

Medico-legal Issues Leveled against Forensic Physicians in Pre-screening of Detainees

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Editorial

Forensic physicians come across medico-legal issues at three stages in relation to detention; during pre-screening of detainees, during documentation and evaluation of ill-treated detainees and in death in custody. In this article, the medico-legal issues that leveled against forensic physicians during “pre-screening of detainees” are discussed. Medico-legal pre-screening examination before detention is usually performed to assess fit to be detained (FTD); fit to be interviewed (FTI), documentation and evaluation of injuries, any evidence to prove the alleged crime etc. The relatives almost always make allegations against the custodians, whatever the outcome of the detention that reports; injuries or deaths. Though the allegations usually leveled against the custodians, in respect of “pre-screening of detainees”, we understand that the forensic physicians themselves are responsible for initiating several medico-legal issues. If such circumstances are investigated, the forensic physicians may have to face legal and departmental inquiries and consequences. Therefore, the forensic physicians should adopt the “Basic guiding ethical principles of clinical practice” during the pre-screening of the detainees [1]. They include; obtaining informed written consent, non-judgmental and non-discriminating approach, with compassion, at a place where safety and privacy is maintained, with responsibility and respect, upholding right to decide while maintaining confidentiality. Failing to adopt the “Basic guiding ethical principles in clinical practice” could lead to undermine the fundamental obligations on the part of the professional and the forensic physician who is responsible will be prosecuted under the criminal law and or being liable to pay compensation in civil suit for being negligent. The forensic physician also can be subjected to internal departmental inquiry, outcome of which could lead even for a disenrollment.

The doctor-patient relationship should be maintained similar to other hospital or circumstances and consider the detainee as a human. They should build up a good rapport with detainees while maintaining sympathy and empathy. The entire information that collected through doctor-patient relationship should not be divulged to the custodians. To maintain confidentiality of the information, the forensic physician should divulge only the required information, such as medical concerns, required observations, and medications to be continued and dietary requirements. The forensic physicians should consider “Patient’s safety” before detention. Allegations of negligence could be leveled against the forensic physicians for not considering “Detainee’s safety”. In order to ensure detainee’s safety, it is the forensic physician’s duty to instruct the custodians regarding medication administration, conditions of detention, prevent self-harm etc. [2]. Therefore, regarding “medication administration”, the custodians should be instructed on the dose, times of administration, and special instructions [3]. Ensure to continue existing treatments, to undergo planned treatments and follow ups, prevent complications and, prevent spread of diseases to other inmates. The clear and detailed instructions should be given to the custodians in comprehensible manner and also should be documented. Instruct custodians on “Conditions of detention” such as temperature, ventilation, cleanliness, personal hygiene, bedding, dietary needs, fluids, to provide rest of 8 hours during each 24 hours and such instructions should be documented too [4]. Instructions should be given to “prevent self-harm” such as removal of the detainee’s clothing and personal effects, cells should be checked to prevent any

defects being used for deliberate self-harm etc. [2].

Detainees should be screened for “Fitness to be detained” (FTD). If the forensic physician fails to screen for FTD, the detainee can die in custody. Die in custody is undesirable and unexpected to the relatives, friends or the general public. To prevent such outcomes, it is the obligation of forensic physician to assess whether the detainee is FTD. Therefore, look for common medical problems such as diabetes, heart disease, epilepsy, asthma. Look for infectious diseases, sickle cell disease etc. Assess the mental health, risk of self-harm, claustrophobia etc. [5]. Look for evidence of alcohol and or drug abuse and injuries specially the head injuries [2]. According to Stark (2005), the indications for hospital admission in head injuries are listed below [2]. If any of the following are present, the detainee should be admitted to a hospital. (1) Age more than 65 years with head injury, (2) Persistent headache since the injury, (3) Vomiting since the injury, (4) Seizures since the injury, (5) Impaired consciousness (GCS <15/15) at any time since injury, (6) Focal neurological symptom or sign, (7) Skull fracture or penetrating injury, (8) Amnesia of events before the injury (Retrograde) or after the injury (anterograde), (9) Medical comorbidity such as anticoagulant therapy, bleeding or clotting disorder etc, (10) High-energy head injury such as road traffic trauma, fall from a height of more than one meter or more than five stairs, (11) Significant extra-cranial injuries, (12) Current drug or alcohol intoxication and (13) Continuing uncertainty about the diagnosis after first assessment. Such pre-screenings by the forensic physician before detention is important and would reduce unexpected deaths that occur in custody.

