

Publications of the Criminal Courts Number (25)

Section 1: Duties and Responsibilities of Doctors in Forensic Medical Cases

Section 2: Medical Evidence in Criminal Cases

Section 3: Hierarchy of Paramedics and Nurses

1\ Forensic medical work is one of the most important duties and responsibilities of a doctor. In criminal cases, particularly cases of murder and other offences involving physical harm, medical evidence is a key factor allowing the court to arrive at a decision; in murder cases, the life of the accused may depend on it. Given this, it must be stressed that the work doctors do in this field depends on their ability to pay close and meticulous attention when preparing reports and presenting evidence to the court during trials of this kind.

2\ It is of paramount importance that whenever a doctor is brought to work on a medical legal case for the first time, they make detailed notes of their observations at that time, as their medical opinion will carry greater weight if based on an in-person examination of the victim or corpse, and this will enable them to refer back to their notes and use them as an aide-memoire while testifying in court, on condition that they took those notes during the examination or directly after it.

3\ When a doctor examines a person or corpse they should [not] limit themselves to visible injuries and injuries pointed out by the police, because at that point there may be important information that the police have missed which the doctor, with their medical knowledge and experience, can provide them with in their notes and may be of use to them in their investigation. Furthermore, the court may ask for information on some aspect which the police have ignored or took place after the trial had begun.

(The appendix to this publication contains the questions a doctor is required to answer in the cases most commonly encountered in court. It is not comprehensive and may be adapted or altered to suit the particulars of each respective case.)

4\ When the court asks the doctor to reveal information about the accused, the doctor must examine them with the same attention to detail that they would employ for any patient or corpse, and must enquire into every wound inflicted no matter how slight, as this could be very important for the accused's

case may depend on being able to demonstrate these injuries. It is the doctor's duty to be completely impartial and thorough to help the court uncover the truth.

5\ The court might have no need for a doctor to be present at the trial if a written report has been submitted or if their evidence has already been admitted to the trial by a criminal judge in the presence of the accused (article 228 of the Law on Criminal Proceedings). It is good practice in the pursuit of justice, and saves wasting the time of the doctors and judges involved, for doctors' reports under article 228(2) to be both full and clear. If they are not, the doctor shall be sent for again to give clarification or fill gaps in the report, which can lead to inconvenience and delays.

a\ The box provided should be filled out in detail (by a medical official).

b\ If the victim is in a dangerous state of health, this should be noted down in the appropriate box, and if the patient makes any statement relating to their state of health or injuries and how they happened, this should be recorded in full; this is important particularly when it is possible that the patient may die and the police may have no access to statements made by them before their death, and thus anything they say to the doctor would become important evidence.

j\ The language used must be simple and easy to understand, because judges and policemen normally only possess a modest degree of technical medical knowledge or none at all, and will need clarifications, explanations or even the doctor to be summoned to testify if they do not understand the contents of the report, which leads to time being wasted.

d\ Locations of injuries are to be indicated on a drawing of the victim appearing in the official form. This simple and quick approach allows a layperson to understand more than an equivalent technical report, no matter what level of proficiency they have in verbal explanations.

h\ Once the official form has been completed in full, it is to be sent to the police as soon as possible. Any delays could impact on the investigation. This report is an initial one which can be updated later on. For example if the cause of death is unknown at the time of the report, it must be recorded as such, or if it is feasible to do so, one or two possible causes of death may be given. This allows the police to concentrate their investigation around a couple of possibilities.

7\ When a patient is transferred from one hospital to another, it is up to the doctor responsible for them to report which hospital they have been transferred to in the medical legal case and inform the police as well.

8\ When a doctor is transferred from their place of work or goes on holiday and is aware of an ongoing criminal case for which they may be called to give evidence, they must inform the police before being transferred or going on holiday. This arrangement is beneficial both to the doctor personally and to the course of justice, to avoid the doctor being recalled from their holiday or to their previous place of work to give evidence with all the associated delays, costs and trouble.

9\ Sometimes, the police will ask for a doctor to accompany them to the crime scene or the location of the corpse. This is a legal requirement in cases of murder or serious injury (article 112 of the Law on Criminal Proceedings).

It is of great importance that a doctor should go with the police and be present in these kinds of case. Should the doctor fail to do so following a reasonable request, this will be considered to be in contravention of their official duties.

Moreover, this omission may bring about dire consequences such as a victim who could have been saved dying, or a murder going unconvicted.

10\ When a doctor appears in court to give evidence they shall be allowed to inquire of the court clerk or the judge as to the approximate amount of time that their testimony will take. It is the duty of the court to make sure that doctors are not kept waiting for unnecessarily long periods of time to give evidence. There may occasionally be a delay for valid reasons.

11\ Before entering the court, it is up to the doctor to use the notes they prepared earlier to refresh their memory of the facts of the case, and to take these notes with them into court, as this will allow them to make use of these notes during the trial (with reference to clause (2) above).

