

FINAL PROPOSAL FOR
KERALA MEDICO-LEGAL CODE

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MODIFIED ACCORDING TO
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&
THE DIRECTIONS OF KERALA JUDICIAL ACADEMY
HIGH COURT OF KERALA, KOCHI

SUBMITTED TO
GOVERNMENT OF KERALA
BY
KERALA MEDICO-LEGAL SOCIETY

(Organization of Police Surgeons & Medico-legal experts in Kerala)

INTRODUCTION

**THE NEED FOR A CODE OF MEDICO-LEGAL EXAMINATION AND
CERTIFICATION**

**Factors which necessitate modifications in the present formats for
Medico-legal Examination and Certification and Implementation of a Code of
Medico-legal Examination and Certification**

- The formats for medico-legal certificates were designed in the sixties and last modified in the Eighties (1984) of the previous century and it is high time that the existing formats are modified for the benefit of Law, the Public and also the Medical Officers who dutifully document such certificates. The process of updating the medico-legal system through Government Orders came to a standstill in 1986, in Kerala. The last circular in this regard seems to be No18023/H1/86 dated 04-09-86 regarding time limit of postmortem examinations and the last G.O. seems to be G.O. MS. 207/86/Home (H) dated 22-09-1986, regarding designation of Police Surgeons, both from the Home Department.
- The 2006 amendments made to the Criminal Procedure Code, especially in relation to Sections 53 and 54 and the Common Order from the honorable High court of Kerala dated 05-08-2009 warrants immediate implementation of specific guidelines for medico-legal examination and certification in the state and modification of the existing system.
- It is a plain fact that, except a few senior faculties in the Departments of Forensic Medicine in Government Medical Colleges, nobody is aware of the latest G.O. issued in this regard. As per G.O. (MS) 122/84/Home, TVM dated 04-09-84, Government approved the guidelines and model forms for medico-legal examination and certification, prepared by Dr. V.K.Jayapalan, the then Director and Professor of Forensic Medicine, Medical College, Trivandrum and the same is in force now. Till recently, the copy of this G.O. was only available at Forensic Medicine Departments of one or two Medical Colleges. In all Institutions under Health Services Department, the G.O. issued in the sixties is being followed. It is so outdated that, it prescribes recording of the postmortem certificate using carbon pencil, so that copies can be made using carbon paper.
- Many changes have occurred in the concepts of Law enforcement, Human Rights and interpretation of the Law by Judiciary in the last twenty five years.
- The number of medico-legal cases increased manifold.
- Earlier, it was only Government Hospitals that were used to undertake medico-legal examinations and certifications. With a Supreme Court Order, it was made

mandatory that every doctor practicing Modern Medicine should attend the injured and institute proper and adequate treatment and fulfill his medico-legal responsibilities, within the capacity of the doctor and the institution to which he is attached. The same principle became applicable in the cases of female victim of sexual assault, on the basis of another Order from the Supreme Court. Most of the private institutions also, are undertaking medico-legal work now.

- Apart from the requirements of the Law and the Law Enforcing System, the rights of the affected person(s) in every Medico-legal case should be considered. Requirements in relation to the concepts of Human Rights, incessant growth of the field of Insurance and of late, the Right to Information Act etc should also be considered.
- The doctor who first examine or admit a patient in the casualty / OP may not be the one who treats the patient. In contrast to the practice followed till the Seventies, the admitting doctor may not be seeing the patient again, during the course of treatment or at the time of discharge. The doctor, who actually treated the patient, will be writing the Discharge Certificate. During the trial of the case in Court of Law, questions are raised to doctors, for not filling the columns in the wound certificate, in relation to results of laboratory and other investigations, details of treatment, condition at discharge etc. Also, on many occasions, doctors find it difficult to answer the questions in relation to the abovementioned aspects, with the very little data recorded in the present format of Discharge Certificate, which is prescribed by G.O. (MS) 122/84/Home, TVM dated 04-09-84, mentioned earlier. Instances are many, when doctors are asked to reappear before the Hon'ble Court, with the entire case sheet, on a later date. Hence, the system of just one wound certificate to incorporate the findings at admission, investigation results, treatment details and condition at discharge etc became impractical. What is needed is a comprehensive format for recording the Discharge Certificate, for patients admitted with a Medico-legal case history. The Discharge certificate format prescribed in the 1984 G.O. is insufficient for this purpose and needs thorough modification.
- The space available in the present format of wound certificate, for recording the injuries, is very limited. Bifurcation of the treatment and discharge part from the wound certificate will reduce the columns in the present format and will enhance

the space for recording the injuries. A proper, elaborate and scientific recording of the injuries will definitely help the Judiciary and the Police in ensuring justice to the injured and will also help the doctor to substantiate his findings in spite of severe cross examination by the defense.

