



Sara Bird

How to write a medico-legal report

Background

The preparation and provision of medico-legal reports by the treating doctor is an inevitable but sometimes unwelcome part of general practice.

Objective

This article outlines the steps involved in preparing a 'good' medico-legal report, including some of the common pitfalls to avoid.

Discussion

General practitioners play an important role in providing medico-legal reports about their patients for a wide variety of purposes. A medico-legal report may be seen by a diverse, non-medical audience. Once prepared, the report may be used as evidence in court proceedings and subjected to close scrutiny. A structured and comprehensive medico-legal report may minimise the chances of having to give evidence in court.

Keywords

medicolegal aspects; medical records; ethics, professional

caused Mrs Z considerable distress, revealing confidential information that was not known to her family.

Types of medico-legal reports

A request for a treating doctor to prepare a report for legal purposes may be received from:

- a patient
- a solicitor
- an insurer
- a statutory authority (eg WorkCover)
- an employer
- the police
- a court.

Am I obliged to provide a treating doctor medico-legal report?

In general terms, there is no legal obligation for you to prepare a report, although some statutory bodies (eg AHPRA, WorkCover) can require the preparation of a report in certain prescribed circumstances. However, a treating doctor has a professional and ethical obligation to assist by providing factual information concerning a patient's condition or injury, at the patient's request, to the patient's legal advisers or, with the patient's consent, to other nominated third parties. Importantly, although there is an ethical obligation to assist the patient by providing a factual report, you are under no obligation to provide an opinion in your report.¹

Before preparing a medico-legal report

Before preparing the report:

- Ensure that you have the permission of the patient to provide the report. Ideally, any medico-legal report should be prepared in response to a written request, accompanied by an appropriate signed authority and/or the express permission of the patient. It may be appropriate to confirm directly with the patient that the authority is valid by ensuring that the patient is aware of what has been requested and that they agree to the release of this information.

Case history

The general practitioner (GP) received a letter from solicitors acting for one of his patients, with an enclosed authority signed by the patient. The patient's solicitors requested a report outlining the GP's involvement with their client, including the patient's initial presentation, diagnosis and management. The GP provided a report that included the following statement as part of the description of the initial consultation:

'The patient first came to see me with Mrs Z, her mother-in-law. I had treated Mrs Z for many years for chronic depression, which was the result of domestic violence, and she thought the patient would benefit from my considerable expertise in managing mental health problems.'

One year later, the GP received a letter stating that the Australian Health Practitioner Regulation Agency (AHPRA) was conducting an investigation into his professional conduct. In her letter of notification to AHPRA, Mrs Z had stated that the patient had used the GP's report in Family Court proceedings. This had

- Know the nature and purpose of the report. Clarification from the requesting party should be sought if the purpose of the report is not clear. Be wary of requests from patients for reports addressed 'to whom it may concern'.
- Use the medical records to prepare the report. Do not rely on your memory or the information provided by the requesting party.

Format for a medico-legal report

In the report, it is useful to include headings and, if the report is long, numbered paragraphs. A suggested format for a medico-legal report is as follows:

- patient's name and date of birth
- requesting party's name, date of the request and purpose of the report
- your credentials, including professional address, qualifications, experience and position at the time you were involved in the patient's management
- medical facts in chronological order:
 - presentation (history and symptoms)
 - examination findings
 - investigations
 - provisional diagnosis
 - treatment/management
 - current condition
- response to questions (if any)
- your opinion (if appropriate)
- signature and date of the report.

If you are answering questions that have been posed in the request for a report, include the questions in full in your report followed by your answers. Remember you are not obliged to answer the questions if they require you to give an opinion, only to provide the facts as known to you.

If you have no independent recollection of your management of the patient, the information in your report will be based solely on what is recorded in the medical records (eg 'I have no independent recollection of my involvement in the patient's care. According to the medical records, the patient presented on [date]. I recorded the following history: "Punched in pub. Complaining of painful nose". I performed an examination, which I recorded as follows ...').

The extent of the medical information included in the report will be dependent on the nature of the report and is a matter of clinical judgement.

Information that is not relevant to the report need not be included but relevant matters must not be omitted (eg a pre-existing history of back pain should be disclosed in a workers compensation claim for a back injury).

