

A critical review of the practice of recommended forensic medical examiner in Romania for the last three years

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Abstract: In Romania, the activity of recommended forensic medical examiners is growing, as more and more parties in a trial are turning to them, either directly or by means of their attorneys. In the activity of forensic medical examination performed within the Institute of Forensic Medicine of Cluj-Napoca, we have studied and analysed several forensic medical opinions performed by recommended examiners. The conclusion we have reached in some cases is that, for the purpose of favouring the party they are representing, recommended examiners do not guarantee the objectivity and the scientific basis for their expert opinions. From the cases at our disposal, we have synthesized several controversial aspects used by recommended examiners in order to favour their employers, in the detriment of finding the truth. These aspects can easily be disregarded by employers, attorneys or even by the courts of law. We take this opportunity to underline the necessity of an assessment framework and a stricter control of the activity of recommended examiners, otherwise the entire activity of forensic medical examination, both official and private, could be discredited.

Key Words: recommended forensic medical examiner, expert opinion, legal evidence.

INTRODUCTION

The quality of recommended expert is provided by the New Code of Criminal Procedure, therefore in compliance with Art. 173 c. (4) “the parties and the main procedural subjects have the right to ask for the participation of an examiner recommended by them when the expertise is performed” [1]. This provision has a general character and does not refer only to the forensic medical examiner but to all recognized categories of experts. The notion of Recommended Forensic Medical Examiner is regulated within the Law regarding the organization and activity of forensic institutions [2]. This law provides the conditions a forensic expert must comply with in order to perform his activities as recommended

forensic medical examiner upon request of the parties as well as the way in which this can be performed.

Concerning the conduct he is held to comply with, references are made in Art. 97 according to which “In the professional activity he performs as counsellor of the parties, the recommended expert must make all necessary efforts to guarantee a legal evidence based on scientific facts, in compliance with the forensic medical methodology and ethical and deontological regulations” and Art. 99 (2) in which is mentioned that “The recommended expert cannot request to the official expert elements which obviously have no other purpose than postpone the completion of the forensic medical report, without effectively bringing a contribution to proving scientific facts”.

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The compliance with these precepts would be enough for the forensic medical opinions of recommended examiners to be constituted in real means of legal evidence, useful and pertinent, recognised and respected by legal institutions. Nevertheless, by studying the activity of some recommended examiners which have been entitled to participate as experts in the expert assessments performed by the Institute of Forensic Medicine of Cluj-Napoca, we have noticed severe lack of compliance with the two above mentioned articles. The purpose of this article is to draw attention to some controversial aspects present in the activity of recommended examiners, aspects which in the author's opinion are capable of bringing disservices to the notion of Forensic Medical Examination itself.

MATERIAL AND METHODS

We have chosen six expert opinions drawn up by recommended examiners, works performed upon the parties' request within forensic medical examinations delegated to the Institute of Forensic Medicine of Cluj-Napoca between 2015-2016. The criteria for entering the study was that of the existence of a completely different conclusion than those expressed in the official works. We have complied with the principle of privacy of involved medical examiners and with that according to which the data obtained in the capacity of official examiner cannot be used in communications and scientific works but after the permanent legal completion of the case.

Example no. 1

Patient G.N., aged 30, is hit by her husband and during the fall she suffers a severe craniocerebral trauma with subdural haematoma, contusion and meningo-cerebral dilaceration. She is operated in a Neurosurgery department, but 6 days after the surgery she dies. At autopsy, the traumatic cerebral modifications as well as a bronchopneumonia are ascertained. The conclusion is that the death was violent and is connected by causality to the aggression she had to go through. The forensic medical examiner recommended by the husband's attorney pleads in favour of a non-violent death, with pathological cause (bronchopneumonia). The arguments he brings are the following: the patient underwent surgery for the traumatic brain injuries she suffered which practically interrupted the causality connection with the aggression; she did not suffer from bronchopneumonia prior to the admission; the bronchopneumonia was due to the negligence of the medical staff in performing the medical act; bronchopneumonia is a cause of non-violent death. Moreover, the recommended examiner qualifies the medical facts as being included in the notion of malpractice.