Lasantha Jagath Kumara (23) died as a result of cruel torture inflicted on him by the Paiyagala Police, Sri Lanka. The Officer in charge of the Paiyagala Police Station was held responsible for his death. However, one of the others who were responsible for this death was the then assistant forensic physician, at the Kalutara Nagoda Hospital. The deceased was produced before the assistant forensic physician by police to obtain a certificate stating that he was fit to be detained. After a lengthy inquiry at the Sri Lanka Medical Council (SLMC) on issuing a false certificate on FTD, the assistant forensic physician was found guilty in 2007 and was suspended from medical practice for three years. This decision was a landmark decision taken against a forensic physician by SLMC, in Sri Lanka [6].

Forensic physicians should assess the detainee’s “Fitness to be interviewed” (FTI) before obtaining a statement by the custodians.

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Recording of statements without assessing the FTI is another medico-legal issue and such statements taken by the custodians become invalid in the court of law. FTI can be affected by under influence of alcohol, substance abuse, learning difficulties, psychiatric illnesses, physical illnesses such as epilepsy, head injury, migraine, hypothyroidism, diabetes mellitus, dementia etc. [2]. If the forensic physician's pre-screening for FTI was not performed properly, the detainees can challenge the forensic physician's opinion at the court of law.

Some detainees are under influence of alcohol and it can affect FTI. Severe alcohol intoxication is considered as unfit to be interviewed. Deterioration of short-term memory occurs as lower levels as 70 mg/100 ml but the ultimate decision of FTI in alcohol intoxication should be determined by the clinical assessment of the physician rather than the blood alcohol concentration. Further, alcohol withdrawal states such as "hangover" can affect interrogation [7].

Substance misuse also can affect FTI. Both drug intoxication and withdrawal states are considered as unfit for interview. Intoxication with substance misuse is easy to recognize. However, with the hallucinogenic substances such as LSD, the mental state may fluctuate. Further, the drug withdrawal states are vulnerable to provide false confessions and therefore, such withdrawal effects should be treated before recoding a statement [8].

Learning difficulties of detainees also can affect FTI. If moderate or severe learning difficulty, it can be recognized but the mild learning difficulties may not be obvious. Further, the detainees with such disabilities are vulnerable in police custody and they show difficulties in understanding their legal rights and in communicating with custodians [9]. The psychiatric illnesses also can affect FTI. Of them, the functional psychiatric illnesses such as anxiety, depression are vulnerable to give false confessions [10]. The psychotic illness such as schizophrenia does not necessarily mean that the detainee is unfit for interview and such an opinion would depend on functional assessment of the physician. The physical illnesses such as epilepsy, head injury, migraine, hypothyroidism, diabetes mellitus, and dementia also can affect FTI. Most epileptic patients are mentally normal. However, during aura, the detainees may have distorted perceptions or hallucinations. In absences or petit mal epilepsy, several such absences may occur in quick succession, producing significant gaps in memory [2]. During Post-ictal period, the recollection may be unreliable [10].

Concussion due to head injury can cause retrograde and anterograde amnesia. However, both retrograde and anterograde amnesia can occur without losing consciousness [11]. Migraine is a common condition affecting approximately 20% of women and 15% of men and there may be marked impairment of memory [12]. Hypothyroidism can affect FTI and can obtain a statement if adequately treated. However, if undiagnosed or undertreated hypothyroidism, treat the detainee before recording a statement [13]. Diabetes Mellitus can affect FTI. Hyperglycemic coma is rare. Hypoglycemia is not rare and most will have complete amnesia. The blood sugar level should be at 6 mmol / L to give a statement or to be interviewed [14]. Dementia can affect FTI. It is diagnosed when the mini-mental state examination Score is equal or more than 24 out of 30. It is called "mini" because it concentrates only on the cognitive aspects [15].

Detainees should be screened for psychiatric disorders by performing "Mental health assessment" and consider admission to hospital or detention in custody. If fails to assess the mental state, can miss the diagnosis of chronic-mental illness, mental illness in substance abuse, deliberate self-harm in mental illness and such detainees are vulnerable to violence, injury or death in custody. Therefore, the

forensic physician should perform a Brief Mental State Examination (BMSE) to assess the mental health of detainee before admission term memory), (2) Appearance (Self-care, behavior), (3) Risk behaviors (Self harm, harm to others), (4) Other behaviors (Obsessive/ compulsive behaviors), (5) Speech (Rate, volume), (6) Mood (Biological symptoms such as sleep, appetite, energy), (7) Thought (Delusions), and (8) Perception (Hallucinations, illusions). or detention [2]. The steps of BMSE are shown below. (1) Cognitive function (Concentration, short-term and long- term memory), (2) Appearance (Self-care, behavior), (3) Risk behaviors (Self harm, harm to others), (4) Other behaviors (Obsessive/ compulsive behaviors), (5) Speech (Rate, volume), (6) Mood (Biological symptoms such as sleep, appetite, energy), (7) Thought (Delusions), and (8) Perception (Hallucinations, illusions).