12\ It will be beneficial for the doctor to adhere to the following guidelines when giving evidence to the court:

a\ to listen closely and carefully to the entirety of the question asked and to answer that question alone.

b\ if they have not understood the question fully, to ask the court to repeat it a second or third time if this is needed to understand it.

j\ if they believe that the court has made any mistake regarding a medical matter, the doctor must be allowed to correct this.

d\ they must not be waylaid from the main narrative of their testimony by distracting questions directed at them by lawyers; if any questions asked of them are inappropriate, the court must take responsibility to defend them from these questions; if they do not understand a lawyer's questions, they must ask for them to be repeated until they have understood.

h\ the doctor must, as they do in when writing their reports, use simplified and accessible language that can be understood by laypeople with no specialised knowledge, as well as by the court and the defendant.

w\ if the doctor knows the answer to any question, they should not hold back or feel afraid to give it, and if they have made a mistake they must draw the court's attention to this; even doctors are not infallible, and honesty in these situations is to be accepted and encouraged.

z\ the doctor must always be mindful that the court is not versed in medicine and is completely dependent on the expert knowledge and experience of doctors. This places a sizeable responsibility on the shoulders of the doctor, who comes to the court to assist it in establishing the truth of the matter, on which rests the life and/or freedom of the defendant.

Section 2

Doctors' Evidence in Criminal Cases

Date of issue: 15/06/1952 (Gregorian)

1\ If the course of justice requires that a doctor should be summoned to give evidence in a criminal case then this must be arranged no matter what inconvenience this causes the doctor or the Ministry of Health.

a\ in cases presided over by criminal judges, a medical report may be accepted concerning injuries inflicted and the physical cause of death, so long as it is clear and complete, as per article 22(2) of the Law on Criminal Proceedings, waiving the need to summon a medical official. If the report is not completely clear the court must return it to the doctor to be completed to a satisfactory standard, indicating the points on which the court requires additional information. The report must also be read aloud and the defendant must be asked if they have any objections to anything that it contains; any objections

must be noted down. If this objection appears to be justified or if it affects the reasoning [of the court] then ideally, in the interests of justice, the same doctor should be summoned to give their testimony in person. The judge or the court should therefore instruct the doctor to appear before them as a witness.

b\ in general, during the judicial investigation the same procedures

j\ during trials of the major and minor courts, and when the medical aspect of the case is decisive in issuing a resolution (generally speaking, for crimes committed against the mind or body) a doctor must be called as a witness. The the court must inform the doctor of the approximate date and time at which they are to give their testimony and endeavour to hear their testimony, where possible, at the stated time.

3\ A list of standard questions for cases such as these, which the court should bring to attention and address to the doctor, are included in an appendix to this publication. It is not comprehensive and may be altered to suit the particular circumstances of each respective case.

Section 3

Evidence given by paramedics and nurses

Date of issue: 15/06/1952

1\ The court must practise the highest degree of care when accepting and weighing up the medical evidence brought by paramedics and nurses due to the limitations of their knowledge and training.

2\ Paramedics and nurses perform important general roles which are of vital importance in their particular fields. However, they are not experts in medical matters and should not be summoned to give expert evidence. Their testimonies should be limited to events that took place in their presence, based on their observations and degree of medical knowledge. It would however be dangerous to take their opinions on matters that demand deduction and drawing conclusions.

It is established practice that their testimonies should be limited to factual injuries and behaviour observed, ie. the court should treat it as they would treat evidence brought by any intelligent person with a capacity for observation and the ability to describe bodily injuries, or who knows of the

simple tests used by paramedics to determine if a person is drunk, or can understand words spoken by somebody dying or suffering from serious injuries.

3\ The weighting of such evidence is left entirely to the discretion of the court, and the conclusions they draw should depend to a great extent on the mental capability, level of training and period of service of the paramedic or nurse, as well as the experience they have had in situations similar to the one at hand.

Appendix to criminal publication number (25)

Subject: some questions that may be addressed to a doctor in forensic medical cases

Date of issue: 15/06/1952

1\ Poisoning:

1\ have you examined the body of the deceased residing in and if so, what did you observe?

2\ in your opinion, what was the cause of death? Give your reasoning.

3\ did you find any external marks on the body that indicate the use of violence? If so, describe these.

5\ to what cause would you ascribe these traces: to illness, poisoning or another cause?

6\ if the cause was poisoning, how would you classify the poison used?

7\ have you formed any opinion on what poison was used in particular?

8\ did you find any traces of illness in the body of the deceased besides the traces that normally appear in cases of poisoning by? If so, describe them.

9\ do you know of any illness which, in an autopsy, leaves traces resembling those that you have described in this case?

10\ to what extent do the traces left by that illness differ from those that you have found in the case at hand?

11\ what are the symptoms of this illness in a living body?

12\ are there any marks that appear in the autopsy in cases of poisoning by but were not present in this case?

13\ is it not possible that the traces which you have mentioned could result from instantaneous changes in the stomach following death?

14\ did it appear from the state of the stomach and intestines that the victim had vomited, or not?

15\ what are the customary signs of poisoning by?

16\ what is the normal period of time between the poison being administered and the symptoms of poisoning beginning to show?