Example no. 2

Patient C.S., aged 64, while he is released from the Department of Cardiology of an Emergency Clinical County Hospital, is hit on the crosswalk by a vehicle. Following this event, he presented ecchymosis, excoriations and rib fractures. He is admitted again in the Emergency Clinical County Hospital and he days after 7 days from the accident. The performed forensic medical autopsy concluded that the death was not violent and was due to an acute myocardial infarction, objectified by the observed positive cardiac enzymes and cardiac morphological modifications: concentric cardiac hypertrophy, cardiac sclerosis and coronary luminal narrowing. The employed forensic medical examiner pleads in favour of a violent death and existence of a causality connection between the road accident and the death. He finds its argumentation mainly on an alleged sequence in time of the links of the causality chain and, respectively, on the psychological impact induced by the traumatic event.

Example no. 3

In the year 2009, month of July, the patient S.D., aged 77, presented a severe cranial and spinal cord trauma caused by him falling from the wagon as a consequence of an impact from the back with a car. He has a myelic fracture C4-C6 and a frontal haemorrhagic contusion. After the trauma, he presented a severe tetraparesis. He got better gradually, but progressively psychological disorders appeared: memory disorders, attention disorders, lack of orientation in time and space. In the same year, during the month of September, the panel of an involutive dementia was ascertained. The family requests by means of their attorney, to establish the causality connection between the road incident and the installed dementia. The forensic medical examiner recommended by them, draws-up an expert forensic medical opinion in which he quotes cases from the literature which prove the possibility of appearance of such causality connections. As a consequence, he particularises these scientific data to the case of his employers and without taking into account the possibility that the installed dementia might have a pathological cause, he draws the conclusion that it is definitely post-traumatic.

Example no. 4

Patient L.C., aged 29, is victim of an aggression, suffering only one stabbed-cut injury, at the level of the anterior face of right hemithorax, penetrating the thoracic cage, with minimal air collection. He is urgently taken to the hospital, the above-mentioned diagnosis is declared and before performing the draining intervention of air collection, he runs away from the hospital. He is found two weeks later, when he is brought to the Institute of Forensic Medicine of Cluj for an expert examination. The recommended examiner employed by the aggressor

concludes that the wound penetrating the thoracic cage has not endangered his life.

Example no. 5

Patient I.M., aged 59, is victim of an aggression being hit with a metal bar at the level of the right hallux. He comes to the forensic medical practice where he receives a forensic medical certificate which ascertains the presence of a contuse wound of 2/0.6 cm in dimension and assesses its severity at 7-8 days of medical care. Afterwards, after 9 days have passed, the patient comes in again to the practice for obtaining an extension of the number of days of medical care. The forensic doctor ascertains the presence of matter at the level of the wound, the entire injury being strongly tumefied and erythematous. He hands him the necessary extension in case of infective complication to 14-15 days of medical care. After the given days of medical care have passed, the patient comes in again to the forensic practice for a new extension of the period because the wound was not cured and he had received a recommendation to prolong the antibiotic treatment for another 7 days. The official forensic medical examiner considers that the wound cannot be assessed to more days of medical care than it already was. On the other hand, the recommended forensic medical examiner draws-up a forensic medical opinion in which he states that the severity of the right hallux wound calls for a period of 21-22 days of medical care.

Example no. 6

The attorney of the inmate M.J. draws him up a letter to a recommended forensic medical examiner in which he asks the examiner to declare if in the case of his ill client, which suffers from pulmonary carcinoma, the interruption of the enforcement of the sentence is imposed. The recommended forensic medical examiner draws-up a forensic medical opinion in which he analyses the medical documents made available to him by the attorney and he declares he is in favour of the interruption of the enforcement of the sentence.

RESULTS

After studying the six cases above mentioned we have summarized in Table 1 the encountered controversial aspects.

DISCUSSION AND CONCLUSION

The purpose of forensic medicine as auxiliary to justice is that of providing pertinent and concluding evidences any time they refer to the human biologic system. In order not exist a monopole of the Romanian State on this activity, the law giver has provided the possibility of elaboration of private expert opinions, by

recommended examiners.

The ethical and deontological principles which are at the basis of the activity performed by forensic medical examiners have been formulated by the great Professor Mina Minovici (see Table 2), in "Tratatul Complet de Medicina Legală" ("Complete Treaty of Forensic Medicine")[9].

By analysing the studied opinions, we have noticed since the beginning deviations from the above-mentioned testimony, escalating up to the conclusions totally different from those of the official examiners. This made us wonder how was it possible for two forensic medical examiners, one recommended and the other one official, analysing the same forensic medical facts, to issue antagonistic conclusions? We have noticed some aspects, presented in Table 1, which made these conclusions possible. We consider that these reasoning disorders, apparently inexplicable, are composed of errors which can be avoided in the future.