- When an injured person is brought to a hospital, he has every right to get a copy of the wound certificate. Now that, almost everyone is having one or other Insurance coverage, the need for such a copy is very much pressing, as far as the injured is concerned. Presently, the wound certificate is written only in duplicate. Original is issued to the Investigating police officer and the duplicate retained as office copy. To fulfill the legal right of the injured, the wound certificate should be written in triplicate and one copy should be issued to him or his legal heirs on demand for the same.
- Every doctor, qualified in Modern Medicine, should know how to classify the injuries examined by him, as hurt and grievous hurt. It is based on this interpretation that the relevant sections of IPC are incorporated by the Investigating Officer, in the charge sheet against the accused. It will be fair enough to record this interpretation in the opinion part of the wound certificate, instead of giving the same in the statement given to Investigating Officer, as is being practiced now. In cases where findings revealed by investigations such as X-ray examination etc., during the course of treatment by another doctor in the same institution or another institution, make the injury grievous, that has to be recorded in the discharge certificate.
- There is a lack of awareness among doctors, regarding their legal responsibilities. Intimation is the first legal responsibility that every doctor practicing Modern Medicine, should fulfill. In all instances, where a patient or persons who brought the patient to the doctor, gives a history of any unlawful act punishable under any sections of Indian Penal Code and if the doctor or the patient or the persons who brought the patient to the doctor has reasons to believe that the particular unlawful act has actually caused or contributed in the causation of the condition which made the patient to approach the doctor or made someone to take the patient to doctor, the doctor is legally bound to intimate the police, about the particular unlawful act. This should be done immediately when such a fact is brought to the notice of the doctor, during any

phase of interaction between the patient and the doctor, as part of a doctor-patient relationship. Any offence under the purview of I.P.C. is considered as an offence against the State. During the trial of such cases in the Court of Law, the State represented by the Government Prosecutors or Pleaders, acts as the complainant. Hence, the doctor need not take the consent of the injured or the victim of unlawful act, for giving intimation to police. Ignorance of this aspect has made many doctors to face serious legal consequences.

- Such deficiencies and lacunae exist with all the Medico-legal examinations and certifications.
- The Drunkenness Certificate, with a spelling mistake (Drunkness) in its heading itself, is a classical example. From a legal viewpoint, examination of any person without his consent is an assault. And, there is no column for consent in the present format of certification of drunkenness. There is no column for recording any history available from the subject, in relation to consumption of alcohol. In the examination of a person to look for drunkenness, the cardinal sign looked for consumption is smell of alcohol in breath. The ceiling or other fans should be switched off, and the examiner should be able to identify the smell of alcohol in the breath of the subject, from a distance of 30cm. The smell should be persistent, that is, it should be present in the beginning of the examination and also at the end. If present, opinion that the person has consumed alcohol is furnished. If the higher functions like memory, muscular coordination, reflexes etc are involved, an opinion that the person is under the influence of alcohol is furnished. By just going through the present format, it can very well be seen that there is no scope for a schematic examination with an objective of obtaining a defined and qualified opinion regarding drunkenness. Above all, it contains such ridiculous tests like asking the person to light a cigarette, as part of the examination. There is no defined opinion part, which if present, will be of great assistance to the doctor as well as the Law.
- In cases of drunkenness also, the relevant section of Kerala Police Act can be incorporated in the charge sheet, only on the basis of the opinion furnished by the doctor. Hence, it is ideal that the certificate is issued immediately or at the earliest within 24hours of the examination.

