



Lecture 1:

- CHAPTER (1): PRINCIPLES OF FORENSIC PRACTICE
- CHAPTER (2): THE ETHICS OF MEDICAL PRACTICE

● Book

● notes

● Important

CHAPTER (1): Principles of forensic practice

Introduction:

- Different countries have different legal systems, which broadly divide into two areas - **criminal and civil**.
- These systems influenced by a wide variety of factors including culture, religion and politics and it has a wide variation from country to other.
- For example: abortion which is routine practice in some countries is considered to be a crime in others.

Legal systems:

The exact structure is frequently developed from and thus determined by the political system, culture and religious attitudes of the country in question. In England and Wales, the principal sources of these laws are Parliament and the decisions of judges in courts of law.

- **Most countries have two main legal systems:**
 1. **Criminal courts:** deals predominantly with disputes between the State and individual.
 2. **Civil courts:** deals with disputes between individual including those of alleged negligence, contractual failure, debt, and libel or slander.
- Decisions made by judges are referred to as **'common law' or 'case law'**.

Criminal law:

- Criminal law deals with relationships between the state and the individual and as such is probably the area in which forensic medical expertise is most commonly required.
- Criminal trials involve offences that are ‘against public interest’; these include offences against the person (e.g. murder, assault, grievous bodily harm, rape), property (e.g. burglary, theft, robbery), and public safety and security of the state (terrorism).
- In these matters the state acts as the voice or the agent of the people.
- In a criminal trial it is for the prosecution* to prove their case to the jury or the magistrates ‘beyond reasonable doubt’.
- The defence does not have to prove innocence because any individual is presumed innocent until found guilty.
- The penalties that can be imposed in the criminal system commonly include financial (fines), imprisonment and community-based sentences. Some countries allow for corporal punishment (beatings), mutilation (amputation of parts of the body) and capital punishment (execution).
- Special courts are utilised for those under 18 years of age.

*the prosecution : the side of a legal case which argues that a person who is accused of a crime is guilty.

Civil law:

- Civil law is concerned with the resolution of disputes between individuals.
- The standard of proof in the civil setting is lower than that in the criminal setting.
- In civil proceedings, the standard of proof is proof on the balance of probabilities - a fact will be established if it is more likely than not to have happened.
- **civil cases has three divisions:**
 1. **Chancery** - specializing in matters such as company law;
 2. **Family** - specializing in matrimonial issues and child issues; and
 3. **Queen’s Bench** - dealing with general issues.

*In both civil and criminal trials, the person against whom the action is being taken is called the **defendant**; the accuser in criminal trials is the state and in civil trials it is the **plaintiff**.

Doctors and law:

- they may be charged with a criminal offence or they may be sued through the civil court.

A doctor may also be witness to a criminal act .

Professional witness:

- A professional witness is one who gives factual evidence.
- This role is equivalent to a simple witness of an event, but occurs when the doctor is providing factual medical evidence.

Expert witness:

- An expert witness is one who expresses an opinion about medical facts.
- An expert will form an opinion, for instance about the cause of the fractured leg or the laceration.
- The role of an expert witness should be to give impartial and unbiased assessment or interpretation of the evidence that they have been asked to consider.
- The duties of an expert are summarized as being that the expert's duty is to the court and any opinion expressed must not be influenced by the person who requested it, or by whoever is funding it, but must be impartial, taking into account.
- all the evidence, supporting it where possible with established scientific or medical research, and experts should revise the opinion if further or changed evidence becomes available.

key elements to expert evidence:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
2. An expert witness should provide independent assistance to the Court by way of objective, unbiased opinion in relation to matters within his expertise.
3. An expert witness in the High Court should never assume the role of an advocate.
4. An expert should state facts or assumptions upon which his opinion is based.
5. He should not omit to consider material facts which could detract from his concluded opinion.
6. An expert witness should make it clear when a particular question or issue falls outside his area of expertise.
7. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
8. In cases where an expert witness, who has prepared a report, could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.
9. If, after exchange of reports, an expert witness changes his views on a material matter having read the other side's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
10. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time at the exchange of reports.

