

Guideline

Subject: Provisions of Second Opinion¹ in Forensic Pathology - Information for the Requesting Agent
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When seeking a second opinion it must be ensured the forensic pathologist is appropriately qualified. The Royal College of Pathologists of Australasia can be contacted for advice re forensic pathology organisations and institutions in Australia, as well as individual forensic specialists with particular areas of expertise.

A request for a second opinion may be directed to a pathologist with expertise relevant to the issue or a request for a second opinion may be directed to the chief/senior forensic pathologist at one of the forensic centres in Australia or New Zealand. A second opinion should not be requested from a forensic pathologist based at the same forensic organisation or centre as the pathologist who provided the original report when it is possible to obtain an external opinion. This is to ensure true independence of the second opinion. However, it is recognised that this may not be possible to achieve in some jurisdictions (for example, New Zealand) or that the best possible opinion may only be provided by a pathologist at the forensic organisation or centre as the pathologist who provided the original report.

Where possible, the reviewing forensic pathologist should not be provided with the final diagnosis or conclusions of the original pathologist in the first instance. The case should be approached (with the recognition that the pathologist providing the second opinion may not have been able to conduct a secondary autopsy), as if the reviewing pathologist were reporting the case “de novo”.

It is increasingly being seen as desirable for experts to consult each other prior to providing written reports and oral evidence. The possibility or desirability of such consultation should be canvassed between the instructing party and the pathologist being sought to provide a second opinion. Agreement on how to proceed should form part of the undertaking to provide a second opinion.

It is understood that any second opinion provided becomes the property of the requesting agency and that that agency may restrict its release in whole or in part. Nonetheless, it is entirely ethical for a pathologist approached to provide a second opinion to require, as a condition of accepting instructions, the ability to discuss any or all aspects of the case with the original reporting pathologist. It is expected that discussion between the original reporting pathologist and the reviewing pathologist would be aimed at clarifying any questions or differences of opinion that arise, and that as a result, either pathologist may wish to modify their opinion based on such discussion. Free discussion between pathologists can be beneficial to the provision of a second opinion and has the potential to lead to an agreed, rather than adversarial, outcome. However, it is recognised that for the purposes of providing the best possible representation that such communication may not be considered desirable by the instructing party. In such a case the pathologist may decline to provide a second opinion on the grounds that the review is compromised by the inability to discuss the case with the original pathologist. It may be that in some cases the reviewing pathologist simply wants to inform the original reporting pathologist that a review is (or has) been undertaken.

In providing a second opinion it is incumbent on the forensic specialist that they have the relevant training, knowledge, skills and expertise in order to fulfill their duty to the court. It is the duty of an expert witness to provide relevant and impartial evidence within their area of expertise. The opinion provided should be based wholly or substantially on specialised knowledge arising from the experts own training, study or experience.

For the purposes of assisting the Court in assessing and understanding the credentials of an expert witness, it is critical that a clear distinction is made between the various categories of forensic specialists; all of whom will have a primary medical degree. These specialists may include forensic pathologists, paediatricians, forensic physicians, forensic medicine specialists, and police surgeons. Practitioners qualified within each discipline will have training and experience applicable to their scope of practice.

Forensic Pathologists are fellows of the Royal College of Pathologists of Australasia (RCPA) and their expertise includes, but is not limited to, documentation and interpretation of injuries, documentation and interpretation of pathological findings, the interpretation of post-mortem imaging, toxicology and other post-mortem investigations, assessment of time of death, and determination of cause and manner of death with clinico-pathological correlation.

Paediatricians, forensic physicians, forensic medicine specialists, and police surgeons may be fellows of the Faculty of Clinical Medicine (RCPA) and their training, experience and scope of practice is in the field of clinical forensic medicine and primarily concerns the living and not the examination of the deceased.

It is recognised that there are areas which may fall within the remit of both disciplines, and the opinion of a practitioner from another forensic discipline may assist the Court. Before agreeing to provide a second opinion however, practitioners should be mindful of their duty as an expert witness and ensure that the nature of the opinion which is being sought is within their area of expertise.

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

The constraints of this document will be subject to local conditions and legislation.