- Also, doctors are generally unaware of the relevance of preservation of blood and urine samples in cases of alleged drunkenness. When a person is brought for examination with a history of alleged drunken, disorderly behavior in a public place, punishable under Sec.51(a) of Kerala Police Act, blood and urine examination is not mandatory. In cases of alleged drunken driving, punishable under Sec.185 of Motor Vehicle Act (1988, last amended in 1994), it should be proved that there was presence of alcohol in the blood of the suspect, in excess of 30mg/100ml. Hence, blood and urine examination is mandatory in such cases. Just because blood and urine samples were not preserved in such cases, persons accused of that offence is always acquitted in the Courts.
- The presently followed formats for examination and certification of Potency and that for examination and certification of a female victim of Sexual Offences are not available in most of the institutions undertaking such examinations. The prescribed method of recording the findings in a draft format and preparing and issuing the certificate in another format is highly impractical. It is a fact that in many institutions, these certificates are recorded in the Accident Register Cum Wound Certificate. This method is highly improper because it will lead to insufficient documentation and loss of confidentiality. With the 2006 amendments, it becomes necessary that a comprehensive format conforming to the requirements stipulated in Sec 53A of Cr.P.C. is designed.
- The present format for examination and certification of Potency is spread over two pages, which makes recording in duplicate, using carbon paper difficult. If it can be reduced to one page, it can be maintained in a book form.
- The concepts relating to sexual offences, including rape, has changed to the core in recent years. The present format and the opinion part in the certificate of examination of a female victim of sexual offence is of relevance to cases reported immediately or at the most within a few days of occurrence of such an offence. In practice, it is seen that such cases are reported after many weeks or months. The format should be modified to incorporate that aspect also.
- With the advent of DNA fingerprinting, it became necessary to preserve specimens for that purpose also. A second sample of properly preserved vaginal swab will serve this purpose.

- New areas like examination of a male victim of unnatural sexual offences, examination and certification of a victim alleged to have been drugged or sedated for the purpose of theft or other such unlawful acts, medical examination of a person before admission to a jail, examination of an accused/subject by a Team of Experts etc are arising where medico-legal certification is mandatory, but we don't have any prescribed formats in all institutions. Generally doctors are unaware of the proper scheme of examination in such cases and also about the material objects that are to be preserved in each type of such cases. What is being done now is that they record the history and findings of general physical examination in the Accident Register cum Wound Certificate. With the amendment made to Sec.54 Cr.P.C., the accused is entitled to have a copy of the certificate of physical examination of his body. That necessitate the recording of almost every medico-legal certificate in triplicate.
- Doctors working in the busy Casualty units of a Medical College or District Hospital and Doctors who are managing the peripheral institutions find it difficult to document the irrelevant and unnecessary data to be filled in the present formats, which in turn leads to loss of time from their duty hours.
- Absence of defined data regarding the findings, opinions and interpretations in the present formats lead to lack of uniformity in Medico-legal documentation throughout the state.
- These problems often render the Doctor incapable of substantiating his findings, opinions and interpretations in the Court of Law, which makes all the effort taken in this regard worthless and leads to great loss of Government money.
- Only less than three percent of the total Medico-legal examination and certification is being done by qualified Forensic Medicine specialists. More than 97% of the medico-legal certification is done by M.B.B.S. doctors and doctors from specialties other than Forensic Medicine, working in Health Services Department, Government Medical Colleges and Private Hospitals in our State. Major share of Medico-legal work (about three fourth) is undertaken by the doctors of Health Services Department, in comparison to those working in the Medical Colleges and Private institutions. The above said problems mainly affect doctors in Health Services Department.

