Medical Justice
seeking basic rights for detainees

Post : 86 Durham Road, London, N7 7DT
Website : www.medicaljustice.org.uk
Phone : 0207 561 7498
Fax : 08450 529370

Medical Justice Doctors Handbook

Role of independent visiting doctor

Clinical responsibility remains with the IRC healthcare provider

The independent doctor visiting a detainee undertakes a clinical assessment of the patient. Clinical responsibility to provide care remains with the detention centre healthcare provider.

This means that the independent doctor can only recommend investigations, referrals and/or treatment of the patient to the detention centre healthcare provider, and cannot undertake these her/himself. You cannot and should not prescribe but have every right and duty to recommend referral or treatment including changes of medication, as clinically indicated. All such recommendations should be documented.

After your visit, inform the Medical Justice office of any concerns you have about the detainee including any recommendations you have. If there are urgent concerns, discuss with the caseworker promptly by phone. You may need to draft a letter to healthcare marked "urgent" and email it to the caseworker who will check and fax it to the IRC healthcare unit.

If you are writing to healthcare staff in an IRC regarding an individual patient, you should:

- Make clear that you are an independent doctor, have never been their GP (if that is the case) and are not their treating clinician.
- Use your personal headed paper or a c/o Medical Justice address. No letter should be written on Medical Justice headed paper as your role is to visit as an independent doctor (visiting at the request of the solicitor or Medical Justice).

The letter must be checked and sent out by the Medical Justice Caseworker. Please do not send faxes or emails directly as this can cause duplication and confusion. If there is an urgent problem there will be a member of Medical Justice staff available who can fax the letter (use the office mobile number if needed).

Professional conduct

As an doctor you are expected to conduct your work in a professional manner. In particular:

1. Act in the best interest of your patient at all times and in accordance with the GMC's guidance for good medical practice.
2. Behave in a professional manner at all times and towards everyone that you are dealing with. This this includes dealing calmly and politely with IRC staff even if you disagree with them.
3. Remember that when visiting detainees, you are a visitor and a guest in the IRC. You will need to follow the rules about security, etc.
4. If taking photographs, you will only photograph images that are required for clinical purposes (scars, injuries or medical notes). You must not take non-clinical photographs of staff, detainees, the IRC or any aspects of security. Signed consent must be obtained from the client.
5. Produce medico-legal reports punctually and in accordance with any reasonable deadlines requested by and the legal representative. Agree the timetable in advance with the casework manager.
6. All reports and letters must be checked according to the internal reviewing process BEFORE being sent out (via casework manager and/or clinical adviser).

7. If there is urgent medical information about patient care that needs communicating immediately to the IRC healthcare staff (e.g. if the patient has a symptom such chest pain) then communicate this to healthcare staff immediately, as clinically appropriate. For less immediately urgent medical problems it is usually better to complete your visit, leave the IRC and write a letter promptly afterwards. Send it urgently to the casework manager who can fax it to healthcare staff and follow up any concerns.
8. Share concerns with colleagues (casework manager or clinical adviser or other professional mentors) – either about systematic problems or about any particular case.
9. If you are unable to carry out an assigned task, communicate this as soon as possible to staff, so that someone can assist or take over the task if needed.

By volunteering as a doctor with , you are agreeing to this code of conduct.

Dealing with stress

Be aware that detention visits and medico-legal work can be emotionally demanding, particularly as the patients you see may show distress. If you are feeling emotionally stressed by the work, please talk to someone who can support or counsel you. This could be the clinical adviser or caseworker, a colleague, a professional mentor or a professional counsellor (the BMA and most medical indemnity insurers provide telephone and sometimes face to face counselling). Remember that you have a right to maintain your own health, and if you are feeling over-emotional or 'burned out' yourself then you are unlikely to be able to work effectively or objectively.

During the visit

Check the notes: Was the patient asked about torture or ill-treatment during the initial nurse or doctor assessment? Was the patient examined? Any 'rule 35' report documenting concerns or scars/symtoms?

