

Authorising Body:	Board
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Responsible Department:	Practice, Policy and Partnerships
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1. Purpose

This document has been developed by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to guide members who are preparing reports in medico-legal and/or forensic contexts. This includes reports based on independent medical examinations, and reports which are prepared for both civil and criminal matters. This guideline establishes a basic standard of practice and outlines the role of the psychiatrist when responding to a referral request for a report, along with best practice in conducting independent medical examinations, report writing and adherence to appropriate professional standards.

For those psychiatrists in Australia working as family report writers or expert witnesses in family law matters, it may be helpful to refer to the RANZCP's [Professional Practice Guidelines 3: Australian Family Court Proceedings](#) in addition to this guideline.

2. Definitions

For the purposes of this document:

- a 'medico-legal report' or 'report' is a written opinion prepared by a psychiatrist about a medical matter for use as evidence in legal proceedings
- an 'independent medical examination' is a psychiatric assessment requested by a referring agent and conducted by a psychiatrist for the purposes of a legal matter
- a 'treating psychiatrist' is a psychiatrist who is or has regularly treated a patient and has been asked to provide a report about that patient
- a 'referring agent' is a person or body requesting an independent medical examination or a report in the context of a legal matter.

The purpose of a report is to provide evidence to assist the recipient of the report or other relevant body to come to a decision about the matter before it.

3. General principles

In conducting independent medical examinations and preparing reports, psychiatrists should consider the following general principles, but will also be bound by relevant legislation and the requirements of their roles, for example where psychiatrists are sitting as members of tribunals or panels.

The principles and guidelines outlined below are applicable to all medico-legal settings in Australia and New Zealand.

- 3.1 The purpose of a report is to provide evidence to assist the recipient of the report or other relevant body to come to a decision about the matter before it.
- 3.2 In preparing a report, psychiatrists must adhere to relevant scientific and clinical psychiatric principles.

- 3.3 Psychiatrists must observe relevant Australian and New Zealand laws and regulations concerning keeping medico-legal records and reports. This includes keeping written notes in accordance with legal requirements in the relevant jurisdiction.
- 3.4 Psychiatrists must understand and comply with the applicable expert witness codes of conduct when providing a report or giving verbal evidence to a Court or Tribunal. These codes may differ between jurisdictions.
- 3.5 Psychiatrists must understand and comply with relevant professional codes of conduct and ethical standards so as to uphold the principles of honesty and objectivity, provide defensible evidence, avoid misleading the recipient of the report or other relevant body and manage or avoid conflicts of interest as appropriate.

4. Providing reports

4.1 Requests for reports

- 4.1.1 Psychiatrists should request that the referring agent provides a comprehensive written explanation of the medical question(s) to be addressed in the report, along with all relevant information and expert witness guidelines.
- 4.1.2 Psychiatrists should request that the referring agent seeking the medico-legal report provides notification of any urgent time constraints for the provision of the report.
- 4.1.3 Psychiatrists may request payment of fees to be made before the report is written or may request payment in the event that the person fails to attend the scheduled examination [1]. Fee agreements dependent upon a particular outcome are unethical and as such should not be accepted by psychiatrists.

4.2 Report content

- 4.2.1 Psychiatrists providing a medico-legal report should clearly state the source of the request within the report, such as the name and details of the referring agent.
- 4.2.2 Psychiatrists must disclose all sources of information provided by the referring agent and any information provided by other parties [1]. Relevant privacy legislation or other factors may limit access to information of potential relevance: where this is the case, it is good practice to acknowledge those constraints.
- 4.2.3 Psychiatrists may state what further information (if any) would be useful to enhance the comprehensiveness and reliability of the stated opinion.
- 4.2.4 Psychiatrists must express the limitations of their opinion. All such opinions must be within the bounds of reasonable medical certainty and the generally accepted knowledge-base of the profession. The limitations of reports based on desktop assessments (where the person is not assessed directly) must be specifically acknowledged.
- 4.2.5 The professional opinion of psychiatrists must be limited to their field(s) of expertise [2] and the report should not offer expert opinion on diagnosis and treatment outside the discipline of psychiatry. It is recognised however that psychiatry is a branch of medicine and that a key skill of psychiatrists is to understand potentially complex interactions between somatic illnesses and mental disorder. It may therefore be relevant to comment in an appropriately qualified fashion, on known or potential physical health conditions.
- 4.2.6 Psychiatrists must present their qualifications accurately.
- 4.2.7 Psychiatrists should use their discretion in regard to how much data is explicitly included in the body of the report, based on what is necessary and relevant.
- 4.2.8 Opinion should be clearly delineated from factual data and the clinical reasoning leading to the expert opinion should be properly explained.