- It is a fact that there is a dearth of doctors in the Health Services Department. Among the many factors that keep doctors away from Government Sector, one important factor is an aversion caused by fear, among doctors, towards handling medico-legal cases and their invariable, delayed consequence of Court appearance. This fact is clearly evidenced by the intense scarcity of doctors to work in Casualty Units of Institutions with a secondary or tertiary status, under Health Services Department. By making examination, recording of findings and their interpretation in medico-legal cases easy and giving adequate training to handle such cases and also on how to give evidence in a Court of Law, this problem can be solved.
- Doctors working in many institutions under Health Services Department are not getting the existing formats for certification. In many institutions doctors keep one copy of the format and get a photocopy of that format for certification every time. There are no specific guidelines to ensure uninterrupted supply of the medico-legal formats to the Medical Officers.
- There are no specific guidelines regarding the issue of medico-legal certificates (who should issue, to whom should issue, when should issue etc). Also instructions regarding the institution-wise custodianship of such documents are lacking.
- There are no specific guidelines regarding the category-wise responsibility for undertaking various medico-legal examinations. Specific guidelines are lacking with regard to which category of doctors should undertake what type of medico-legal examinations.
- There is also lack of awareness regarding the category of doctors authorized to do an autopsy. As per G.O. MS No.364/68/Home, dated 14-10-1968, from the Home (A) Department, Trivandrum, it is stated that the Police Surgeons will conduct all medico-legal autopsies in the Hospital to which he is attached. This can very well be taken to be in accordance with the specification namely, qualified medical man appointed in this behalf (autopsy) by the State Government, mentioned in subsection (v) of clause (3) of Sec.174, Cr.P.C. This may be one reason why all cases for postmortem examination with inquest by Executive Magistrate is being forwarded to the Police Surgeons on all possible occasions. In the same order from the Home Department, it is stated that all

cases of homicides, suspicious deaths, traffic accidents and other important cases should be personally attended to by the Police Surgeons. Except in cases of Traffic accidents, this is being followed even now. There is a reference to routine cases of postmortem examination to be attended by Medical Officers other than Police Surgeons, in G.O. Rt. No.1985/84/HD dated 19-6-1984, from the Health (A) Department, Trivandrum. Then there is the Order, G.O. (Rt) No.1185/82/Home, dated Trivandrum 3-5-82, which authorize postgraduate students in the Department of Forensic Medicine in the State, to undertake medicolegal work including autopsy, independently. From all these, a reasonable presumption that all Police Surgeons, Medical Officers under Health Services and Medical Education Departments are authorized to do autopsy, apart from the Post Graduate Students in Forensic Medicine department of Medical Colleges. Also there are the recent Government Orders authorising Co-operative Medical College, Pariyaram and Amrutha Institute of Medical Sciences, Kochi, to undertake Medico-legal autopsy.

- Another area of controversy is regarding the time of postmortem examinations. As per the provisions of Sec.174 and 176 of Cr.P.C., and based on circulars from the Central Government and verdicts from the Hon'ble Supreme Court { Bhupinder Singh v. State of Panjab, (1988) 2 SCJ 246 (SC) } postmortem examination is a mandatory legal procedure to be followed in all cases of death due to unnatural causes. It is a universally accepted dictum that, ideally postmortem examination should be conducted in broad day light and hence, the time for conducting postmortem examination was fixed as between 07.00am and 05.00pm. Since a complete medico-legal postmortem examination will take a minimum of one hour, it was further clarified by the Government that medical officers shall not accept requisitions for postmortem examination after 04.00pm. In spite of these directives, there were instances where medical officers were compelled to accept requisitions for postmortem examinations after 04.00pm. The Government then further issued a circular (No.18023 / H 1 / 86 / Home (H) Department, TVM Dated 04-09-1986), instructing the District Collectors, Revenue Divisional Officers, Superintendents of Police and other such officers, not to compel medical officers to undertake postmortem examinations, after the

prescribed time limit. These are the three existing Government Orders / Circulars, regarding the time of postmortem examination.

- According to the destination of the postmortem certificates and where the processing according to the provisions of the Law (Indian Penal Code and Criminal Procedure Code) and consequent final disposal of the case is done, these certificates can generally be divided into two categories. All cases of unnatural deaths, where any of the sections of I.P.C. is not applicable, will be disposed off by the Executive Magistrates. All cases where any of the sections of I.P.C. is applicable, will be dealt with by the Judicial Courts of Law. For any of such certificates to be admissible in the Court of Law, they should be according to the Law, as per the rules and prepared and issued in order. Even minute technical flaws in the conduct of the prescribed procedure, preparation and issue of the certificate or any of such aspects may be challenged by the defense or may render such certificate inadmissible in the Court of Law. From a legal viewpoint, it is not at all desirable that someone is authorized to violate or instruct someone to violate the existing rules for any reason, without concurrence from the Hon'ble Court of Law or a decision by the Government, changing such rules. Another important point is that, nobody can predict which case of unnatural death without any obvious implications of any sections of I.P.C. at the outset, may later become a case to be dealt with by a Judicial Court. It may be during the course of investigation that the case becomes one with sections like 302, 304, 304(A), 304(B), 306, 314, 315, 316, 376, 377 or 498-A of I.P.C. is attributable to it. Hence, it is ideal that the postmortem examinations are done according to the Law, as per the rules, in order and without any interference from any person or agency. It is to be born in mind that, such directions from any superior officer, to violate any existing rule regarding postmortem examination and the medical officer acting in compliance with such directions, may create room for doubt regarding the findings and conclusions recorded in the certificate. Such actions are not definitely going to be interpreted as the one being done in the interest of Justice and may get interpreted as an interference with the process of Law. During the trial of the case in a Court of Law, the medical officer alone will have to answer for such technical flaws, committed by him under pressure or on order from the superior officer.

