

Guideline

Subject: Provisions of Second Opinions in Forensic Pathology
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INTRODUCTION

Forensic Pathology like any area of medicine and science is subject to differences in opinions. These can extend from issues such as specific diagnoses to the cause of death. Often differences arise in areas such as whether the time frame of death can be concluded, or the overall conclusion about whether the deceased was assaulted or fell. The areas where differences can arise are numerous. It is not infrequently, therefore, that formal second opinions in Forensic Pathology are requested, usually by representatives of a defendant in a criminal trial.

Forensic pathologists have a responsibility to provide assistance to the legal system. The Australian Medical Association states: "Doctors have an ethical obligation to assist the courts and alternative dispute resolution processes by providing expert evidence when reasonably called upon to do so." Not providing a second opinion when requested may deprive a person of their right to justice. Nonetheless, a forensic pathologist may decline to provide a second opinion if, in her/his view:

- the quality of the review could be compromised by factors such as an inability to discuss the case with the pathologist who provided the original report/opinion;
- there is insufficient time before the trial to undertake the work required to provide a properly considered opinion;
- concerns regarding the quality of the material supplied or a lack of the necessary expertise.
- the requesting party has previously obtained a second opinion and they are seeking another one more to their liking.

SCOPE OF COLLEGE INVOLVEMENT

The College may be involved in facilitating second opinions in the following way:

- Providing names of organisations, institutions and/or individuals who may be approached to perform a review.
- Providing guidelines to assist the review process
- If necessary to assist with addressing any deficiencies of practice amounting to a significant departure from professional standards identified by the review.

GUIDELINES

- Any review should be undertaken in a neutral manner without pre-conceptions and in good faith.
- It is expected that a Forensic Pathologist will not review cases from colleagues within the same forensic organisation/centre when external review can be arranged. If circumstances are such that there is no suitable external person to provide the second opinion then the reviewing pathologist must be mindful of the potential for conflict of interest and make sure the instructing solicitor is aware of the situation.

- The reviewing pathologist must ensure he or she is appropriately qualified to undertake the review. If, during the course of the review, it becomes apparent that there are sub specialty forensic pathology issues of importance outside the reviewers expertise, this must be brought to the attention of the instructing solicitors.
- The reviewing pathologist, as part of the initial dialogue with the instructing solicitor, can ethically require, as a condition of accepting instructions, the ability to discuss the case with the original reporting pathologist. It is well understood that this can be the most efficient and effective way to establish clarity about some issues.
- The reviewing pathologist should at least inform the original reporting pathologist that a second opinion has been requested.
- It should be accepted as usual practice for the reviewing pathologist to provide the primary pathologist with a copy of the review, bearing in mind that any report produced is property of the requesting party. This needs to be discussed with the instructing solicitor as part of the initial dialogue.
- Following this, it is expected that there would be discussion between the original reporting pathologist and the reviewing pathologist to attempt to resolve any questions or differences of opinion that have arisen and that subsequently either pathologist may modify their opinion(s).
- It must be recognised that the process of review of Forensic Pathology is different to that of other disciplines within pathology with regards to the range and scope of material that may need to be considered, the requirement to give consideration to any constraints of local practice and that the pathologist providing the second opinion may agree to be limited in what they can communicate to the original reporting pathologist (or others) by the person or body requesting the review.

NAMES OF ORGANISATIONS AND/OR INSTITUTIONS THAT MAY BE APPROACHED TO PROVIDE A SECOND OPINION

The College can be contacted for advice regarding pathologists with a forensic pathology scope of practice. A request for a second opinion may be directed to a pathologist with expertise relevant to the (known) issue or a request for a second opinion may be directed to the chief/senior forensic pathologist at one of the forensic centres. As mentioned above, a second opinion should not be provided by a forensic pathologist based at the same forensic organisation/centre as the pathologist who provided the original report.

If the request is of a specialist nature not covered by forensic pathology (e.g.: chemical pathology, genetics or other) the request may be directed via the CEO to the Chair of the relevant Advisory Committee (*note*: requests for opinions on matters such as anthropology, toxicology and entomology may be directed to the Faculty of Science).

Notes:

For the purposes of this document the phrase 'second opinion' will include second and all subsequent opinions.

This document is not intended to apply to peer or other review processes that exist within a department that are governed by policies and procedures of that department.