- 4.2.9 When the clinical data is not consistent with any diagnosable psychiatric disorder, this should be clearly stated [1].
- 4.2.10 All psychiatric opinions must be founded on clinical experience and knowledge of relevant, peer-reviewed literature. Psychiatrists should indicate in broad terms the degree of certitude attached to their opinion.
- 4.2.11 Psychiatrists should not provide draft reports and must never alter the opinion given in a medico-legal report at the request of any party, including the person being assessed. If a factual clarification is requested or additional information is provided that results in a varied or contrary opinion, the psychiatrist must produce a supplementary report that clearly identifies the existence of the original report and the nature of any change(s) (i.e. of fact or opinion).
- 4.2.12 When producing reports for third party organisations that broker expert reports for requesting agencies, psychiatrists should review and approve a final concluded copy of the report that will go to the requesting agency, before they agree to final 'sign-off'.

4.3 Treating psychiatrists' provision of medico-legal reports

- 4.3.1 The RANZCP recognises that treating psychiatrists may be asked or required to provide medico-legal reports. In such circumstances, psychiatrists must clearly state in the report their role as a past or present treating practitioner.
- 4.3.2 The academic literature supports a range of views on the management of conflicts of interest regarding treating psychiatrists' reports [3]. Psychiatrists should consider their ethical duties when providing reports. Treating psychiatrists responding to medico-legal report requests must clearly identify their role and must recognise and disclose to the referring agent the extent and possible effects of any conflict of interest.
- 4.3.3 Where a report is being written by a treating psychiatrist, the health interests and needs of the person to be assessed must always be paramount in responding to a request for a medico-legal report.
- 4.3.4 It may be particularly difficult for treating psychiatrists to provide objective opinions regarding matters of 'causation' (such as for example the possible causal relationship between mental disorder and offending in criminal matters, or the possible causal relationship between workplace events and the development of mental disorder in civil matters).
- 4.3.5 Treating psychiatrists may choose to limit any written reports for legal purposes to provision of information about diagnosis, treatment and prognosis. It is recommended that treating psychiatrists discuss this with the person to be assessed, including issues associated with consent.

5. Conducting independent medical examinations

5.1 Before conducting the examination

- 5.1.1 Prior to commencing any examination, psychiatrists should:
- 5.1.1(a) clarify whether the person being examined understands that the examination is occurring due to a referring agent's request for a report or because it has been ordered by a Court, Tribunal or other body
 - 5.1.1(b) inform the person that their primary role is to provide a report to enable decision-making by the recipient or other relevant body
 - 5.1.1(c) explain the purpose of the consultation, the form of the interview, the arrangements made for the person's privacy, and the availability of breaks and/or refreshments.

- 5.1.1(d) explain the limits of confidentiality to the person being examined [1] and any other attendees (such as support persons or interpreters) and that the outcome of the examination may be produced to the recipient of the report or other relevant body.

- 5.1.2 Psychiatrists should carefully consider the person's capacity to consent to participate in the examination.

5.2 Interaction

- 5.2.1 An examination for the purposes of producing a medico-legal report involves duties to the referring agent/agency as well as limited duties associated with a doctor–patient relationship. Such duties include maintaining confidentiality to the extent possible, disclosing conflicts of interest and significant findings, and minimising harm. As such, it is essential that psychiatrists conducting such examinations maintain a professional manner and demonstrate neutrality and courtesy throughout the interaction.
- 5.2.2 A psychiatrist seeing a person referred for a medico-legal examination and report should not offer to provide routine treatment for that person. Emergency treatment should only be provided where no reasonable alternative exists and immediate referral should then be made to a treating health professional for ongoing care [1].
- 5.2.3 A person may request the presence of support person/s during the assessment. Psychiatrists should consider these requests on a case-by-case basis, balancing the person's desire for a support person and the requirements of the assessment. Psychiatrists may accommodate such a request in accordance with the person's wishes, and any relevant laws which may apply. The presence of support persons, and any impact that their presence had on the person's presentation and psychiatric opinion, should be disclosed in the report.
- 5.2.4 A person may request that the assessment be recorded using an audio-visual device. Psychiatrists should be aware of the legal requirements which apply in their local jurisdiction in relation to such requests and are free to decline. The recording of the interview should be disclosed in the report.
- 5.2.5 Where surveillance reports and footage form part of the information provided by the referring party, psychiatrists need to ensure that the person is aware of that fact in order to ensure natural justice. If surveillance footage is provided, psychiatrists may choose to view some or all of this in the presence of the person where appropriate.
- 5.2.6 In the event of new information being provided after an assessment interview, psychiatrists should carefully consider whether a further interview is required in order to clarify its significance with the person. If a follow-up interview is requested by the psychiatrist but not facilitated, psychiatrists may consider declining to provide a revised opinion.
- 5.2.7 Assessments may be conducted by way of videoconference technology. On rare occasions, where no other means is available, telephone assessments (in the absence of video) may be conducted. Psychiatrists should carefully consider the appropriateness of conducting such assessments in any specific case. When such modes of assessment are used, that fact must be documented in the report, along with any technical issues that may have affected the quality of the assessment.

