

Perceptions of judiciary on competencies needed by medical officers to provide expert evidence in Sri Lanka

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Abstract

In Sri Lanka many medical officers function as expert medical witnesses in court. Some function as forensic pathologists with postgraduate training in Forensic Medicine, some perform medico legal work as part of their day to day duties with purely undergraduate knowledge in Forensic Medicine and others perform medico legal duties as incidental services during the course of a routine clinical practice. No studies have been conducted in Sri Lanka to identify the competencies necessary to function as expert medical witnesses in court. Different categories of people were identified in order to assist in this task. The judiciary was considered one such important category as they are directly involved in using the evidence of doctors in the administration of justice.

Objective: To identify competencies required by expert medical witnesses in court, as perceived by the judiciary, in the Sri Lankan context.

Method: Fourteen semi-structured in-depth interviews were carried out on lawyers and judges on their perceptions of the competencies required by expert medical witnesses in court.

Results: Data analysis revealed the following as important competencies in providing expert medical evidence to court, recording information accurately and completely in an appropriate and legible manner, demonstrating scientific approach, utilizing principles of critical thinking, reasoning and evaluation, working efficiently within the existing legal system and medico-legal framework, maintaining integrity and providing evidence in court in a convincing manner.

Conclusion: These findings would assist the development of future Forensic Medicine programs in Sri Lanka, in order to produce competent expert medical witnesses to court.

Keywords: Expert medical evidence, competencies, expert medical witness

Introduction

Medico-legal services expected from a medical officer in Sri Lanka are the clinical examination of adults and children for medico-legal purposes with documentation and reporting, completion of the declaration of death

certificate, postmortem examination, referral to specialist for postmortem examination, preparation of medico-legal reports and postmortem reports, providing evidence in court and conducting visits to scenes of crime.

These "medical officers" either function with postgraduate training in Forensic Medicine (Forensic Pathologists), perform medico-legal work as part of their day to day duties with purely the undergraduate knowledge in Forensic Medicine (district medical officers, medical officers--medico-legal etc.) or perform medico-legal duties as incidental services during the course of a routine clinical practice.

Medical graduates that lack the knowledge and experience in Forensic science often reach incorrect conclusions in such a way that death investigation might be misdirected (Hiss et al, 2007). Thus, it appears necessary to train medical witnesses in medico-legal work in a more meaningful manner so that they can

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execute quality medico-legal work that would be invaluable in the dispensation of justice. Therefore, It is necessary to develop an evidence based approach to making decisions on the content that is to be included in the Forensic Medicine curricula both at undergraduate and postgraduate level. Identifying competencies are expected from medical witnesses that also take into account the needs of the judiciary. This will provide the basis for an evidence based approach (Leung, 2002). There is no evidence in the available literature to show what the expectations of the judiciary are in relation to expert medical evidence.

Objective

To identify competencies required by expert medical witnesses in court, as perceived by the judiciary, in the Sri Lankan context.

Methodology

A single interviewer, with a medico legal background, carried out fourteen individual, semi-structured, in-depth interviews on a group of lawyers and judges with more than 10 years' work experience, on the perceptions of the competence of non-specialist medical officers who provide expert opinion to the court. They were selected by purposeful sampling to include lawyers for the prosecution and defense while ensuring inclusion of lawyers who have practiced in different parts of the country.

Before the interview, the interviewee was requested to reflect on their encounters with medical officers who provided expert medical evidence to the court. Interviews were 30-45 minutes long were conducted, with an interview guide, after consent was obtained. The same interview guide was used for all interviews and the interviews were recorded on audio tapes.

Context information and demographic data of the interviewee was collected separately at the end of the interview. The data were further improved by carrying out some interviews, performing preliminary analyses, and then selecting more respondents to fill in emerging questions. Subsequently data were transcribed verbatim. The data were analyzed by a process of familiarization which included reading the transcripts which helped list key ideas and recurrent themes. A thematic framework was identified inductively and deductively (Abeyasinghe, 2009; Peiris, 1974; Schwartz & Wojtczak, 2002). Issues raised by the respondents themselves and views or

experiences that recur in the data were also considered. This resulted in identification of all the key issues, concepts and themes by which the data could be examined and referenced.

