



Guideline – Medico-Legal Consultations and Examinations

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Summary

This guideline provides clarification on the conduct and administration requirements of NSW registered practitioners providing medico-legal consultations and examinations.

Applies to (Scope)

NSW registered practitioners
Medical Council of NSW staff and members

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| Document Owner | Functional Group/Subgroup |
| Executive Officer, Medical Council | Medical team |

Medico-Legal Consultations and Examinations Guideline

1. Purpose

The Medical Council of NSW receives many complaints about medico-legal consultations. In these circumstances, the practitioner is not in a therapeutic relationship with the person being examined (the consumer), and the interview and examination may need to be more extensive than the consumer might have been expecting. While some procedures may be simple or routine for the practitioner, they may not be for the consumer. Effective communication is crucial, especially when the consumer may be nervous and anxious about the possibility of receiving an adverse medical report from the practitioner, and the potential impact on the outcome of the legal or other process for which they are undertaking the examination.

2. Key Principles

Practitioners are reminded that they have a duty to act in an ethical, professional and considerate manner when examining people, whether or not they are responsible for their care. The same level of professional skill is required of a practitioner acting in a medico-legal capacity as in a therapeutic setting.

Practitioners practising as medico-legal consultants are practising medicine, and accordingly are subject to the provisions of the Health Practitioner Regulation National Law (NSW) regarding their conduct, health and performance and must abide by the Medical Board of Australia's Good medical practice: a code of conduct for doctors in Australia.

Practitioners should only undertake medico-legal assessments in their areas of expertise and should decline a request if:

- they are not adequately qualified or experienced;
- there may be a conflict of interest (personal, work-related, or financial); or
- for any other reason they are unable to complete the task within the terms stipulated by the third party

At all times, practitioners should treat the consumer with dignity and respect. To avoid appearing insensitive, rude, or abrupt in their manner or rough in their examination, practitioners are advised to give particular attention to identifying the consumer's concerns, and to adequately explain the reasons for the examination and how it will be conducted. Adequate time should be allowed for the consultation to enable a complete assessment to be carried out.

3. Use of this guideline

THE CONSULTATION

1. At all times, the practitioner should communicate with the consumer in language that they can understand.
2. The consumer has the option of having an accompanying person present during the history and/or the examination. This should be explained to the consumer when the interview is being scheduled. The role of the accompanying person is to support the consumer, but not to answer questions or contribute to the assessment. However, should the consumer have an intellectual or speech difficulty, it is appropriate for the accompanying person to assist in the communication between practitioner and consumer.
3. A professional interpreter should be used where the consumer has difficulty with spoken English. Interpretation should not be provided by a support person or member of the consumer's family. Interpreters can be organised via the Translating and Interpreting Service (TIS National); NSW Health Care Interpreting Services (HCIS) (NSW Health staff); or through Multicultural NSW Language Services.
4. The practitioner should not make any unnecessary personal remarks, especially when the consultation involves an intimate examination.
5. The practitioner should be sensitive to cultural diversity, and respectful of the consumer's personal circumstances such as possible trauma or mental health issues, especially when conducting an intimate examination.
6. As an aide memoir or to clarify disputes about assessments some practitioners choose to video or audio record the examination:
 - a. The reason for this should be clearly explained to the consumer and consent must be obtained in advance.
 - b. In accordance with health and privacy legislation, video and audio records must be kept secure for
 - i. an adult 7 years from the date of the recording
 - ii. a child or young person until the age of 25 years
7. The practitioner should not offer any opinion to the consumer on their claim or medico-legal circumstances.
8. The practitioner should not offer any opinion on the consumer's medical or surgical management by other practitioners.
9. In the majority of cases it is appropriate to advise the consumer of an incidental clinical finding which has been identified by the examining practitioner. There may be some situations where it is preferable to notify the consumer's treating practitioner.
10. It is not appropriate for the practitioner to undertake any form of treatment in relation to the consumer.

