

SUBJECT AND TASKS OF FORENSIC MEDICINE. LEGISLATIVE FUNDAMENTALS OF FORENSIC MEDICAL EXAMINATION IN UKRAINE

Themes: 1. Forensic Medicine, its contents and tasks.

2. Legislative fundamentals and structure of forensic medical service in Ukraine.

3. Forensic examination of dead body: order, rules, conditions, documents.

Objectives: to know the legislative status of a forensic expert, cases when medico-legal examination is required; the structure of forensic service in Ukraine; and the basic rules of a forensic autopsy, and the necessary requirements for medical documents.

Introduction. During the investigation of criminal cases against human life and health medical and biological knowledge is needed to reply to case-related questions. The answer to such questions is to be given by a forensic medical examination and by the specialists (called forensic experts or forensic pathologists). According to the Ukrainian legislation, cases relating to executing medico-legal actions may involve a doctor of any specialty; therefore, knowledge of legislative fundamentals of forensic medical examination and procedural regulations on medico-legal activity is necessary for a doctor of any specialty.

Basic level of knowledge and skills (before the practical class)

- To know about Criminal Code (CC) and Criminal Procedural Code (CPC) of Ukraine, the questions regulated by them.
 - To know the main notes of the «Bases of the Health Care Legislation of Ukraine» (1992).
 - To differentiate the peculiarities between an ordinary (pathomorphological) and forensic-medical autopsy.
- To be able to indicate any topographic regions of a human body.
- To know the morphological structure and topography of inner organs and tissues.

Visual Aids and Material Tools:

Different investigator's documents, forensic medical papers, table and photos are used during the training.

I. Individual Student's Program

Theme № 1 of the practical class.

1. Definition, content, tasks and significance of Forensic Medicine.
2. Forensic Medicine as a discipline, short history of its development.
3. Foundation of forensic medical service in Ukraine.

Theme № 2 of the practical class.

1. The structure of legislative departments, procurator's office and law- court in Ukraine, their main tasks and functions.
2. The basic principles of the Law of Ukraine «About Forensic examination», concepts about Criminal Code, Criminal-Procedural Code, Civil and Civil-Procedural Codes of Ukraine.
3. Cases when forensic examination is assigned and is necessary (according to art. 75, 76 of CPC of Ukraine).
4. The judicial position of an expert (his duties, rights and responsibility).
5. Objects, kinds and types of medico-legal investigations.
6. The structure of medico-legal service in Ukraine.

Theme № 3 of the practical class.

1. Reglamentation of forensic autopsy in Ukraine.
2. The main rules of a forensic autopsy.
3. Notions of the «medico-legal examination» and «medico-legal investigation» of a dead body: common and different particularities between them.
4. Dead bodies that need a forensic autopsy (indications to a forensic autopsy).
5. Requirements for forensic documentation.
6. The main principles and contents of a «Report of a forensic autopsy».

Block of Information (Terminology)

Forensic medicine is the subject concerned with the application of medical scientific knowledge to certain branches of law, both civil and criminal. It is a special medical discipline which studies and decides definite biological, medical and medico-criminalistic questions for requirements of law practice, legislation and health care. In short, it deals with medical aspects of law.

Forensic Medicine as a special medical discipline investigates the following objects'.

Dead bodies;

Alive persons (victims, the suffering, accused and other)

Case materials (medical documents, forensic papers, investigator's materials);

Material evidences of biological origin (blood, semen, saliva, hair etc.) and non biological origin (traumatic instruments)

The main task of the discipline is to help the court of law court in disclosing crimes against human health and life. Forensic medicine plays a great role in health care because it promotes better diagnostics and prophylactics of traumatism, poisonings, sudden death.

Research methods used in forensic medicine:

- General (materialistic)
- Morphological (autopsy, histological, cytological)
- Clinical (examination of victims)
- Immunological (investigation of biological fluids)
- Medico-criminalistic (X-ray examination, stereomicroscopy, trassological, inspection of scene of death etc.)

Article 75 CPC of Ukraine: «*Examination is assigned* when scientific, technical or other kinds of special knowledge are necessary for decision on certain investigation cases.»

Forensic examination — is a research by an expert on the basis of special knowledge of material objects, phenomena and processes in which there is information about circumstances of the case. Shortly it means practical activity of an expert.

Article 76 CPC of Ukraine: «*Examination is necessary*» in the following cases:

- To determine the cause of death;
- To determine the degree of severity;
- To determine the psychiatric status (mental condition);
- To determine the sexual status of a victim
- To determine the age (as referred to criminal liability).

Forensic medical examination — is the kind of forensic examination assigned to answer special medical questions which can occur in practical activity of judicial bodies or court. It is only performed under an official written sanction of an investigator or judge.

Duties of forensic medical expert:

- to be on call of the person making the inquiry (investigator, public prosecutor, judge);
- to perform a complete examination and to make an objective written conclusion;
- to explain the conclusion if an investigator requires it
- to consult an investigator;
 - not to investigate an object when the expert is a relative of the victim or offender;
 - to keep the investigator's secret etc.

Rights of forensic medical expert:

- to get acquainted with the case materials;
- to apply for additional resources, necessary to draw a conclusion;
- to question the court, the lawyer, the accused and the witnesses;
- to be present during interrogation (with the sanction of the person making inquiry);
 - to question the interrogated persons;
 - if other experts are invited for a judicial sitting, they can confer with each other and make a common conclusion;
- to consult experts of all medical branches;
- to receive a compensation for expertise services (in definite cases);
- to refuse of examination:
 - if the questions aren't related to his competence;
 - if the case materials are insufficient for investigation;
 - if an expert does not have necessary knowledge to complete the examination.