Each transcript was then read in full and the thematic framework or index systematically applied to all the data in textual form. The data was arranged according to the appropriate part of the thematic framework to which they related and charts were drawn (Pope, et al, 2000).

To improve the validity of the coding frame, a co-staff member was invited to comment on the themes identified. Areas of disagreement about the coding and conceptualization were discussed until an agreement was reached. Once the coding framework was identified and confirmed, its reliability was assessed by calculating inter-rater reliability. Initially, the coding frame was applied to a random selection of three transcripts by an independent rater and the researcher. A comparison was made between the categories checked off by the researcher and the independent rater (Mays & Pope, 1995).

Results

Out of the 15 categories identified there was agreement in 11 categories in all interviews. The percentage agreement between the two persons (inter-rater reliability) was calculate as 73.33%. Several key competencies were identified by the judiciary in relation to an expert medical witness.

1. Recording information accurately and completely (12/14)

1.1 I don't think they are very precise they are very general in their description.

1.2 The importance of the history, I do not think they know...the doctor is considered as independent and if doctor comes and says this is what she had told and if she tells in court a different story, that is one yard stick which is used by us to see whether there is truth in what she says.

2. Demonstrating scientific approach

2.1 Utilize principles of critical thinking, reasoning, evaluation and reporting (9/14)

2.1.1 most people think that it is a matter of filling up that form.

2.1.2 It has to be something more than reading aloud from our document. You have to analyses, interpret, present,

2.2 State scientific basis for conclusions and solve problems using information from different sources (11/14)

2.2.1 *I have come across people who have given evidence based on feelings*

2.2.2 *make sure that whatever opinion they express is supported by their observations.*

2.2.3 *they just.. say what's in the report.I don't think they have any time to refer.*

2.3 Ensure continuous self-improvement (12/14)

2.3.1 *their knowledge will be more useful if they have a mechanism to update them*

3. Work efficiently within the existing legal system and medico-legal framework

3.1 Be aware of the role of the medical officer in an expert testimony (11/14)

3.1.1 *they have not been told as to the purpose they should serve in court.*

3.1.2 *expertise is something more than merely being a doctor*

3.1.3 *They just answer the questions. they need to be trained in their presentation.*

3.2 Be familiar with the legal and court procedure (12/14)

3.2.1 *They should be more familiar with the court procedure.*

3.2.2 *They should know their territory. should confine to their limit.*

3.2.3 *rules of evidence medical experts also should know..*

3.2.4 *how evidence is evaluated. That is also going to be helpful for the expert.*

4. Maintain integrity

4.1 Ensure consistency of evidence and conscientiousness (9/14)

4.1.1 *test of consistency....if you take up different positions at different times then your evidence is going to be affected.*

4.1.2 *You can't overlook...you have to take your job very seriously.*

4.1.3 *all these documents that they send to court have to be prepared with a great degree of responsibility and when they are giving evidence also that it should be done with the same degree of responsibility.*

4.2 Be independent (12/15)

4.2.1 *in expressing opinion you have to forget that you have been called either from the prosecution or the defense. be extremely impartial and objective.*

5. Provide evidence in court in convincing manner

5.1 Be confident (11/15)

5.1.1 *Demeanor of a witness is very important.*

5.1.2 *if you want yourself believed then you must act in a certain way...then even the defense counsel will not try to confront you.*

5.2 Formulate answers carefully (10/15)

5.2.1 *be careful in formulating your answers with correct words ultimately what is remaining is what is on record and not the understanding of the judge.*

5.2.2 *they have to think that judges and lawyers don't know medicine explain it very clearly educate their duty is just to help the court*

5.2.3 *Flexibility you must always keep in mind that there could be alternatives*

5.3 Be prepared (8/15)

5.3.1 *some doctors are not prepared they consider it a nuisance they want to just finish it and go.*

5.3.2 *some doctors come to court, they don't bring their notes they purely depend on the Medico Legal Report available with court.*

Discussion

This study shows that the judiciary expects certain competencies from expert medical witnesses.