THE INTRODUCTION

1. The practitioner should properly introduce themselves and explain their specialty field of medicine in language which the consumer can understand.
2. The practitioner should explain the purpose and nature of the consultation and examination and that it is not the practitioner's role to treat the consumer.
3. The practitioner should be aware that the patient may believe that they are not independent but are working for the third party. The practitioner should explain that their role is that of an independent reviewer who is providing an impartial opinion for use in a court or before another decision-making body and that there are limitations on the confidentiality of the assessment.

THE INTERVIEW

1. The practitioner should limit their questions to matters that are relevant to the purpose of the assessment, prefacing personal questions with an explanation as to why they are necessary.
2. The consumer should be given an opportunity to provide information that they believe may be relevant to the assessment.

THE PHYSICAL EXAMINATION

1. It is essential that prior to commencing an examination, the practitioner explains which part of the body is to be examined, why it is to be examined, and what the examination entails, including the extent to which undressing is required. The position of the practitioner during the examination should also be explained, particularly when the practitioner will be standing behind the consumer.
2. The consumer's modesty should be preserved by;
 - the provision of a screen behind which the consumer can undress and dress,
 - the practitioner excusing themselves from the consulting room whilst the consumer is undressing,
 - the provision of a gown or sheet for modesty
3. The practitioner should examine the consumer in privacy, unless the consumer has brought a support person to be with them at that time, although the practitioner may choose to have a chaperone present during the examination.
4. Examination should be limited to the area relevant to the consumer's problem. It is inappropriate for a practitioner to examine any part of the body without the consumer's consent. This may limit the scope of the practitioner's examination and subsequent report.
5. If an intimate examination is warranted, the reasons and nature of the examination must be carefully explained to the consumer, and the consumer's permission obtained. This should be noted in the report.

THE REPORT

1. The practitioner should ensure that their report contains both the consumer's history and examination findings and that it notes all diagnostic possibilities. Any limitations to a full assessment should be noted.
2. The report should be impartial and unbiased, and reflect the practitioner's consideration of the available opinions of other practitioners and health professionals who have assessed, treated or provided reports on the consumer in the past.
3. The practitioner should not offer any opinion on the consumer's medical or surgical management by other practitioners.
4. The report should be completed within the timeframe requested by the third party unless there are foreseeable delays or the deadline is unreasonable, in which case the practitioner should negotiate a new timeframe.
5. The report should set out the material relied upon and any assumptions made.
6. The report should be comprehensible, easy to read and explain medical terminology.
7. The practitioner should be aware of the risks inherent in utilising their previous reports as the basis of a subsequent report without further review of the consumer.

4. Legislation and References

- The Health Practitioner Regulation National Law (NSW).
- Medical Board of Australia's Good medical practice: a code of conduct for doctors in Australia.
- Health Records and Information Privacy Act 2002
- Surveillance Devices Act 2007

5. Related Policies

Nil.

6. Definitions & Abbreviations

| Term | Explanation |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ahpra | Australian Health Practitioner Regulation Agency |
| Council / we / our | relevant Health Professional Council. The Councils established under section 41B of the Health Practitioner Regulation National Law (NSW) No 86a. |
| HCCC | Health Care Complaints Commission |
| HPCA | Includes the individual health professional Councils and the support functions and business units. The HPCA is an administrative unit of the Health Administration Corporation. |

MEDICAL COUNCIL OF NSW

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| Registered practitioner | Includes identified groups of health practitioners practising in New South Wales whose health, performance and conduct are regulated by a Health Professional Council. |
| Council members | Includes the office holders and members of the individual Health Professional Councils and their associated Committees. |
| The Law | The Health Practitioner Regulation National Law (NSW) No 86a |
| Staff | Includes permanent, temporary, casual, contractors or consultants, working in a full-time or part-time capacity, at all levels of the HPCA. |

7. Revision History

| Version | Approved By | Amendment notes |
|-----------------------------------------------------------------------------|-------------|-----------------|
| June 1996 September 2001 April 2003 December 2004 December 2005 | | |