge rebuked the doctor for shifting his opinion and asked him whether he understood at all the implications of what he was saying. The only result of all this was that the houseman became more confused, and could not extricate himself from the awkward situation. This instance shows the importance of minor injuries from a medico-legal point of view and also emphasizes how a doctor must remain calm and cool and give proper answers according to his conviction without getting confused.

The defending counsel can ask all sorts of questions which are very confusing and exacting. Sometimes, minute anatomical, physiological and medical details are also asked by the counsel and the Medical Officer must be reasonably prepared to answer them in all cases, the Medical Officer must understand the question and then answer it. If the question is not clear he is at liberty to ask for clarification. His answer should be exact and to the question put.

The summons for attending the courts are sent in duplicate. The doctor who is to attend has to sign one copy and send it back to the concerned council and the other should be retained in the office. In order to avoid all confusion it is necessary to maintain a summons register. This should show the name of the Medical Officer called, name of the court, the date and time of hearing and the name and register number (indoor and / or outdoor) of the case-paper. This register should be checked by the principal Medical Officer as well as the R.M.O. and the Medical Officer concerned should be reminded on the previous day. It should be ensured that the Medical Officer is relieved of his duty and he attends on the date at the required time.

Doctors should not refuse to attend the Court or remain absent without proper intimation to the court. Medical Officers are usually treated with consideration but they must realise that they are liable to be pulled up for contempt of court for such lapses, It is quite illogical to say that the doctor cannot attend the court on account of other work. The court work has precedence, over other work. Courts also consider the preoccupations of Medical Officer with medical work and inform the Medical Officer the exact time his evidence would be taken so that the time of a Medical Officer is not wasted. It is, therefore, incumbent on Medical Officer to respect the order of the court. Instructions have already been issued by this Office vide Appendix 31.

It should be easy to identify the name of the doctor or the name of the principal doctor who has treated the case from the records on the case-papers. In fact, as already stated the name of the doctor or the name of the principal doctor should be written on the case-paper. It is observed that occasions arise where it is difficult to find out which doctor treated a particular case. Medical Officers are frequently transferred from one place to the other and it actually happens that the office from which he has been transferred does not know the Medical Officer's subsequent address. The difficulty, therefore, arises in transmitting the summons to the new address or supplying the address to the Police or Court. The new address should, therefore, invariably be kept on record in detail. This must also invariably be done in the case of those who leave the service on any account. In cases where more than one Medical Officer has treated the case by way of continuation of treatment the Medical Officer who examined the case first and who handled the important treatment or issued Certificates, should attend the court. There should be a principal M.O. for each M.L. case.

Sometimes there is difficulty in finding the Out-patient and In-door case records of the patients concerned in court-cases. This is quite indefensible. As already stated, the case-papers

should be filed serially month wise and they should be under lock and key with the R.M.O. In case a paper is removed from the bundle, a paper should be inserted to show to whom the paper was issued and the purpose for which was issued with signature of the person. The R.M. O. must see that the paper is returned immediately after the work is done. It is the duty of the Medical Officer to make available the case-papers to the court whenever required- vide Appendix 29. A duplicate copy of the case-paper in addition to the entries made in the medico-legal register should be made in such cases, as already stated.

Before appearing in the court, the Medical Officers should study the case papers thoroughly and brush up any points about which he may have doubt by referring to the standard books. The attendance should, be with full realisation of the importance attached to medical evidence. Many times, medical officers cut a very poor figure in the court of law and become subjects of derision and laughter. The Medical Officer should refresh his knowledge of the Anatomy and also normal size and weights etc., as well as medicolegal significance of the problem. .

The examination in the court of law consists of.

- 1) The examination in chief,
- 2) The cross-examination,
- 3) The re-examination.

Examination in Chief:

12.34. This is one, which is taken first. Leading questions are not allowed in this examination. The Medical officer has to answer relevantly the questions put to him. As a rule, he should not supply additional information extra opinion or comments. The answers have to be to the point.

Cross Examination:

12.35. This follows the examination-in chief and in this, leading questions are allowed. Many times the Defending counsel Will try to put words in the mouth of the Medical officer. There is a great amount of Latitude. Give to the defending counsel in this respect. At times the defense counsel may put question, which maybe irritating, but the Medical officers must not be perturbed and must give their opinion supported by facts of the case observed by them. Defense Counsels even go to the extent of asking the age and experience and ridicule the fact of being young or having very little experience. The Medical Officers should not be upset as long as they give there opinion supported by facts of their observations. The courts always take care to see that the Medical Officers are not unnecessarily harassed.

Re-Examination:

12.36 After the cross - examination is over, there could be what is called re-examination' conducted by the counsel who conducts the examination chief. In this examination no new matters can be introduced. It is only for the purpose of clarification of any matters that may have been raised during the cross-examination. The court, of course, has unlimited powers of asking any question for clarification at any time.

While answering the questions during any of these examinations, the basic philosophy should be to stick to the true facts of the case. A medical Officer should also give his opinion according to his best possible judgment, which he should be prepared to defend with sufficient technical knowledge.

Many times, the defending counsel will quote extracts from certain books and throw them as a challenge to the Medical Officer's statements. Before, committing by giving definite replies in such cases the Medical Officer should call for the book. He should make sure that it is by a recognized author and that the edition is latest or nearly so and read the whole relevant portion. Many times, words or portions tom out of context may assume a different meaning.

