

common medico legal issues for doctors

Medical practitioners need to respond to many issues beyond the provision of healthcare to their patients. This is a necessary part of modern medicine and can often be challenging for the doctor. These increasing requirements (which are not clinical and predominantly administrative) are time consuming, but an essential portion of medical practice.

Based on the MIPS experience, we provide some tips on the most common issues faced by our members. Please note that the following is not professional legal advice and you should always obtain the counsel of your MDO and/or your solicitor before making any decisions regarding your professional practice.

subpoenas and giving evidence

Court ordered subpoenas require either your attendance at Court to give evidence and/or produce documents (usually medical records) relevant to the proceedings at hand. Arrangements can be made to provide documents to the court or attend at a convenient time with the solicitors who produced the subpoena and/or the court. But you will need to confirm these arrangements.

Do not ignore these or delay actioning any Court Order. Always seek the advice of your MDO and/or a solicitor. Failure to comply may lead to a charge of contempt of court.

Should you be required to give evidence, always be prepared. Ensure your notes are relevant and accurate and be familiar with the patient's history and the facts of the case. Only deal in your area of expertise. Answer all questions clearly and accurately and stick to the facts.

In most cases you are likely to have a lawyer representing you in which case you will be well briefed beforehand. *Again always seek the advice of your MDO and/or a solicitor.*

releasing medical information to a third party

Medical information may be requested by an authorised representative (parent, guardian, Enduring Power of Attorney, solicitor, insurer etc.). Be sure to sight *and retain a copy* of the authorisation, which must contain the patient's signature and be contemporaneously dated. Keep a copy of this on the patient's record. Providing access to sensitive personal health care information requires careful analysis as the repercussions for inappropriate access are serious. *Always err on the side of caution and again always seek the advice of your MDO and/or a solicitor.*

family court matters

Family break-ups can often place doctors in difficult situations when it comes time to provide or disclose information. There may be issues around custody, records handling and consent. As a general rule either parent is entitled to details unless disclosure poses a threat to the child or is precluded by Court Orders. You should check with the primary care giver to ensure there are no hindrances and if there are, always ask for written evidence. These situations can be extremely emotional, sensitive and volatile. *If you are not sure in any way, always discuss with your supervisor or your MDO or contact the Family court.*

advice regarding testamentary capacity

The need to establish the state of mind of your patient could occur at the time of making a will, later or may ultimately be reviewed by a Court. The most important issue to determine is testamentary capacity at the time of making the will. Most importantly, you should have no conflict of interest (benefit from the will). Be sure to gain the patient's consent before responding to and communicating a request assessing a patient's testamentary capacity and restrict yourself to your professional opinion as a medical practitioner. *Contact your MDO if you have any concerns about your patient's testamentary capacity where you have been requested to provide a report.*