The noticed controversial aspects appear because some recommended forensic medical examiners become advocates of their employers, therefore forgetting the principle of objectivity in the analysis of scientific data. The reasoning these examiners base upon is the following: in the chain between a cause and a medical effect, due to the principle of variability of the human body, a cause may determine several effects, as well as an effect can be generated by several causes. This leads to the idea that the possibility of an effect to be determined by a cause might be produced by several possible parallel and convergent ways. In such cases, the role which some recommended forensic medical examiners understand to have, is to prove that from all the possible ways in which a cause can be linked to its effect, the most probable one is the one favourable to their employer.

It is as if a clinical doctor would opt for instance from 3 possible therapeutic options which would make the disease (cause) to lead to its healing (effect), for the one most favourable to his patient. But in the forensic medical activity such a principle, that of choosing the most favourable option/possibility for the employer/client/patient, can lead to collateral effects which could infect the finding of the truth and, implicitly, would disfavour the other party involved in the legal trial. In other words, if a clinical doctor chooses the most favourable therapeutic option for his patient, no matter the consequences, this reflects only upon his patient, which, obviously, has given his informed consent. By means of consequence, it does not involve any legal effects upon other third parties.

On the other hand, in forensic medicine, if the reasoning which links the cause to its effect is chosen on a subjective ground, more favourable to one of the parties, the consequences of this reasoning affect not only that party, but also third parties. Unfortunately, some recommended forensic medical examiners act this way, their only goal being to prove from a scientific

Table 1. Controversial aspects used by recommended examiners in order to favour the parties

| Controversial aspects | Examples and comments | Specialty literature |
|--|---|---|
| 1. Creation/removal of causality connection through an incorrect classification of medical/forensic medical elements in the links of causal chain (cause, effect, external and internal conditions, contributory, circumstantial, triggering or decisive factors). | <p><u>2nd example:</u> The causality connection between the accident and death is interrupted by the existence of a 7-day free interval. The recommended examiner erroneously maintains this connection, making abstraction of this free interval. Also, the mental impact caused by the accident should have had an effect shortly after the accident.</p> <p><u>1st example:</u> Bronchopneumonia is recognized as a frequent complication in the case of patients with acute craniocerebral traumas. The listing in time of CCT causal links, coma and bronchopneumonia makes this its first consequence, meaning that the death was violent. The recommended forensic medical examiner has the necessary knowledge to distinguish these elements, even if for a layman, bronchopneumonia as an immediate cause of death, directs him to think of a non-violent death.</p> | <p>“The characteristics of the lesions in the secondary traumatic causes: continuous action in time with no free intervals” [3].</p> <p>“The mental trauma is recognized as producing acute neurocirculatory dysfunctions, capable of precipitating death” [4].</p> |
| 2. Erroneous appreciation of the pathological factors' importance in relation to the traumatic ones in the assessment of violent/non-violent death. | <p><u>4th example:</u> The definition itself of “life endangering” refers to its appreciation, irrespective of the sometimes-increased reactivity of the organism, which enables the lethal danger to be overcome and without the necessary instruction of medical therapy.</p> | <p>“CCT with cerebral dilaceration and acute lethal subdural hematoma with coma, finally complicated with a bronchopneumonia. Death is violent, the bronchopneumonia being a final complication of CCT, which remains outside of the forensic medical causality, but it is inside the causality report” [3].</p> |
| 3. Interpretation of the notion of life endangering, considering the patient's particular reactivity. | <p><u>5th example:</u> In the case presented, the recommended forensic medical examiner erroneously takes into consideration only the therapeutic criteria of the injury, ending up to assess the gravity of a simple contusion at 21-22 days of medical care, this interval being identical with that in which the patient followed a treatment with antibiotics.</p> | <p>“It is considered that a traumatic injury endangered a person's life when there is the real danger that the respective traumatic injury to determine the victim's death without the proper medical treatment and irrespective of the sometimes-increased reactivity of the organism, which enables the lethal danger to be overcome and without the necessary instruction of medical assistance/therapy” [5].</p> |
| 4. Quantification of the number of days of medical care, considering only one criteria of appreciation: either the diagnosis or the therapeutic-prognosis, or only that of pathological antecedents. | <p><u>3rd example:</u> The recommended examiner attributes to the installed dementia a strictly traumatic aetiology, erroneously appreciating the causality connection between them and without considering the fact that this could have appeared independently from the trauma or if it appears, it manifests lately.</p> | <p>“This forensic medical notion of <i>Days of medical care</i> must be distinguished from the period of hospitalization (or the days in which the medical care is ensured through hospital accommodation” [5].</p> |
| 5. Attribution of a strictly traumatic etiological source to a pathology, without considering the possibility that these could have appeared without any connection to the traumatic event. | <p><u>6th example:</u> Pronouncement on the interruption of the enforcement of the sentence shall be made only within the Committee, without being able to be appreciated by a single forensic examiner.</p> | <p>“Posttraumatic encephalopathy=anatomoclinical syndrome which normally begins to develop late (6 months after the primary traumatic effects)” [6].</p> |
| 6. Expression of the opinion regarding the postponement/interruption of the enforcement of the sentence, retroactive assessment of blood alcohol level, appreciations upon discernment/mental competence. | <p><u>1st example:</u> The notions of “malpractice” and “medical fault” are legal notions which exceed the appreciation capacity of the forensic examiner. In such cases, he can the most pronounce on the existence or less of the causality connection between the incriminated medical act and the prejudice caused to the patient.</p> | <p>“The expertise is always made within the Committee. The Committee is composed of a forensic examiner, one or several specialized doctors, according to the inmate's diseases, the jail's doctor or the county sanitary district of the Ministry of the Interior” [7].</p> |
| 7. Appreciation upon the existence of legal notions which exceed the forensic medical competence, e.g. malpractice, medical fault. | | <p>“The phases of the forensic medical examination in the analysis of the medical liability: the analysis of the fact material from the medical documentation; assessment of the caused prejudice; causality report between therapy and prejudice” [8].</p> |