If examining scarring or other injuries:

Obtain consent for photos if taken (can provide a consent form).

If examining for scars, watch the patient signing their name (you can do this while obtaining consent for photos). Note whether he/she is right or left handed. This may be important when interpreting scarring e.g. when considering self-harm or locations of scars.

Take a childhood and occupational history – as you will need to consider alternative causes for the scars, including accidents of daily life (e.g. from walking barefoot) and occupational hazards.

If unsure about lesions, take digital photos. Record the scars on body maps even if you have taken photos. Otherwise it can be difficult to tell which part of the body a photograph belongs to. Body maps are helpful for showing the overall pattern of lesions and precise location, which helps when evaluating the consistency of scarring with the patient's account.

Medico-legal reports (MLRs)

The production of Medico-Legal Reports (MLRs) form a core part of our clinical work. An MLR may play a crucial role in detainee's asylum or human rights application if it provides clinical evidence of the patient's account or their medical condition.

Follow up of detainees

After your visit, inform the Medical Justice office of any concerns you have about the detainee including any recommendations you have. If there are urgent concerns, discuss with the caseworker promptly by phone. You may need to draft a letter to healthcare marked "urgent" and email it to the caseworker who will check and fax it to the IRC healthcare unit.

Unless the doctor is asked to follow up the detainee for clinical reasons, all further support and liaison should be via the Medical Justice caseworker. The Medical Justice office will keep you updated on any progress of the detainee's case and will contact you if follow-up is needed.

Preparing for the visit

Before you visit you can get a good idea of the problems you will be facing from the referral form and information you have been sent.

If you have been asked to write a medico-legal report, the documents you may have been sent might include a witness statement, reasons for refusal letters and judges' determinations. This will indicate whether you need to take a camera or body maps to photograph scars or visible signs of injury or illness. You may want to look up further information on particular conditions before you go. It is often a good idea to take a set of body maps in any case, as some patients might not disclose that they have scarring until they see the doctor.

You can see one or more detainees during any one visit. Let the Casework Manager how many detainees you are comfortable with seeing during one visit.

If you run into difficulties with your visit, please call the office who may be able to assist. If you encounter problems which suggest that other visiting clinicians will be similarly affected, please notify the Casework Manager.

Doctors' access into IRCs

Protocol for visits by independent doctors to IRCs

A protocol issued in December 2006 clarifies the role of, and facilitates access of detainees to, independent doctors. It stipulates that detainees have a right to be seen by their own private doctor, the IRC have to provide an appropriate room. The doctor must be registered with the relevant professional organisation and have indemnity cover.

Indemnity insurance

All doctors visiting detention centres or giving phone assessments must have indemnity insurance

Most doctors working in the NHS have insurance that covers activities associated with visiting immigration detainees. Some, for example doctors who may not be involved in direct clinical care, may have to pay a small supplement to their existing policy. Retired doctors may need to take out a new indemnity insurance policy.

Any doctor who intends to do a number of detention visits and is concerned about indemnity insurance costs should speak to the Casework Manager. There are a number of options for getting the costs covered e.g. from funding for medico-legal reports.

Resources to take on a visit

Checklist - What to take on a visit

Aim to arrive at least 30 minutes before the time of your first appointment; it may take this time to go through the security procedure to enter.

What to bring:

Documents/paperwork:

- Photo ID (passport or NHS ID. If you bring your driving license you need both parts),
- Proof of address (such as a gas bill),
- A copy of your indemnity insurance (if not already emailed to the IRC staff)
- A copy of your GMC registration certificate (if GMC number not already checked by the IRC staff)
- Copy of the letter that was faxed/emailed to the detention centre requesting your visit or (in the case of Yarl's Wood and Brook House) the 'visitors pass' issued by the detention centre.
- Consent form for patients to share information and use photos in MLR (this will be emailed to you before the visit)

Medical equipment (depending on purpose of visit):

- Notebook and pen
- Copies of body maps (we can email these as a pdf, please ask)
- Camera – to document injuries or scars
- Ruler or tape to measure scars
- Doctor's bag with basic instruments e.g. BP machine, diagnostic set, stethoscope

Cameras/phones/laptops:
You will not be allowed to take in a mobile phone that has a camera. However cameras on their own and a basic mobile phone without a camera should be allowed. If you are stopped from bringing these in and need them, please call the office.