PRIVILEGED COMMUNICATION

12.37. A Medical Officer should remember that communication between him and the patient are not considered as privileged. This is in contrast to the communications between a lawyer and his client. The Medical Officer will have, therefore, to divulge any communication, if asked to do so, in the court of law.

The Medical Officer cannot refuse to answer any questions unless they are irrelevant in which case the court usually intervenes.

Sometimes, Medical Officers who have not examined cases under trial are called upon to give Evidence as expert witnesses. The medical officers should not consent to give such evidence unless they are Confident about their knowledge on the subject. While giving evidence in the court of law the Medical Officers should, as far as possible, talk in terms of common language and avoid highly technical terms.

The Medical Officers are often required to give evidence in the lower court as well as in the higher court. It is quite necessary that the opinions and the reports should not be contradictory. The Medical Officers should remember that they are allowed to refresh their memory from case notes and records. They can also have the help of statements made by them in the past, which may have been prepared by them or under their instructions, and also of Medical textbooks. They can refer to the previous reports they have made regarding the case, at the time they were treating the patient. They can see copies of reports, submitted by them, if the court has been furnished with copies of the reports. By taking resource to all this, the Medical Officer should ensure that there is no contradiction in their evidence in two courts.

As an expert witness, a doctor can volunteer a statement if he thinks that injustice will result if such a statement is not made. The Medical Officer should also never try to imagine or concoct evidence due to force or pressure of the court atmosphere. If he does not, in fact, remember, he should say no. He should be willing to admit his ignorance of a particular subject rather than make incorrect statement, which later he may find difficult to support.

12.38. Law as Applied to Medicine: Medical law consists of two parts namely the application of Medical knowledge to law and the application of knowledge of law to medicine. The former is called Forensic Medicine, the latter is concerned with legal rights, powers, privileges, duties and obligations of medical practice.

The Medical profession is governed by legislation and also by a code ethics and etiquettes. Thus all Hospitals and medical practitioners must be aware of the second aspect namely application of legal principles bf the practice of medicine and medical ethics and etiquettes.

The members of public are now becoming more and more law conscious. Occasions do arise when medical practitioners are sued. It is therefore necessary for them to know the law governing their profession. They must know their legal liabilities and responsibilities.

Every hospital should have a copy of the book "Medical Law and ethics in India" by Dr.H.Mehta M.S., EC.P.S., Bombay. This contains information on various aspects of medical ethics and etiquettes, Disciplinary councils, rights of and duties of medical practitioners, medical negligence, etc.

Doctors working in the hospital and especially in the casualty, outpatient department, in-door Wards and operation theatre have to be careful in this respect. Mistakes may appear trivial but the Consequences can be very great and such as to put the hospitals in difficulty.

Any accident in any section of the hospital creates a medico-legal problem for the hospital for Example death due to sudden allergy. Following an injection, death on a operation table, death due to a Inadvertently wrong administration of medicines, injections etc. In the operation theatre legal action for Negligence against surgeon and hospital authority may be taken for failure to remove a swab or instrument From patients' body.

Operations are sometimes done on the wrong patient or on the wrong side. This creates legal Problems. It may be mentioned here that if death following a surgical operation on a patient for the treatment of injury, the assailant responsible for the death if it is proved that the death was unavoidable even without the operation and if the operation was considered necessary and was performed by a competent Surgeon with reasonable care and skill.

Hospital Authorities are liable for the acts of its employees. The relationship between a doctor and patient is in the nature of a contract.

The responsibilities accepted by the doctor when he accepts a case for treatment are:-

- a) To use proper skill and necessary care.
- b) To maintain secrecy.

The patient on the other hand undertakes:-

- a) To carry out the instructions of the doctor.
- b) To impart such information as necessary for, treatment.
- c) To pay fees for the services

Medical Malpractice or negligence is classified as under: _

(i) Ethical Malpractice - Such as adultery, association with unqualified treatment of patients, alcohol, Abortion etc. The offences for which state Medical Council takes direct action.

(ii) Civil Malpractice - It is a negligence arising out of the performance of professional duties or the exercise of professional skill, in cases where it is found in the way of under noted points:-

- a) *Examination and Diagnosis* - Not using proper aides of investigation and' therefore arriving at a wrong diagnosis.
- b) *Reference to Specialist or Second Opinion* - Not referring to a specialist where the case demands a specialist care. '
- c) *Moving the patient*- When he is not in a fit condition .

d) Continuation of Treatment - Failure to examine periodically and therefore resulting in serious injury to the patient. ~

e) Taking over a Case From Another Practitioner. Relying fully on the diagnosis of another doctor and treating the patient without personally examining the case thereby causing an injury to patient.

f) Negligent Acts of Third Person- While delegating the task of treatment the doctor is not absolutely absolved of the responsibility. He will be responsible in case of injury on account of the negligence.

g) Informing the patient of his Condition - In some cases it is better to keep information of patient's condition, concealed if the doctor is reasonably satisfied, that it would be better for the patient not to know it. But in some cases the position becomes otherwise where the concealment is unreasonable .

h) Departure form approved methods of treatment.

i) Prescription and Doses - Omitting to write dosage in the prescription. The physician must be careful while prescribing through phone.

j) Foreign Body Left in the patient - Leaving the swabs and instruments inside the abdomen at the end of operation. In such cases the principle *Ipsa LOquitur* applies as the thing speaks for itself.

k) The use of Special Apparatus in Diagnosis and Treatment - Not using special therapeutic aides and if at ail using, handling by untrained personnel

l) Infection arising out of negligence

iii) Criminal malpractice: Is the negligence arising out of performance of professional duties or the exercise of professional skill.

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