Many respondents thought that medical officers need to understand the importance of accurate recording of the history and examination findings. They think that a lack of understanding of this fact resulted in inadequate and inaccurate documentation causing misleading of court and embarrassment to the doctor. For example the fact that the medico legal history is not recorded verbatim (especially when it comes to mentioning the name of the assailant, stated by the victim) causes damage to the credibility of the victim, at the time of trial. It maybe that the limited space for the "short history" in the Medico legal Report (MLR) and the absence of

a place for the history in the Postmortem Report (PMR) also creates an impression of redundancy of the history in medico legal practice. In addition to recording information on the standard forms, it was also advised that medical officers maintain their own records in a readable, accurate and more comprehensive form for future referral. Since the technical nature of the PMR and MLR does not leave allowance for documentation of information appropriate to the needs of court it is imperative that students are made aware of the information that court may expect them to provide when giving evidence in court. Reasons for insufficient reports were considered to be the lack of interest by medical officers, heavy work load, misconception that adhering to the format would suffice and the technical nature of the outdated medico-legal forms. Even though the structure of the format was considered insufficient it was also seen that some parts of the form are not being utilized.

It was stated that expert opinion includes analysis, interpretation and expressing an opinion and not mere narration of what one has observed. Statements such as "according to medical science" should be discouraged while specific reasons should be given for an opinion. The expert is expected to draw the attention of the court to the details which influenced him/her in reaching his decision, so that court could independently, but with the expert's assistance, form its own opinion. It was also stated that giving reasons for a particular opinion supported by references and recent findings would lead to the expression of opinion in a more confident manner. It was also highlighted that in situations where defense counsel attempt to limit the evidence of experts by requesting brief answers, experts may request the judge an opportunity to provide explanations. Even though professionalism deems that experts should not provide evidence based on feelings and affiliations it may also be stated that pure scientific criteria for the expression of opinions may not be appropriate for matters affecting human beings. Knowledge of cultures and human behavior and life in general is needed to express opinions on matters affecting human beings. Therefore the need for a broader education system which produces balanced individuals and a continuous professional development program with regular training was highlighted as a necessity especially for medical officers in peripheral hospitals where there is no mechanisms to update their knowledge, no supervision and where there is work overload.

It was the perception of the judiciary that medical officers should be told how medical evidence fits into the overall case and the role of the medical officer in expert testimony. It has been observed that some feel that their role is to prove the prosecution case while some think that they should merely read out their report. Awareness of the legal and court procedure, system of administration of justice, the rules of evidence (confining to one's own specialty, maintaining chain of custody, consent, submitting reports, handling reports from referrals) and how evidence is evaluated (tests of promptness/ belatedness, the tests of consistency, probability/ improbability, demeanor, partiality/ impartiality) are important competencies. Absence of this knowledge would result not only in exclusion of the evidence of the expert but may also result in a grave miscarriage of justice. It was also the opinion that experience and exposure would not only to produce experts who are broad minded and of balanced predisposition but would also help medical officers identify their role in expert testimony.

Maintaining integrity of the expert and building and maintaining reputation was considered vital by the judiciary. Consistency of evidence is considered not only as an indicator of integrity but is also a consideration when deciding whether evidence would be accepted by a court or not. Reasons for discrepancies in records in a forensic setting has been identified as the inability to recall details as the trials are protracted, not recording the relevant information in the first instance (belatedness), mistakes made in transferring information from the MLEF to the MLR and the lack of understanding on the importance of the medico-legal history and examination. It must be considered that discrepancies in reports due to negligence maybe considered as intentional by court resulting in the committing of an offense. The importance of being conscientious especially in performing medico-legal work should be highlighted. It was observed that sometimes when medical experts come to court they merely discharge their duties, hastily, with no interest in the case. This may not only result in the medical expert being disbelieved by court but also delays in court procedure and manipulation of the expert by other interested parties. The fact that expert evidence should be independent is a fact that many criminal lawyers thought needed to be taught to students. An underlying partiality of experts towards the prosecution was highlighted in this study. Partiality in most

