

NEW SOUTH WALES MEDICAL BOARD

POLICY

TITLE	GUIDELINES FOR MEDICO-LEGAL CONSULTATIONS AND EXAMINATIONS	FILE REF	DD10/10871
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The Medical Board receives many complaints about medico-legal consultations. In these circumstances, the practitioner is not in a therapeutic relationship with the examinee, and the interview and examination may need to be more extensive than the examinee might have been expecting. While some procedures may be simple or routine for the practitioner, they may not be seen as such by the examinee. Effective communication is crucial, especially when the examinee may be nervous and anxious about the possibility of receiving an adverse medical report from the practitioner.

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 Medical Practice Act, 1992 regarding their conduct, health and performance and must abide by the Board's Code of Professional Conduct: *Good Medical Practice*.

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),
- 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 examinee with dignity and respect. In order 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 examinee's concerns, and to adequately explain the reasons for the examination. Adequate time should be allowed for the consultation to enable a complete assessment to be carried out.

In order to avoid misunderstandings between practitioners and examinees, the Board has endorsed the following guidelines:

THE CONSULTATION

1. At all times, the practitioner should communicate with the examinee in language that they can understand.

2. The examinee has the option of having an accompanying person present during the history and/or the examination. This should be explained to the examinee when the interview is being scheduled. The role of the accompanying person is to support the examinee, but not to answer questions or contribute to the assessment. However, should the examinee have an intellectual or speech difficulty, it is appropriate for the accompanying person to assist in the communication between practitioner and examinee.
3. A professional interpreter should be used where the examinee has a difficulty with spoken English. Interpretation should not be provided by a support person or member of the examinee's family.
4. The practitioner should not make any unnecessary personal remarks, especially when the consultation involves an intimate examination.
5. The practitioner should be aware of differing cultural sensitivities, especially when conducting an intimate examination.
6. Some practitioners choose to video or audio record the examination. The reason for this should be clearly explained to the examinee and consent should be obtained in advance.
7. The practitioner should not offer any opinion to the examinee on their claim or medico-legal circumstances.
8. The practitioner should not offer any opinion on the examinee's medical or surgical management by other practitioners.
9. In the majority of cases it is appropriate to advise the examinee 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 examinee's treating practitioner.
10. It is not appropriate for the practitioner to undertake any form of treatment in relation to the examinee.

THE INTRODUCTION

1. The practitioner should properly introduce himself or herself and explain his or her specialty field of medicine in language which the examinee 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 examinee.
3. The practitioner should explain that his or her 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 practitioner should be aware that the patient may believe that they are not independent, but are working for the third party.

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 examinee 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 examinee.
2. The examinee's modesty should be preserved by;
 - the provision of a screen behind which the examinee can undress and dress,
 - the practitioner excusing himself or herself from the consulting room whilst the examinee is undressing,
 - the provision of a gown or sheet
3. The practitioner should examine the examinee in privacy, unless the examinee 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 examinee's problem. It is inappropriate for a practitioner to examine any part of the body without the examinee'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 examinee, and the examinee's permission obtained. This should be noted in the report.

THE REPORT

1. The practitioner should ensure that their report contains both the examinee'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 examinee in the past.
3. 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.
4. The report should set out the material relied upon and any assumptions made.
5. The report should be comprehensible, easy to read and explain medical terminology.
6. The practitioner should be aware of the risks inherent in utilising his or her previous reports as the basis of a subsequent report without further review of the examinee.