17\ how long does(type of poison) generally take to be lethal?

18\ have you sent the contents of the stomach and any other materials for chemical analysis?

19\ where the contents declared and sealed up in your presence immediately after being extracted from the body?

20\ describe the vessel containing them and the type of seal used?

21\ have you submitted a report on the chemical analysis and has it now been presented to the court?

22\ if it is the corpse of an adult woman, what is the state of the uterus?

(2) Personal violence :-

1\ have you examined the body of the deceased residing in and if so, what were your observations?

2\ in your opinion, what was the cause of death?

3\ did you find any external signs of violence on the body? If so, describe these.

4\ in your opinion, were these injuries and/or wounds sustained before or after death?

5\ have you examined the inside of the body? Described to us any unusual traces that you observed.

6\ you reported that: in your opinion, was this the cause of death and on what timescale did the death ensue from it?

7\ did you find any other symptoms of illness on the body?

8\ if so, is it your opinion that even if the victim had not suffered from this illness, their injuries would still have been fatal?

9\ do you believe the fact the victim suffered from this illness decreased their likelihood of recovering from the injuries inflicted on them?

10\ do you consider that these injuries and wounds in their entirety, or one of them, could under normal [word missing] be a direct danger to the life of the victim?

11\ were these injuries caused by physical force or weapons?

12\ did you find anything strange or any strange substance in the wound?

13\ with what weapon was the injury or wound inflicted?

14\ is it possible that the injuries were inflicted using the weaponry you see before you (exhibit number)?

15\ was the victim able to walk or talk after being subjected to these injuries?

16\ have you carried out a chemical or other analysis on the traces (of the weapon used, the clothes etc.) that you see before you in the evidence brought (exhibit number)?

17\ do you believe there are any traces of blood?

18\ in your opinion, what amount of time elapsed between the injuries being inflicted and the victim's death?

19\ what is the orientation of the wound and are you able to form an opinion as to the position of the person who inflicted this wound in relation to the victim?

20\ is it plausible that anyone could have inflicted this kind of injury? Give your reasoning.

21\ (for gunshot wounds) give the specific orientation of the wound.

22\ does the appearance of the wound indicate that the firearm was discharged relatively close to or far away from the body?

23\ did you find a bullet, gunshot wound or shrapnel inside the body or having exited from it?

24\ do you reckon that you could have mistaken the entry wound for the exit wound?

(3) Strangulation (asphyxiation):

1\ did you examine the body of the deceased residing in and if so, what did you observe? Give your reasoning.

2\ in your opinion, what was the cause of death?

3\ were there any apparent external traces of violence on the body?

4\ did you notice any unusual traces when you examined [there seems to be a typo here, I assume it says "examined" - translator] the body internally?

5\ was there any rope or similar item around the neck when you saw the corpse?

6\ can you confirm with certainty whether the trace or traces or marks were created before or after the victim's death?

7\ with what kind of instrument was the victim strangled or hanged?

8\ is it possible that the rope or other instruments (exhibit number) which you see before you could have left the traces which you observed?

9\ is it your opinion that this rope or objects would have been able to bear the weight of the body?

10\ if this is a case of strangulation, would the injuries inflicted require extreme violence?

(4) Drowning: -

1\ have you examined the body of the deceased residing in and if so, what were your observations?

2\ in your opinion, what was the cause of death?

3\ were there any visible marks that drew your attention? If so, describe them to us.

4\ describe any apparent external traces that you observed after the subsequent examination?

5\ did you find any unusual substance such as straw or grass etc. in the hair of the victim or stuck to their hands or in their airways or hanging from any part of their body?

6\ did you find any water in the stomach of the victim?

(5) Rape:-

1\ did you examine the body of? If so, tell us the number of days that passed between the count of rape with which the defendant is being charged, and the examination being carried out. What did you observe?

2\ did you observe any traces of the use of violence around the vagina or adjacent to it?

3\ is it possible that these wounds or injuries could have resulted from rape?

4\ was the vagina ruptured?

5\ did you notice signs of any other violence on the body of the woman?

6\ was she pre or post-pubescent?

7\ can you estimate her age (this question is relevant in cases of rape of underage girls)

8\ was she strong and in good health, or weak to the point that she would not be able to resist an attempted rape?

9\ have you examined the body of the defendant?

10\ did you notice any signs of violence on their body?

11\ did they suffer from a sexually transmitted disease or show any other sexual symptoms?

12\ did you discover that the woman was suffering from any sexually transmitted disease, similar or otherwise?

13\ at the time when you examined the woman's body, had enough time passed for the sexually transmitted disease to become apparent, assuming that it was transmitted to her by infection?

14\ can you estimate the amount of time for which the woman has suffered with this disease since this complaint was raised?

15\ can you estimate the amount of time the woman had been suffering with this disease for **when [there is a typological error here and part of the word is missing. I have filled it in in a way that seems to make sense – translator]** the complaint was raised?

16\ have you examined the objects presented to you which are now present in court (exhibits number) as evidence?

17\ what is the conclusion of your examination?

18\ do you believe that she was raped or not? Give your reasoning.