If you wish to take a laptop into your visit, please notify the office in advance.

Campaigning and challenging poor standards

The medico-legal reports and other evidence generated by doctors through individual case-work contribute to our research which is used in various ways to affect lasting change. Medical Justice is in a unique position to document the widespread harm caused by UK immigration detention – we are not aware of any other organisation that routinely sends independent doctors into detention centres.

If you see many detainees, you may spot trends or issues you consider are medically concerning and that you consider may need highlighting. If so, please discuss this with Medical Justice staff so that further action can be considered.

Despite its size, Medical Justice has a record of success in campaigning and challenging UKBA policy. Many individual detainees have been released as a result of doctors' medico-legal reports. Medical Justice's work has also led to legal challenges which have resulted in changes in national policy.

Clinical investigations

Volunteer doctors should NOT carry out clinical investigations (swabs, blood tests, sputum and urine specimens etc.) (The correct action is to document the clinical need for the investigation and make this known to detention centre healthcare staff (by writing a letter, sending it to the casework manager who will fax it to healthcare).

It is acceptable for the visiting doctor to carry out 'bedside tests' during your visit - e.g. blood glucose, urinalysis, pulse oximetry. The IRC healthcare staff may allow you to use their equipment if needed - this is at their discretion.

Examining medical records

Medical notes held in the detention centre can guide your examination. The clinic staff should bring you the detainee's notes on your arrival. The doctors and nursing staff all write in the same notes. In some IRCs the psychiatric notes are separate. The drug treatment charts may also be separate and you may have to ask for them. Some of the IRCs are entirely paperless and you will be given a computer print out that you can take home with you. It is possible to take photographs of relevant pages if photocopying is not an option. There are rarely notes from the previous GP. There should be hospital letters if the patient has been referred from the IRC. There may be notes from other IRCs.

Consider why you are visiting the patient.

You may be visiting:

a) To provide medical advice (re hypertension, hunger strike etc)?

b) To assess and document evidence of alleged torture relevant to detention or asylum?

c) Because of alleged harm on attempted removal?

Medical and psychiatric conditions:

a) Have these been appropriately assessed, documented, investigated and referred?

b) Does the treatment chart show an appropriate plan?

c) Are there likely to be relevant previous UK medical notes (GP/hospital)?

d) Have these been obtained?

e) Was the detainee on important treatment before detention? Are they still receiving it, and if not, why not?

f) If they were referred to hospital, was this visit permitted? Were they handcuffed or denied confidentiality? Have they seen their hospital letter or essential results? If not, why not?

Torture:

a) Is it recorded whether the detainee stated that they were tortured in their country of origin? Under Rule 35, this is a mandatory tick-box question in the long admission clerking when the detainee arrives at the centre. However, on return from failed removal or on transfer between centres, nurses may use a short form which does not include this question.

b) If the patient has been detained in another IRC, is there a record of the previous detention centre's healthcare notes?

c) Were they referred to a doctor about torture? Did this doctor examine adequately, record accurately and forward a "rule 35" torture report form? If a rule 35 report was made, has the UKBA caseworker responded?

Harm on attempted removal or other assault:

a) Has the detainee been seen by a doctor?

b) Are the injuries accurately documented and has reasonable treatment been given?

c) If the detainee would like to make a complaint speak to the casework team.

d) According to UKBA policy, a Rule 35 report should be completed if injuries have been sustained during a failed removal attempt – was one done ?

e) The detainee can ask for photos of injuries to be taken and they should be kept as a part of the detainee's medical records. Photos of injuries will be very important evidence in regards to any subsequent complaint or legal case lodged.

