



## MEDICAL BOARD OF WESTERN AUSTRALIA

### MEDICO-LEGAL AND OTHER INDEPENDENT MEDICAL EXAMINATIONS

#### **Medical Board Policy** **Issued: July 2004**

Doctors are asked to undertake independent examinations in which legal proceedings are not pending, including superannuation medical, disability and life insurance medicals, and examinations under a number of statutory provisions. The recommendations apply to all such examinations.

#### **1 INTRODUCTION**

The Medical Board is aware of a number of complaints on consultations and reports provided by medical practitioners in relation to medico-legal matters. In the context of this Policy, 'medico-legal' refers to consultation or reports associated with workers' compensation claims, personal injury claims and other litigation often requiring co-operation between the medical and legal professions. In these cases, the doctor is not in a therapeutic relationship with the patient, and the history-taking and examination may need to be more extensive than the patient might have expected. In addition, the patient may be generally nervous and, in particular, anxious about the possibility of receiving an adverse medical report from the doctor.

This policy does not apply to "plaintiff" medical examinations where a patient has legal representation, and through the advice of their legal representative seeks an opinion from a medical practitioner then such opinion is not considered a medico-legal or independent medical examination for the purposes of this policy. In this situation the patient is essentially seeking further advice on diagnosis and management and is in control of the examination and that advice albeit through a legal advocate.

Doctors are reminded that they have a duty to act in an ethical, professional and considerate manner when examining patients, whether or not they are responsible for the patient's care. Effective communication is an important professional skill in these circumstances.

In order to avoid appearing insensitive, rude, abrupt in their manner, or rough in their examination, doctors are advised to give particular attention to identifying the patient's concerns, and to explain adequately the reasons for the examination.

If further investigations are required in order to answer the questions posed of the doctor, such investigations should be authorised, prior to them being ordered, by the person or organisation requesting the report. Depending on the nature of the investigation, the doctor should explain the nature and purpose of the test to the patient. There is no role for the examining doctor to provide advice to the patient regarding diagnosis and treatment or to make comments about the patient's medical management.

In order to prevent misunderstandings between doctors and patients, the Board provides the following comments.

## **2 CONSULTATION**

### **2.1 The Introduction**

- The doctor should properly introduce himself/herself and explain his/her specialty field of medicine in language that the patient can understand.
- The doctor should explain the purpose and nature of the consultation and examination.
- The doctor 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.
- The doctor should accommodate a patient's request for an accompanying person to be present during the history and/or examination. In such cases, the third party is present at the specific request of the examinee and the individual should not interfere with the examination process.
- There may be unusual circumstances in which it may be necessary for the doctor to obtain corroborating information from third parties (for example, in cases of head injury, severe mental illness) and under these circumstances, explicit informed written consent should be obtained from the patient.

### **2.2 Explanation to the Patient**

- Prior to commencing an examination, the doctor should explain which part of the body is to be examined, why it is to be examined and what the examination entails.
- Similarly, the position of the doctor during the examination should be explained (this is particularly important when the doctor is standing behind the patient).
- Prior to commencing the examination, the doctor should explain the extent to which undressing is required.

### **2.3 Physical Examination**

Doctors are expected to comply with the AMA policy on physical examination. In particular they should be mindful of the following issues:

- The doctor should examine the patient in privacy, unless the patient has brought a friend to be with them at that time.
- Before the examination, the doctor should provide a sheet, a gown or some other garment with which to preserve the patient's modesty.
- The patient's modesty should be preserved in undressing before, and dressing after, the physical examination.
- Modesty may be preserved by:
  - The provision of a screen behind which the patient can undress; or
  - The doctor excusing himself/herself from the consulting room whilst the patient is undressing.
- Chaperones - the doctor should consider whether or not the presence of a third person is required during the examination, especially where the patient has brought a friend for that purpose.
- If an intimate examination is warranted, i.e. breasts or ano-genital region, the reasons and nature of the examination must be carefully explained to the patient, and the patient's permission obtained. This should be noted in the

medical records. The patient's wishes concerning the presence of a chaperone or friend should be respected.

- In the majority of cases, it is appropriate to notify the patient of an incidental problem that has been identified by the examining doctor.
- Do not force the examinee to undertake any potentially harmful activity. For example, you should measure active range of joint motion rather than being forceful with passive range of motion.

### **3 MANAGING THE UNCO-OPERATIVE PATIENT**

If an examinee is unco-operative you should again explain your role and the need for co-operation.

Prior to the evaluation, the examinee may refuse to cooperate, make demands for specific requirements, or require that specific individuals participate in the evaluation, or impose limitations on the history provided at the examination or the examination itself.

In these cases, you should explain the reason why this information is useful to you in making your assessment and then document the non-compliance.

If the degree of lack of co-operation is likely to compromise your evaluation, advise the examinee of this or terminate the evaluation unless he or she is co-operative. If he or she continues to be unco-operative, you should stop the examination, contact your client and document what occurred.

To avoid these problems, be sure to clarify your needs in advance.

#### **3.1 Managing the Physically Threatening Examinee**

In the rare event that a patient should physically threaten you or your staff, in order to protect yourself and your staff from harm, stop the evaluation and notify the client, notify the Police as appropriate, and document the circumstances.

Medico-legal evaluations are a service that you are choosing to provide. You are never required to perform an examination that will compromise your safety, ethics, capabilities or integrity.

#### **3.2 Audio, Video Recording and Note Taking**

The medico-legal assessment is part of the forensic process of evidence gathering for legal proceedings. It is reasonable for both parties to record the process in detail. This may take the form of audio, video recording or note taking. It is expected that both parties would agree to this process.

Should that not be the case, agreement should be negotiated before the consultation. Should a medical practitioner not consent to the recording of the consultation, he/she is obliged to ensure that the patient and the insurance company is informed of this prior to the consultation.

### **4 REPORTS**

- The medical practitioner must give consideration to the purpose of the report and the persons likely to read the report.
- Reports should:
  - Be prepared to provide the details requested in the solicitor's written communication;

- Include a list of material that has been considered by the doctor;
- Provide a description of the process of the physical examination of the patient; and
- Be completed and submitted in a timely fashion.
- Comments and statements made by patients should be comprehensively and accurately recorded.
- Statements of opinions should be clearly identified as opinions and be supported by reasons and, if possible, references such as reputable trials and studies.
- Offensive or judgmental statements should be avoided. Assessments should be couched in clinical language.
- Any sensitive information that is relevant to the content of the report must be discussed with the patient and the patient informed that it will be contained in the report.
- Personal or private information that is not directly relevant to the injury, incident or illness for which the report is being sought should not be released without formal consent.

CONSENT

I, ....., understand that I am being seen for a medical evaluation for the purpose of legal proceedings and no treating physician/patient relationship is established.

I understand that the information I discuss will be included in a report that is prepared for the requesting client. I consent to this report being sent to this client and to participating in the assessment.

I agree to the physical evaluation, the obtaining of photographs, and to advise the physician immediately if I experience any difficulties during the examination.

Signed .....

Date .....

Witness .....