instances was considered due to the fact that medical officers who are most often witnesses for the prosecution feeling that they should support the prosecution, rather than intentional. The fact that medical officers are exposed to the defense point of view only in court and the fact that he feels that he has to continue to agree with the prosecution in court may impact negatively on the doctors evidence. The experts should be able to discuss the report in open court with the state counsel and the defense counsel and should be open minded enough and willing to accommodate the defense view where relevant. It was also stated that in case a doctor decides to testify on behalf of the defense in a criminal case that the medical witness should be absolutely certain that he is not misleading court.

Many believed that it is important to provide evidence in court in a convincing manner and to impress the court that you are a trustworthy witness by being confident and facing the cross-examination effectively. The lack of confidence of experts detected in cross examination maybe a result of many lawyers following courses in Forensic Medicine and being almost as knowledgeable in Forensic Medicine as the doctors. It was stated that a confident behavior and appropriate demeanor in court would ensure to a certain extent that the evidence provided is believable and also result in hesitation by the defense counsel to confront the expert. Some participant thought that confidence of the experts maybe improved with experience, fluency in the English language (which is important for the review of literature etc.), preparedness and by updating of knowledge. Even though the court may need to know that there is more than one answer to a question the expressions or comments of the counsel or the judge should not influence the evidence of the experts. Ensuring flexibility by avoiding dogmatism was considered important while it is also important to convey the fact that they should not be manipulated by interested parties. It was perceived that as far as the expert medical witness is concerned manipulation by interested parties may be avoided as long as he/she is the expert is competent and is conversant with his own case. The expert may succumb to manipulation by interested parties either to please certain parties or due to unpreparedness of the expert. As expected language skills were identified as an important aspect in the provision of oral evidence.

Persons fluent in English were more confident; it appears that some medical officers find it difficult to translate some English technical terms to Sinhala, as evidence in court is led in Sinhala (Sinhala is the national language in Sri Lanka but medical education in Sri Lanka is in English). Some considered that the language skills, both Sinhala and English need to be improved. Since evidence in court is presented to a non-medical audience and every accused person need not be represented by a lawyer, the jargon use by the expert should not only be comprehensible to the judiciary but also to laymen. Many commented that too many technical terms were used in providing oral evidence as well as written evidence. Using of technical terms in court may lead to inappropriate documentation of proceedings by the court stenographer as well as difficulty in understanding of evidence by the judge and counsel. The fact that judgments are made and reviewed on records taken down by the court stenographer during the trial and the fact that the present day translators may not be adequately competent in translating technical terms, highlights the importance of the use of simple, precise language when providing evidence. The members of the judiciary felt expert's preparedness was important while ensuring that court can access records whenever necessary. A witness may not be prepared for a case if he has no access to his own records. Therefore, in a system where medical officers are transferable from one station to the other it was considered important to ensure accessibility of reports whenever needed. Handing over of reports when the expert is on leave is also important in order to grant access to reports when the court requires it. Taking one's own notes to court without depending upon the copy sent to court and having copies of all reports on which conclusions are based creates an impression of being prepared. It is believed if an expert is unprepared, not only he will provide inappropriate, vague answers to questions but may also be subjected to manipulation by interested parties. The laws delays and the current medical system where medical officers are transferred frequently also contribute to lack of preparedness of medical experts.

Conclusion

The judiciary identified recording information accurately, demonstrating scientific approach, awareness of the functioning of the existing legal system and medico-legal framework, maintaining integrity and providing evidence in

court in a convincing manner as essential competencies required by medical witnesses when providing expert medical evidence. It is hoped that these findings would assist the development of Forensic Medicine programs in order to ensure that competent expert medical witnesses would better assist court in the administration of justice.

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