Taking up complaints on behalf of patients

If you are concerned about the care or treatment a detainee has received, discuss this with the Casework Manager.

Assessing problems by phone

This may be necessary as an initial step in cases where a medical assessment is urgent and there is not time to arrange a visit. You should discuss the requirements of the assessment with the Medical Justice caseworker, bearing in mind the limitations of an assessment which is not face to face.
The doctor may be able to help the detainee without visiting the detainee in person. The doctor can give advice and point to the recommended guidelines relating to their problem.

- The detainee may then be able to request the health care centre within the detention centre to consider their problem.
- The detainee can inform their lawyer about the issue.
- The doctor may be able to write a supporting letter about the medical needs of the detainee based on general principles and guidelines.

For a telephone assessment, you will if possible have the detainee's medical notes from the IRC. Most detainees have mobile phones. In some detention centres you can also call them through the main landline. You will need the room number or extension in order to get through to them.

When telephoning a detainee always make sure you are speaking to the right person.. Always assume your call is not private; the landlines are often in communal areas and the detainee may be in a shared room. The detainee may ask you to call back when there is more privacy.

If you want information from another doctor, discuss this with the caseworker.

Do not assume that anyone else, including their lawyer, knows the detainee's diagnosis. Detainees need to give consent for you to pass on medical information.

If writing a letter/report based on a telephone assessment, it must always be made clear that the doctor has only spoken to the detainee on the telephone. The source of information should be made clear, e.g. that the letter is based on information provided by the detainee and/or on information from medical records.

Writing the report

Reports should be completed as soon as possible after the visit.

If for any reason, a report cannot be completed in the intended time, the doctor must inform the Casework Manager as soon as possible. Medical Justice aims to provide MLRs and letters within 3 weeks of seeing the patient. Sometimes MLRs and letters are needed more urgently either for clinical or legal reasons. If there is a legal urgency you will be notified by the caseworker. If your assessment reveals urgent clinical problems you should communicate these to the caseworker promptly and speak to/fax IRC healthcare staff as appropriate).

When you start to write the report:

- Be clear what your instructions and what your tasks are - these should be provided by the solicitor, if there is one, via the medical Justice caseworker. MLRs can be used in an asylum case, a human rights case, a civil action case, a judicial review and perhaps for issues outside the immigration process, such as for accommodation issues.

- Make sure you have seen everything you need to see to do your report (which could include, but is not limited to the refusal letter, previous reports, and medical records). Where there may be useful information in GP or hospital notes, or a discussion with previous clinicians is indicated, refer this to the office who will get the detainee's written permission to obtain such patient information. This can then be faxed to the relevant doctor.

Make it well-presented and professional, with numbered paragraphs and pages. In the report you should be thorough and show your reasoning. You may consider:

- Citing research or authoritative guidelines. You may wish to attach these (some useful references are listed later).

- Adding body maps and/or photos if relevant e.g. if describing scarring.

- You will need to append your CV so that the report reader is aware of your clinical background and experience.

Describe the history and the examination findings with as much precision as is possible. Give an opinion about each lesion or finding, showing your reasoning. Comment on overall patterns of scarring or the overall clinical picture. If appropriate, give a prognosis and make recommendations for referral or treatment.

If the patient has communication problems, explain these and discuss any difficulties the client may have in giving oral evidence.

Address the questions asked by the solicitor in your instructions.

The MLR is not written on Medical Justice headed paper as it is an independent assessment arranged through . It could be written using the doctor's own personal contact details, your work address or c/o the office.

Send the draft report to the Casework Manager.

Some References in writing MLRs:

Arnold F. Treatment and management of wounds and scars of torture. Wounds UK 2009 Vol 5 No 4

Bögner D, Herlihy J and Brewin CR Impact of sexual violence on disclosure during Home Office interviews. British Journal of Psychiatry 191, 75-81: 2007.

Cohen J. Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony? Medico- Legal Journal, 69 (1): 25-34, 2001.