Evidence of courts:

There are a number of general rules that can be made about giving evidence.

Statements and reports:

- A statement in a criminal case is a report that is prepared in a particular form so that it can be used as evidence.
- There is an initial declaration that ensures that the person preparing the statement is aware that they must not only tell the truth but must also ensure that there is nothing within the report that they know to be false.
- A statement provided when acting as a professional witness will be based on the contemporaneous notes (notes or records made at the time of examination), and it is important that the statement fairly reflects what was seen or done at the time.
- A statement may be accepted by both defence and prosecution, negating the need for court attendance.

Attending court:

If a citizen is asked to appear as a witness for the court, it is the duty of all to comply, and attendance at court is generally presumed without the need to resort to a written order.

The process of giving evidence:

- Whether called as a witness of fact, a professional witness of fact or an expert witness, the process of giving evidence is the same.
- When called into court, every witness will, almost invariably, undergo some formality to ensure that they tell the truth.
- Regardless of how it is done, the effect of the words is the same: once the oath has been taken, the witness is liable for the penalties of perjury.
- Whoever has 'called' the witness will be the first to examine them under oath; this is called the 'examination in chief' and the witness will be asked to confirm the truth of the facts in their statement(s).
- When this questioning is completed, the other lawyers will have the opportunity to question the witness; this is commonly called 'cross-examination'. This questioning will test the evidence that has been given.
- The final part of giving evidence is the 'reexamination'. Here, the original lawyer has the opportunity to clarify anything that has been raised in cross-examination but he cannot introduce new topics.

Doctors in court:

Preparation of medical reports:

- A report may be requested by the police, prosecutors, Coroners, judges, medical administrators, government departments, city authorities or lawyers of all types.
- A good rule of thumb is to ensure that, when medical records will need to be reviewed, written permission to access and use those records has been given, either by the individual themselves, or by an individual or body with the power to give that consent.
- The fact of a request, even from a court, does not mean that a doctor can necessarily ignore the rules of medical confidentiality.
- Mandatory reporting of medical issues may be relevant in some countries; often these relate to terrorism, child abuse, use of a weapon and other violent crime.

Structure of a statement or report:

- The basis of most reports and statements lies in the contemporaneous notes made at the time of an examination.
- A simple professional witness statement, included may be the doctor's professional address and qualifications should follow.
- The date of the report is essential and the time(s), date(s) and place(s) of any examination(s) should be listed, as should the details of any other person who was present during the examination(s).
- Medical abbreviations should be used with care and highly technical terms, especially those relating to complex pieces of equipment or techniques, should be explained in simple, but not condescending, terms.
- Autopsy reports are a specialist type of report and may be commissioned by the Coroner, the police or any other legally competent person or body.
- An autopsy report is confidential and should only be disclosed to the legal authority who commissioned the examination.
- Doctors must resist any attempt to change or delete any parts of their report by lawyers who may feel those parts are detrimental to their case; any requests to rewrite and resubmit a report with alterations for these reasons should be refused.

CHAPTER (2): The ethics of medical practice

Introduction:

Duties, promises and pledges:

International codes of medical ethics:

Duties of a physician in general (defined by the world medical association):

- Always exercise his/her independent professional judgment and maintain the highest standards of professional conduct.
- Respect a competent patient's right to accept or refuse treatment.
- Not allow his/her judgment to be influenced by personal profit or unfair discrimination.
- Be dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity.
- Deal honestly with patients and colleagues, and report to the appropriate authorities those physicians who practise unethically or incompetently or who engage in fraud or deception.
- Not receive any financial benefits or other incentives solely for referring patients or prescribing specific products
- Respect the rights and preferences of patients, colleagues, and other health professionals
- Recognize his/her important role in educating the public but use due caution in divulging discoveries or new techniques or treatment through non-professional channels.
- Certify only that which he/she has personally verified.
- Strive to use health care resources in the best way to benefit patients and their community.
- Seek appropriate care and attention if he/she suffers from mental or physical illness.
- Respect the local and national codes of ethics.