The chronic-stable mental illnesses can be missed, if fails to screen the mental state. However, the chronic-stable mental illness has no specific problem for detention but long-term medication should be continued. The mental illness in substance abuse also can be missed, if fails to screen the mental state in pre-screening. Concurrent substance misuse and mental illness could present as dual diagnosis or co-morbidity. Sometimes, the primary diagnosis is a major mental illness and the substance misuse could be secondary. At times, the primary diagnosis is substance misuse and the psychiatric illness could be secondary [16]. The "Deliberate Self-Harm" (DSH) in mental illnesses can be missed, if forensic physician fails to screen the mental state. When the risk of suicide is high, the detainee should be admitted to a hospital and keep under supervision. If the risk is deemed to be low, the detainee is fit to be detained (FTD) under supervision [2]. If fails to screen the mental state, can miss the diagnosis of claustrophobia, the fear of having no escape and being in closed or small spaces [2]. It may affect fit to be interviewed (FTI) and often, reassurance is enough, and it rarely warrants any medication. Addicted detainees should be screened for hidden drugs in the body such as stuffers or body packers. Medico-legal issues arise if drug addicts are not properly screened for hidden drugs. If "Drug searches" or "Intimate searches" are not done by the forensic physician during the pre-screening, the detainees can die in custody [17]. Ingested drugs (stuffer or swallower) or packed in body cavities (body packers or mules) are usually found in unlawful drug possession or trafficking. Further, a person who is about to be arrested by the police may swallow drugs. In such circumstances, the forensic physician has to examine the mouth, nostrils, ears, umbilicus, foreskin, vagina and rectum. Drugs may be packed in layers of cellophane or in condoms. The drugs leak into the bloodstream can result in acute intoxication and death from overdose. Therefore, full facilities for resuscitation should be available at the examination room. In such emergency, all attempts should be made to save the life. However, ingested package usually completely eliminate naturally without any complication [18]. Medico-legal issues also can arise in collection of "Forensic samples" from detainees that may be requested by the police authorities. Those samples should be collected as proper evidence. Otherwise, such samples cannot be used as evidence in the court of law. Usual samples are blood, urine, saliva, hair, fingernail scrapings and cuttings, and swabs (e.g., mouth). Such samples should be collected after obtaining the informed consent and only be taken by a doctor or nurse for evidential purposes. Such samples should be packed in accordance with local procedures and ensure to maintain chain of evidence.

When medico-legal examinations were not done before detention, the evidence of "torture" can be lost gradually. The early referrals to the forensic physician or using the medical notes of prison medical officers are the remedies. However, in some instances, to allow healing of such injuries, purposeful delay of referral to the forensic physician

could be done by the custodians. Further, some medico-legal issues that are faced by the forensic physicians can be overcome by perusing the medical notes of the prison hospital. Sometimes, detainees make false medical complaints to obtain bail. Such conditions cannot be usually detected by an ordinary clinical examination of the forensic physician and medical observations over a long period by the medical officers of prison hospital are beneficial. In such circumstances, the bed head ticket (BHT) of prison medical officers' regarding the daily observations of the detainees could be considered. Therefore, maintaining of good medical notes by the prison medical officers with accurate injury descriptions are encouraged to achieve justice and to overcome subsequent medico-legal issues. Further, the medico-legal issues can be overcome by inviting the forensic physicians to conduct regular clinics at the places of detention. In conclusion, several medico-legal issues arise and allegations are leveled against forensic physicians if no proper pre-screening of detainees is performed. At the same time, in pre-screening, the forensic physician has to perform dual roles; documentation and evaluation of evidence for criminal purposes, and save the lives of the detainees and uphold the dignity for humanitarian purposes. Therefore, adoption of proactive preventive medico-legal measures by the forensic physicians during pre-screening is reiterated. If an allegation is raised against a forensic physician, meticulous medico-legal investigations should be conducted to overcome such allegations.

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