- With the advent of Private Insurance Companies, the importance of such technicalities assumed new dimensions. Most of the schemes of these companies deprive compensation to the legal heirs of the insured, in the event of accidental death of the insured, if it can be proved that there was any factor of any sort, contributed from the part of the deceased, in the causation of death. It is seen that these companies make their own investigation into every such death, with a view to find out any of such factors. Any influence which caused a violation of Law or Rules, may be taken advantage of, and may result in deprivation of the otherwise entitled compensation to the legal heirs of the deceased. There is lack of clarity in understanding these aspects among medical officers and most often they fail to convince the superior officers, the problem in complying to the instructions given to them on the basis of public demand.
- From all these it becomes clear that the Government has the absolute authority in laying down the rules regarding the time of postmortem examination. But once the Government has laid down such rules and issued a Government Order in this behalf, it is undesirable for any officer or agency, other than the Government, to compel any medical officer to violate such rules, on any reason.
- Medico-legal postmortem examination is a strictly legal affair and the medical officer who has conducted such postmortem examination shall not communicate with anyone other than the Investigating Officer and the Executive or judicial Magistrate, regarding the findings of such examination, without permission from the Investigating Officer or the Magistrate. Such communications should be according to any of the provisions of the I.P.C., Cr.P.C. or Indian Evidence Act. Nowadays, it has become very common that the private detectives employed by the private Insurance companies approaching medical officers, asking for a statement regarding the manner of death, findings, results of chemical and other such analysis etc. Most of the medical officers are unaware of the fact that they are not entitled to give such statements, which are not within the purview of the three codes of Law, mentioned earlier. What they can do is to certify the authenticity of the certificate of postmortem examination issued by them.
- There are also gray areas like typewriting the postmortem certificates, custodianship of a dead body kept for postmortem examination, maximum period up to which viscera and other material objects preserved from a medico-legal

case should be preserved in the event of not being forwarded to Chemical Examiner immediately, maximum period up to which medico-legal documents are to be kept in an institution etc where no specific guidelines are still lacking.

All these and other such deficiencies necessitate the evolution of a **Code of Medico-legal Examination and Certification**, applicable to the entire State, in the form of a Government Order and the ideal name for such code will be **KERALA MEDICO-LEGAL CODE**.

Such a Code of Medico-legal Examination & Certification, should contain specific regulations regarding the

- Classification of different Medico-legal examinations
- Formats to be used for each type examination.
- Size and the minimum available writing space of each certificate.
- Responsibility of printing the certificates and ensuring their availability to doctors.
- Category of institutions/doctors who should undertake each type of examination.
- Conduct of every medico-legal examination.
- Recording the Medico-legal certificates.
- Maintenance and issue of these documents.

The formats should be easy to be filled in, with findings and opinion incorporated in “choose the correct one and strike off the others” manner, in all possible instances. The code of medico-legal examination and certification with instructions regarding the documentation, maintenance and issue of such certificates, should be made available to all doctors working in Health Services, Medical Education Department and Private Hospitals. This can be achieved by publishing the Code in the official website of Health & Family Welfare Department, from where all doctors can download the same. Institutions can make arrangements for the printing of the formats based on the samples downloaded. Regular training should be ensured to all doctors on Medico-legal examination and documentation, on an yearly basis. This should be arranged through the District Medical Officers of every District, with the help of qualified Forensic Medicine Specialists in Medical Education and Health Services Departments.