Herlihy H, Scragg P, Turner S (2002). Discrepancies in autobiographical memories - implications for the assessment of asylum seekers: repeated interviews study. British Medical Journal 2002;324: 324–7

Herlihy H, Turner S (2007). Asylum claims and memory of trauma: sharing our knowledge. British Journal of Psychiatry 2007; 191: 3-4.

ICD-10 diagnostic criteria for PTSD, depression etc at: http://www.who.int/classifications/apps/icd/icd10online/

Istanbul Protocol: The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Peel M et al. Postinflammatory hyperpigmentation following torture. Journal of Clinical Forensic Medicine 2003; 10: 193-6.

Peel M et al (2005). Medical investigation and documentation of torture. A handbook for health professionals. University of Essex, 2005. (available free on internet)

MLRs - Action checklist

- If you are unsure about something, discuss this with the Casework Manager or clinical lead.
- The Casework Manager will check the draft MLR and/or patient's solicitor.
- The Casework Manager will email/fax MLR and/or other correspondence to the solicitor
- When funding is available, invoices the solicitor.
- Will update you on progress on the detainee's case whenever possible.
- Identify follow up work that may be needed for ongoing medical issues and discuss these with the Casework Manager.

Body Maps from the Istanbul Protocol

Skeleton

Head

Teeth

Hands

Full body female

Perineum thoracic abdominal female

Full body male

Thoracic male feet

Fees & expenses

Funding policy for MLRs

In the majority of cases there is no funding available and Medical Justice organises for the MLR to be written on a pro-bono basis. prioritises cases according to clinical need, not depending on funding availability.

Medical Justice can pay doctors' travel expenses where there is no funding for a detention visit. Please ask the Medical Justice office for details.

Advice on providing medical evidence

Preparing reports for Tribunals and Courts

You should be given clear and precise instructions, with relevant information including the history of the case, why the claim has been refused, and copies of previous reports.

Your job is to help the Tribunal on matters within your expertise. This overrides your obligation to your instructing lawyer.

The report should be addressed to the Tribunal and indicate:

- your qualifications
- what literature and other material you relied upon
- the relevant facts and instructions
- which facts are within your own knowledge
- who carried out examinations or tests, what their qualifications are, and whether you supervised them
- where there is a range of opinions, what the range is, and what your own opinion is
- a summary of your conclusions
- any qualifications (limits) to your conclusions.

Your report must also include a statement that you understand your duty to the Tribunal, have complied with it, and will continue to comply with it.

> *"I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion."*

Things UKBA or a judge may say about your report

- You're biased
- You have exaggerated
- You're too credulous
- You're inadequately qualified (specialist, specialty, seniority, etc.)
- You have strayed outside your remit
- Your report is inconsistent with what the client says
- Your report is internally inconsistent
- Your reasoning is absent, inadequate, or incorrect
- You have disregarded alternatives

What not to do

- Don't advocate.
- Don't exaggerate.
- Don't use hyperbole. Be understated.
- Don't show any sign of your personal or political opinions.
- Don't make points about the unfairness of the system (unless it has broken down).
- Don't talk about the law. (If, exceptionally, you have to, disclaim expertise.)
- Don't stray beyond your competence.
- Don't insist upon findings of fact. Let the evidence speak for itself.
- Don't talk about things you don't have to talk about. (Check with the Medical Justice Casework Manager, if necessary.)
- Don't trust other people's judgment without good reasons for doing so.
- Don't breach deadlines.

Role of the independent expert

The Ikarian Reefer case (1993) provided a useful set of guidelines on the duties and responsibilities of expert witnesses in civil litigation.

These included:

- Expert evidence should be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
- It should assist the court by way of objective unbiased opinion regarding matters within the expertise of the expert witness.
- An expert witness should never assume the role of advocate. Do not be tempted to exaggerate your findings however sympathetic you may feel to the plight of the detainee; in the long run this will undermined their position and could be seriously deleterious to the overall case.
- Facts or assumptions upon which the opinion was based should be stated together with material facts that could detract from the concluded opinion.
- An expert witness should make it clear when a question or issue fell outside her expertise.
- If an opinion is provisional, because of lack of data, that should be indicated. If the report is not the truth, the whole truth and nothing but the truth, say so.