6. Professional standards and relationships in undertaking assessments and developing reports

- 6.1 When preparing medico-legal reports or undertaking independent medical examinations, psychiatrists must follow ethical and professional standards of behaviour as set out in the *Australian Good Medical Practice: a Code of Conduct for Doctors*, *New Zealand Good Medical Practice* and the *RANZCP Code of Ethics*.

- 6.2 In relation to the diagnosis, treatment or management of a particular person being examined, the psychiatrist's opinion must be expressed in professional and respectful language.
- 6.3 Any comment concerning a difference of opinion with a colleague should be confined to matters of substance and expressed in professional terms. Psychiatrists preparing medico-legal reports must not make personally disparaging or unprofessional comments concerning other psychiatrists, other professionals or their expert opinions.
- 6.4 Psychiatrists must never undertake medico-legal assessment of a person who has been, is currently or will likely be, in a material personal or business relationship with the psychiatrist, their spouse or other close relative.
- 6.5 Continuing professional development is a fundamental and mandatory responsibility for all medical practitioners. Opinions in independent medical reports provided by psychiatrists should be based on contemporary medical and scientific standards.
- 6.6 Where psychiatrists are regularly conducting assessments at the request of corporate entities (such as legal firms, medico-legal report agencies or insurance companies), they must take care to maintain full independence including the freedom to decline any particular request for an assessment. Psychiatrists should avoid engaging in any activities brokered by such entities (such as funded dinners or travel for leisure purposes) that may create a potential or perceived conflict of interest.
- 6.7 Psychiatrists should provide trainees with the opportunity to be involved in the preparation of medico-legal reports and independent examinations where practicable to facilitate development of these skills. Specialist international medical graduates and overseas trained psychiatrists should also be provided relevant opportunities to be involved in medico-legal reports and independent examinations.

References

1. Australian Medical Association. Ethical Guidelines on Independent Medical Assessments. Canberra, Australia: Australian Medical Association; 2015. 5.
2. Australian Medical Association. Ethical Guidelines for Doctors Acting as Medical Witnesses. Canberra, Australia: Australian Medical Association; 2016. 6.
3. Taylor, P, Graf, M, Schanda, H, Vollum, B. The treating psychiatrist as expert in the courts: is it necessary or possible to separate the roles of physician and expert? *Criminal Behaviour and Mental Health* 2012; 22: 271–2.

Further resources

American Academy of Psychiatry and the Law. Ethics Guidelines for the Practice of Forensic Psychiatry. United States of America: American Academy of Psychiatry and the Law; 2005.

Medical Board of Australia. Good Medical Practice: A Code of Conduct for Doctors in Australia. Australia: Medical Board of Australia; 2014.

Medical Council of New Zealand. Good Medical Practice. New Zealand: Medical Council of New Zealand; 2018.

Royal Australian and New Zealand College of Psychiatrists. Code of Ethics. Australia: Royal Australian and New Zealand College of Psychiatrists; 2018.

Royal Australian and New Zealand College of Psychiatrists. Professional Practice Guideline 17: Access and use of clinical information for medico-legal report writers in New Zealand. 2020 Available at: [Professional Practice Guideline 17: Access and use of clinical information for medico-legal report writers in New Zealand](#)

Disclaimer

This information is intended to provide general guidance to practitioners, and should not be relied on as a substitute for proper assessment with respect to the merits of each case and the needs of the patient. The RANZCP endeavours to ensure that information is accurate and current at the time of preparation, but takes no responsibility for matters arising from changed circumstances, information or material that may have become subsequently available.

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