Question: Is MBBS degree enough legally for a doctor to do surgeries such as caesarian section (usually done by gynecologist), exploratory laparotomy etc., or do they have to get some kind of certificate (number of surgeries done: 20 etc. from a trainer)?  
Dr. Binita Priyambada, Indore, Madhya Pradesh.

Answer: After the year 1995, the service offered by a doctor to a patient became a contract. The contractual obligations prescribe standard care to be given to a patient. What is required is the ordinary skilled man exercising and the special skill that he professes to have. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In a broader sense, “standard care” means a duly qualified person with reasonable skill for treating the particular patient in the opinion of his peer group in that location and in that time coupled with suitable equipment, qualified assistants and quality drug, proper premises etc.

The ‘Bolam Test’ is used to determine if the doctor has practiced standard care and is negligent or not. The Bolam test states that if a doctor is convinced that he is competent to do a particular procedure with his experience and skill, he/she may do it. Further, this test states that “If a doctor reaches the standard of care that is held by a responsible body of medical opinion, he is not negligent”.

Suppose, if in that locality, specialists or more qualified doctors than himself are not available, in a situation where a patient requires immediate care, an ordinary MBBS doctor can attend to the patient after recording all the facts and the situation in the medical records. In case there are many specialists available in that location, he can ONLY direct the patient to get medical help from them.

Ref: Medical Negligence & Compensation, by – Dr. Jegadish Singh and Mr. VishwaBhushan

Questions:
What is the time limit for preserving medical records?

Dr. Chittaranjan Haldar, Manendragarh, Chhattisgarh.

How long should OPD/IPD records of patients be retained legally? We are told that medico-legal records are to be retained indefinitely. What format can these be stored from the judicial point of view (scanned/ microfilm / paper)?  
Dr. Samuel Joseph. Kozhencherry, Kerala.

Answer: As per the Regulation No. 1.3.1 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002, “Every physician shall maintain the medical records pertaining to his/her indoor patients for a
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period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India”. However, every State Government has prescribed time limit to retain every category of patient’s medical records. The Tamil Nadu Government has issued orders prescribing a time limit, which is given below. In the absence of specific provisions issued by the respective State Government, this can also be followed by all the hospitals, because it is found reasonable.

• Non medico legal IP - 3 years
• Medico legal IP and death cases - 6 years
• Master case sheet in specialty hospital - 20 years
• Scientific and research oriented IP - 12 years
• Pediatric medico legal IP records, death case - 12 years

Ref: Tamil Nadu Government retention policy for Medical Records.

**Question:** When a person suffering from some chronic ailment like malignancy/central nervous system ailments etc. is brought in dead to a hospital and when there is no signs of any foul play on physical examination of the patient in emergency, is it required to initiate MLC in the case before disposing off the body?

**Dr. Sourjya Majumdar, Kolkata, West Bengal.**

**Answer:** The case you described need not be reported to Police Authority as it appears to be natural death arising out of chronic ailments. In another scenario, if you find unnatural death or fire burn etc., you are duty bound to inform the Police under the provisions of Sec – 202 of Indian Penal Code 1860. But please understand that doctor is the best judge to decide whether it is natural death or unnatural death; no other person can decide. If a doctor unknowingly or incorrectly decides unnatural death as natural death, he is obliged to give proper reason for the same, if a question is raised later - that is all. This provision is to enable the doctor to bring a particular crime to the notice of prosecutors.

Ref: A hand book of Criminal Law, by Justice G.Ramanujan

**Question:** In most medical set ups, the casualty medical officer confirms death on arrival and intimates the relatives of the dead on arrival status. No casualty register entry is made of the case, on the plea that hospital is meant for living people and not for dead ones. However, police information is given in writing and body retained until police arrive in the case of young deaths, seemingly unnatural/suspicious/violent deaths or injury/trauma cases. Is this legally correct? If there is no suspicion of unnatural death, is the hospital required to register every 'brought dead' patient?

**Answer:** The following are my clarifications:

1. If the relatives bring a person under the impression that he/she is alive, but at the outset when the doctor examines the person and finds that he/she is already dead, but at the same time though there is no unnatural or suicidal death you can request the relatives to take back the body without any registration because the registration begins only if you intend to give medical care to a person.

2. If a person is brought as though he is having life and when the doctor examines he is already dead, but there are symptoms which speak about unnatural death or suicidal death, etc., the doctor has to report to the police under medico legal intimation slip. Even if the relatives forcibly take back the body, the doctor need not worry as a
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doctor’s duty ends as soon he sends the report to the police; if the police are interested in investigating the matter they can follow it up. (In a few cases hospital authorities cannot retain the body when an unruly mob insists on taking back the body. In a few cases even if it is an unnatural death, to make it look like a natural and ordinary death, the body is taken to the hospital to show that the death was natural.)

3. If a patient is received, who is struggling for life and the doctor starts his treatment and subsequently the patient dies due to the illness, he may release the body without reporting this to the police. In this connection, he has to register the name of the patient, etc., as he has started the treatment.