Cont. International codes of medical ethics:

Duties of a physician to a patient:

- Always bear in mind the obligation to respect human life.
- Act in the patient's best interest when providing medical care.
- Owe his/her patients complete loyalty and all the scientific resources available to him/her. Whenever an examination or treatment is beyond the physician's capacity, he/she should consult with or refer to another physician who has the necessary ability.
- Respect a patient's right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or when there is a real and imminent threat of harm to the patient or to others and this threat can be only removed by a breach of confidentiality.
- Give emergency care as a humanitarian duty unless he/she is assured that others are willing and able to give such care.
- In situations when he/she is acting for a third party, ensure that the patient has full knowledge of that situation.
- Not enter into a sexual relationship with his/her current patient or into any other abusive or exploitative relationship.

Duties of a physician to a colleague:

- Behave towards colleagues as he/she would have them behave towards him/her .
- Not undermine the patient-physician relationship of colleagues in order to attract patients .
- When medically necessary, communicate with colleagues who are involved in the care of the same patient. This communication should respect patient confidentiality and be confined to necessary information .

medical ethics in practice:

- patient autonomy and their right to refuse or choose treatment.
- non-maleficence - do no harm
- beneficence - acting in the patient's best interests
- dignity
- honesty - providing informed consent
- justice - how healthcare is apportioned when
- health and financial resources may be limited.

Consent:

Patient with capacity to make discussion:

- Consent should be based on trust, openness and good communication.
- Doctors must allow patients to make decisions themselves and respect those decisions once made.
- following four stages should be followed when considering treatment:
 1. Both doctor and patient make an assessment taking into account the patient's medical history, views, experience and knowledge.
 2. The doctor identifies **relevant investigations and treatment** to benefit the patient and explains the options with their respective potential risks, burdens and side-effects (including having no treatment or investigation) - the doctor may recommend a particular option, but the decision remains the patient's.
 3. The patient **weighs up** the potential benefits, risks and burdens and any related issues and makes a decision
 4. The patient may request a treatment that the doctor considers of no overall benefit

Patient without capacity to make discussion:

- the doctor must engage with those who are close to the patient and with colleagues involved in the healthcare.
- If a patient lacks capacity and a decision is made on their behalf, the doctor must:
 - make the care of the patient the primary concern;
 - ensure that the patient is treated as an individual
 - and with dignity;
 - support and encourage the patient to be involved
 - in decisions about treatment and care within the
 - limits of their abilities;
 - treat the patient with respect and without dis-
 - crimination. This must be taken into account with all other factors that might otherwise affect consent.

Children:

- aged 16 years and older have the capacity to make decisions about treatment or care.
- The capacity of children below the age of 16 years to consent to medical treatment depends on whether the child has achieved a sufficient understanding and intelligence to appreciate the purpose, nature, consequences and risks of a particular treatment (including no treatment) and has the ability to appraise the medical advice.

Confidentiality:

Confidentiality is a primary, but not an absolute duty. Doctors must use their own judgment to apply the principles of confidentiality and be prepared to later explain and justify any decisions or actions taken when they have apparently breached that confidentiality.

Examples which confidentiality may not apply:

- **If required by law**
 - e.g. notification of known or suspected types of communicable disease.
 - In all cases it is essential that every opportunity is taken to seek the patient's express consent before disclosure.
- **If the patient consents** - implicitly or expressly
- **If justified in the public interest**
 - risks of harm
 - researches
 - education
 - public health.
- **Disclosures to protect the patient or others**
 - (e.g. murder, rape and child abuse)
- **Disclosure after death**
 - Disclosure may be required by Coroners, or others responsible for the investigation of deaths and on statutory forms such as death certificates.
- **Reporting concerns about driving capabilities**
- **Reporting gunshot and knife wounds**
- **Reporting serious communicable diseases**
- **Reporting in relation to insurance or employment purposes**



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