Table 2. Professor' Mina Minovici ethical Decalogue

1. *Tota medicina prudentia est.*
2. *Learn, by doubt, how to balance all the elements of the scientific truth.*
3. *Look carefully and search thoroughly what you see,*
4. *A case, apparently a simple one, is, actually, often among the most complicated ones.*
5. *Avoid rushed theories and beware of the imagination impulses.*
6. *Never make complicated hypothesis.*
7. *Always be objective, because you not only express a conviction, but you have to make a point. Da mihi factum, et dabo tibi jus!*
8. *Cover your ears, close your mouth and widely open your eyes so that, at cover of any external suggestion, you will pronounce only after you have deeply understood the solidity of what you have ascertained,*
9. *Proceed with order and method, after a well-established plan. Do not forget that an autopsy once wrongly performed, it cannot be made right.*
10. *The forensic examiner must possess three things: craft, knowledge and art. The craft is something you learn, the knowledge you gain by hard work. Instead, the art is a natural gift, is instinct, and only the chosen ones possess it.*

Table 3. Proposals to amend the procedure of the forensic recommended examiners

1. The recommended forensic expert should not have access to the official expertise, but only to consult the existing documents in the file.
2. The submission in the same day of both the medico-legal documents (official expertise / expert opinion) to the court.
3. Obligatory supporting of the medico-legal conclusions by current bibliographic data with their citation.
4. Sanctioning of the forensic recommended expert for any opinions without scientific foundation or with the violation of forensic and scientific criteria of assessment of the facts forensic / medical.
5. Penalties: irreversible exclusion from the list of forensic recommended experts.

point of view a reasoning that is favourable to their employer. One can notice how in such works, the entire scientific evidences refer only and exclusively to one way in which a cause has led to its effect. If they were more objective, these experts would analyse from a scientific point of view all the possibilities of producing causality connections, including those that are not favourable to their employers.

In conclusion, we underline the necessity of an assessment framework and a stricter control of the activity of recommended examiners (see Table 3), otherwise the entire activity of forensic medical examination, both official and private, could be discredited. Only by creating

a total transparency of the way in which the forensic medical reasoning is made, both official and private, the forensic medical works can receive the title of useful and pertinent evidence of the act of justice. By means of consequence, forensic medicine would become the main means of establishing the truth in cases which involve the human body, and therefore, the suspicion of any doubts regarding evidences would be eliminated.

Conflict of interest. The authors declare that there is no conflict of interest arising out of this manuscript.

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