4. The doctor who is working in Casualty need not give Death certificate to a dead body because even though he is competent he cannot correlate the name of the person and the dead body, as he does not know the person in details; only the family doctor who knows the patient can issue Death Certificate.

5. All the deaths due to accidental death even though they are not accompanied by relatives, should be reported to police as it is a MLC.

In short and in conclusion, a hospital need not register the “brought dead” patient, if there is no suspicion of unnatural death.

MEDICO-LEGAL CASE

What is a Medico Legal Case (MLC)?

While prosecuting the accused or perpetrators of crime, the law-enforcing authorities require the aid of medical professionals to prove the changes. For certain types of cases, a professional’s help is essential and without which, the prosecutors may not be able to prove the case before a criminal court. In a criminal court, charges should be proved hundred per cent; otherwise the judges, even though they know that the accused has committed the crime cannot punish, resulting in an acquittal of the accused. A series of acquittals may cause huge crime rates in the society which may lead to fear and uncertainty among the citizens. Therefore, the sovereign is duty bound to protect its citizens by the aid of medical science. The doctor, who is attending a court is not just attending a Government office, but is attending the court for discharging a duty which would enable society to enjoy its full right and liberty without any hindrance. Not all the cases require a doctor’s help; but certain types of cases require doctor’s professional help. These cases are termed “medico-legal cases” (hereafter MLC). There is a misconception in the doctors’ circle that the complaints lodged against them before the consumer forum is a medico-legal case which is not correct. In simple language, the definition would be as follows:

“A medico-legal case is a case of death or injury or illness where the attending doctor, after eliciting history and examining the patient, thinks that some investigation by law enforcement agencies is essential to establish and fix responsibility for the case in accordance with the law of the land. The responsibility to label any case as a medico-legal case (MLC) rests solely with the attending doctor”.

Registration of a Medico Legal Case (MLC)

The decision to register a case as a Medico Legal Case rests solely with the doctor who attends to the case. A doctor must always exercise his judgment whether to refer or not to refer a particular case to the public. In a referred case where an MLC has been registered in a hospital, a fresh registration in the second hospital need not be done.

Generally, the following cases are registered as medico-legal cases:
1. Road traffic and road side accidents
2. Accident or unusual occurrences in a factory
3. All cases of serious injury
4. Suspected homicidal injuries
5. Suspected self-inflicted injuries
6. Suspected attempts to commit suicide
7. Burn injuries due to any cause
8. Suspected or evident poisoning
9. Any injury where foul play is suspected and the injured appears to be either the victim or the culprit in a criminal case
10. Suspected or evident sexual offences
11. Suspected or evident criminal abortions
12. Suspected or evident child abuses
13. Suspected or evident partner abuse
14. Unconscious patients where the cause of unconsciousness is not clear
15. Cases “brought dead” to hospital with improper, inadequate and incomplete history
16. Cases referred by the police or a court of law for some specific legal or medico-legal requirement

There is no stipulated time limit for registering a MLC with the police but within a reasonable time. But it is a settled law by the Supreme Court of India that in a “time of emergency, saving the life of a person is primary and all other procedural matters may wait”. Therefore, doctors shall try to save the life of either the victim or the perpetrator of the crime alike and then give intimation to the police. Except in referred cases U/S 53 of the Criminal Procedure Code, it is better to get consent from the patient/or his/her relatives if he/she is unconscious. If police are bringing an accused or victim for examination or treatment, no consent is required but the doctors/hospital should get an official reference from a Station House Officer (SHO). In the case of an accused referred by jail authorities, a requisition by a Magistrate should be produced by the jail authorities.

**Intimation to Police or Medico-Legal Report**

It is just an intimation of suspected injury where the doctor thinks an investigation is required. It may contain:

- **Preamble** which shall contain date, time and place of examination and the names of individuals, if any, who accompanied or identified
- **Findings** or a short narration of injury or suspicious symptoms in the body
- **Opinion** as to whether it is a simple or grievous injury.

Materials or samples found in the body should be kept in a separate plastic bag and sealed. Especially, when the person dies, the blood-stained clothes and other materials found in his/her body should be carefully collected and sealed, then handed over to police. In a few cases seen in private hospitals they put these items in the waste basket which is highly inappropriate because it would be placed before the Magistrate later for proving certain points. Dead bodies of medico-legal cases should be sent to the mortuary for *Post mortem* examination. A death summary should be prepared in duplicate giving all relevant details of the history, findings and management of the case; it should be handed over to the police.

**Source: Human Resource Management in Hospitals by D. Samuel Abraham, (J.R. Publications).**

**Other legal resources by D. Samuel Abraham:**

- Human Resource Administration – Rs. 200
- Frequently asked questions in hospital administration – Rs. 20 (set of 10 only).
- Management in Hospitals – Rs. 200
- Laws on Hospital

These and other legal resources by D. Samuel Abraham are available; you may contact us at cme@cmcvellore.ac.in