Professional obligations

*Good Medical Practice: A Code of Conduct for Doctors in Australia*² states that good medical practice involves:

- being honest and not misleading when writing reports and certificates, and only signing documents you believe to be accurate
- taking reasonable steps to verify the content before you sign a report or certificate, and not omitting relevant information deliberately
- preparing or signing documents and reports, if you have agreed to do so, within a reasonable and justifiable time frame
- making clear the limits of your knowledge and not giving opinion beyond those limits when providing evidence.²

Legal obligations

A number of courts have an Expert Witness Code of Conduct, which a person must comply with in order for their report and evidence to be admissible in court. These codes are applicable to a medical expert who is providing an opinion at the request of one of the parties in the matter before the court. In most cases, these doctors will be independent medical experts who have had no direct involvement in the care of the patient.

On occasion, however, a treating doctor may be asked to provide a report and abide by the Expert Witness Code of Conduct. If you are asked to abide by the Expert Witness Code of Conduct, you should ask the requesting party to provide you with a copy of the relevant code, and seek advice if you are unsure of your obligations. Requirements in an Expert Witness Code of Conduct include:

- Duty to the court
 - An expert has an overriding duty to assist the court on matters relevant to the expert's area of expertise.
 - An expert is not an advocate for a party.
- Form of expert report – the report must include:
 - the expert's qualifications
 - all material facts and assumptions on which the report is based
 - the reasons for each opinion expressed

- if applicable, that a particular question or issue falls outside the expert's area of expertise
- references to any literature or other material relied on to support the opinion
- any examinations, tests or other investigations the expert has relied on, and details of the person who carried them out
- acknowledgement of and agreement to abide by the code
- statement if the opinion is provisional because there is insufficient data or for any other reason.

It is important to be aware that any opinions expressed in a medico-legal report will often come under particular scrutiny by the reader of the report and may be publicly tested and challenged in court. The weight given to the opinion will generally be dependent on the expertise and experience of the author.

As outlined above, a treating doctor is not obliged to provide an opinion in a medico-legal report. Indeed, some opinions may be beyond the expertise of the treating doctor. In these circumstances, it is appropriate to decline to provide an opinion, and to provide factual information only. An independent expert medical opinion may then be sought, based on the facts provided by the treating doctor and/or the medical records.

Tips and traps

- Ensure that you have the patient's permission to provide a report – the most common cause of complaints arising from the provision of treating doctor medico-legal reports is a breach of confidentiality and privacy. Special care needs to be taken in Family Court matters where you may have treated both parties and you are asked to prepare a report by one of your patients involved in the proceedings. It is essential that your report does not divulge any information you have received from any other patient.
- Prepare your report within a reasonable time frame – if necessary, discuss this with the party who has requested the report.
- Always refer to your medical records when preparing the report.
- Remember that you may be cross-examined on your report – only write what you would be prepared to say under oath in court.
- Do not alter your report at the request of your patient or a third party – if you receive additional

information, or you have made a mistake, provide a supplementary report.

- Explain medical abbreviations, terms and concepts – eg ‘He had a GCS (Glasgow Coma Scale) of 15. The GCS is method of recording the conscious state of a patient. A GCS of 15 means he was fully conscious’.
- Avoid the use of legal terms – eg instead of ‘grievous bodily harm’, describe the injuries suffered by the patient.
- Do not record the patient’s history of events as ‘fact’ – eg ‘When asked what happened, Mr A said he was hit by a car’ not ‘Mr A was hit by a car’; and ‘In my opinion, Ms B’s depression has been caused by the reported behaviour of her husband’ not ‘The behaviour of Ms B’s violent and aggressive husband has caused her depression’.
- Differentiate fact(s) from opinion(s).
- Beware of providing an opinion that is beyond your knowledge – eg ‘The patient is unfit for pre-injury duties’ requires an adequate knowledge of what the patient’s work duties were.

- Do not act as an advocate for your patient – you should not deliberately omit any relevant information.
- Avoid emotive language.
- Seek advice from your medical defence organisation if you have any concerns, including asking to review your draft report.

Key points

- The provision of accurate, comprehensive and timely medico-legal reports is part of the GP’s role.
- Before preparing a medico-legal report, know the purpose of the report and be careful not to breach patient confidentiality.
- A treating doctor is not obliged to provide an opinion in a medico-legal report.

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Competing interests: None.

Provenance and peer review: Commissioned, externally peer reviewed.

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This article is provided by MDA National. They recommend that you contact your indemnity provider if you have specific questions about your indemnity cover. The scenarios are based on actual medical negligence claims or medico-legal referrals; however, certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

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