Expert Reports - Practice Direction

As from 13th November 2006 the Practice Direction has been amended to incorporate the paragraph 8A. It seems to reflect and amplify rather well the Ikarian Reefer principles.

Medical Justice suggests that all members writing expert reports take note and ensure any reports they issue are compliant.

Ikarian Reefer - duties of experts

Cresswell J summarised the duties of experts in the Ikarian Reefer 1993 2 LILR 68, 81-82.

This states:

1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation

2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.

3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.

6. If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.

7. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report, or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and (where appropriate) to the court.

8. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports, or other similar documents, they must be provided to the opposite party at the same time as the exchange of reports.

Istanbul Protocol

PROFESSIONAL TRAINING SERIES No. 8/Rev.1
Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Download the Istanbul Protocol

Physical evidence of torture organized violence and assault on removal

General points:

The report should

- give history of injury and nature of trauma

- describe physical lesion(s)

- consider alternative explanations for findings

- give attribution and degree of certainty about same, according to Istanbul Protocol: (URL = see below)

- discuss overall evaluation of lesions

- describe psychological findings (if present) and disuss their compatibility with the history

Istanbul Protocol: The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides the following guidance on evaluating evidence of torture and gives confidence levels for attribution of causation as used in opinions. The terminology should be used and cited.

Paragraph 187 of the Istanbul Protocol provides this guidance on assessing the consistency of lesions with the detainees' accounts of torture:

- Not consistent: the lesion could not have been caused by the trauma described
- Consistent with: the lesion could have been caused by the trauma described, but is non-specific and there are many other possible causes
- Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes (careful)
- Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes (careful)
- Diagnostic of: this appearance could not have been cause in any way other than that described.

When considering consistency, consider everyday and occupational explanations for your findings, and justify your conclusions.

Other points which may be relevant to the report:

- A clinically plausible description of treatment of serious injuries may support claim, as may contemporaneous medical notes (rare) or subsequent investigations. - Read the "reasons for refusal" from IO or "determination and reasons" by IJ. Have they made unwarranted medical assumptions?

- If appropriate, give prognosis and make recommendations for referral or treatment.

- Address any other specific questions in your instructions.

Useful references:

ICD-10 diagnostic guidelines for mental disorders at:
http://www.who.int/classifications/apps/icd/icd10online/

Harm on Removal: Excessive Force against Failed Asylum Seekers
by Dr Charlotte Granville-Chapman, Ellie Smith and Neil Moloney
Medical Foundation for the care of Victims of Torture

Cohen J. Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony? Medico- Legal Journal, 69 (1): 25-34, 2001
Bögner D, Herlihy J and Brewin CR Impact of sexual violence on disclosure during Home Office interviews. British Journal of Psychiatry 191, 75-81: 2007.

Herlihy H, Turner S (2007). Asylum claims and memory of trauma: sharing our knowledge. British Journal of Psychiatry 2007; 191: 3-4.

Peel M et al. Postinflammatory hyperpigmentation following torture.
Journal of Clinical Forensic Medicine 2003; 10: 193-6.

Peel M (ed). Rape as a form of Torture
Medical Foundation for the care of Victims of Torture. London, 2004.
http://www.torturecare.org.uk/UserFiles/File/publications/rape_singles2.pdf

Database

Medical Justice data system - "Max"

Medical evidence generated and encountered through our casework is captured in our datasystem and can be interrogated and analysed for audit and research. This enables us to identify trends and common issues across groups of patients, to substantiate our claims that certain failures in healthcare provision are systemic, and quantify the extent of the harm caused. Our research is the basis for our work to bring lasting change through policy work, strategic litigation and campaigning. We are the only group in the UK that organises independent doctors to visit detainees, so our data is unique and growing.