

29 Other legislation relevant to medical practice

The bulk of state and Commonwealth legislation that is most often and most directly relevant to medical practice has been addressed in previous chapters. The differences between the state jurisdictions are more often in detail than in principle. This final chapter summarises some further legislation that may involve practising doctors, and highlights the principles involved in these acts. Doctors wishing to seek more detailed advice concerning their responsibilities under the legislation should consult the department or statutory body established to administer the relevant act. These additional legal responsibilities emphasise that the community places great trust in the professionalism of doctors in such roles as:

- providing objective reports and certificates in relation to disabilities, injuries and accidents
- assisting in the care and protection of people with disabilities
- notifying authorities where individuals or the community are at risk
- exercising a public role as a person of independence and reliability.

Failure by a doctor to fulfil these responsibilities will diminish the community's trust in the medical profession and may lead to censure by the Medical Board of Australia. In some instances, doctors may face fines or even terms of imprisonment for failing to meet these responsibilities without adequate cause.

29.1 Social security legislation

Under Commonwealth social security legislation, persons with illness or injury leading to temporary or permanent disability with incapacity to work are entitled to social security income in the form of Sickness Allowance, Disability Support Pension (DSP) or other payments. DSP entitlement is heavily dependent upon the treating doctor completing a medical report form provided by Centrelink (the Commonwealth agency responsible for administering the legislation). This report may be used to decide which payment a patient is entitled to or to determine if the patient could benefit from vocational rehabilitation. It should be completed promptly, fully, legibly and accurately. In general, Centrelink staff do not seek additional medical reports from specialists, so treating doctors should assume that this will not happen. Some applicants for DSP may also be assessed by doctors on behalf of Centrelink, and by Centrelink job capacity assessors, so those doctors and assessors need to

be fully informed by the treating doctor of any applicant's illnesses and/or injuries. Patients may be unfairly discriminated against if the medical information relied upon at these independent assessments is based predominantly on the patient's own understanding of their illness or injury and not on a well-prepared report from a treating doctor.

29.2 Testamentary capacity and witnessing wills

Doctors may be asked to certify to the testamentary capacity of a person who is preparing or revising a will. This task must not be accepted if the doctor, or an organisation with which the doctor is associated, stands to be a beneficiary of the will. In assessing testamentary capacity, there are four essential elements. The doctor needs to make a sufficient assessment that the person:

- understands that they is giving instructions in regard to the disposal of assets after their death
- is of clear mind and able to state the extent and nature of their assets
- is able to recall and understand the claims of potential heirs and
- does not demonstrate any sign of serious mental illness, such as delusions or hallucinations, or the effects of medications, which could impair decision making [1,2].

29.3 Statutory declarations

Registered medical practitioners, along with many other professionals, are authorised to witness statutory declarations. The authorisation is to be found in the legislation about giving evidence or in dedicated legislation (e.g., the Commonwealth *Statutory Declarations Act 1959* and the Victorian *Evidence (Miscellaneous Provisions) Act 1958*). In responding to such a request, the doctor is not attesting to the content of the declaration, but is attesting to the identity of the person and to the fact that the doctor physically witnessed the person sign the declaration. The wording required varies between jurisdictions. In Victoria, the person making the declaration is required to state

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury [3].