Independence of a forensic medical expert It is commonly guaranteed in Ukraine by the followings:

- legislative order of the assignment of a forensic expert;
- general independence of all forensic establishments in relation to law court or police departments;
- presence of all participants involved into law sitting during forensic examination (in cases allowed by Ukrainian legislation);
 - criminal responsibility of forensic medical experts.

Responsibility of a forensic medical expert:

According to CC of Ukraine criminal liability of a forensic expert is forecasted in the following cases:

- Refusal of the expert to perform his duties (Article 385);
- Disclosure of information about the investigation or inquiry (Article 387);
- Knowingly false testimony (Article 384).

Types of assignment of forensic-medical examination in Ukraine:

Official — is provided by a forensic pathologist of the Bureau of Medico- Legal Examination. Such a specialist is named as a forensic-medical expert (widely spread).

Free examination — is assigned in cases when there are no opportunities to involve a forensic pathologist, therefore, any doctor can be engaged by the inspector or court to perform the examination (rarely).

Kinds of medico-legal examination:

Individual - is performed only by one expert and it can be initial and additional;

- *Initial* - is fulfilled firstly;

- *Additiona* - is carried out in cases of incomplete initial examination, also with the appearance of new data of preliminary investigation;

Repeated examination - if the conclusions of the initial examination is inconsistent or doubtful (it is performed by another expert);

Commission - takes place in difficult criminal cases with participation of several specialists in medical field (not only forensic-medical experts but doctors of different medical specialties can assist with the examination also);

Complex - is carried out with the participation of experts of different branches of knowledge (criminalists, toxicologists, technicians etc.).

Structure of forensic-medical service in Ukraine.

Ministry of Health Care guides medico-legal service in Ukraine. Ukrainian forensic service is based on the instance principle and submitted by a great network of the special medico-legal establishments known as the Bureaus of Forensic-Medical Examination. There are 27 forensic bureaus in Ukraine in total. Instance principle consists of 3 levels in the structure of the service. The 1st instance is formed by the experts fulfilling their duties in the towns and districts of Ukraine. The heads of medico-legal service in the regions, the republican expert of Autonomic Republic of Crimea, and the major medicolegal expert of Kiev and Sevastopol guide forensic medical service in these territories and make the 2nd instance. The Main medico-legal expert of the Ministry of Health Care guides all forensic medical service in Ukraine and represents the 3rd instance, and leads the Main Medico-legal Bureau of Ukraine as well.

Every Bureau of Forensic Medical Examination consists of the following basic departments:

Department of examination of dead bodies;

Department of examination of alive persons;

Department of commission examination;

Department of examination of material evidences (forensic medical laboratory);

Department of duty forensic medical experts;

Organizational and methodical department.

There are also the following sub departments in Forensic medical bureau: forensic-medical histological, forensic-medical cytological, forensic-medical immunological, forensic-medical toxicological and medico-criminal istic.

Juridical principles of the regulation of a forensic autopsy in Ukraine.

A dead body is the most difficult forensic-medical object, and the investigation of such cases is the most compound and important part of a legal-medical activity.

During the forensic-medical investigation (examination) of a dead body, the forensic pathologist must be guided by the definite articles of Criminal Procedural Code (CPC) — 75,76,192,196. «Instructions about performance of

forensic-medical investigation» (1995), «Rules of forensic-medical autopsy in medico-legal bureaus» (1995) and other normative documents.

There are two types of forensic autopsies according to Ukrainian legislation: forensic examination and forensic investigation of a dead body.

Forensic-medical examination is a forensic autopsy which is performed by a doctor under the special resolution («decision») of an investigator or law-court. Performing the examination, the doctor, as a legal representative, is called as «expert», and has the definite expert's rights, duties and responsibility (mentioned above). The results of such an autopsy must be noted in the special document named «Expert conclusions» or «Testimony». As a rule, an investigator appoints an examination when a crime has occurred (in cases of violent death).

Forensic-medical investigation. If a person did not die violently and a crime didn't occur, a forensic medical investigation should be appointed. The investigator gives a different official document for the autopsy which is termed as «direction». A forensic pathologist, in this case named as «specialist», does not have the expert's duties, rights and responsibilities. The document which is composed by the doctor is called a «Report of forensic medical investigation». In practice there are no differences between an examination of a corpse and its investigation, because all the methods and technique used during the autopsy are the same.

Basic rules of forensic-medical autopsy.

1. Any forensic autopsy (examination or investigation), must be conducted by a pathologist under the written permission (official order) of an investigator, inquest organs, procurator or law-court.
2. Before the autopsy, the forensic pathologist must be informed about the dead person (his or her name, surname, age, home address, profession, previous diseases, complaints, methods of treatment etc.) and circumstances of death. The inquest report usually contains this information.
3. Usually, one expert performs the autopsy; but in some complete cases (exhumation, fragmented corpse, finding of human remains etc.) an autopsy can be fulfilled by two or more experts.
4. A forensic autopsy takes place in a mortuary only and never in a private room.
5. An investigation (or examination) should be conducted preferably in daylight if conditions permit, because color changes in PML (post mortem lividity), bruises, etc., can not be evaluated in artificial light. But in emergency situations artificial light may be used.
6. An investigator, procurator, medical students can attend the autopsy. Any strangers, relatives and unauthorized persons can not be present in a mortuary.
7. A forensic-medical expert or physician who makes the autopsy uses his own methods of investigation and he is the person in charge of the autopsy room. An investigator cannot dictate how to perform the autopsy.
8. Forensic examination (investigation) of the body starts while early changes in the body appear: PML, rigidity, changes in the skin etc. Dissection is inadmissible if less than 30 minutes have elapsed after death.
9. All of the clothing on the decedent must be carefully examined and described by the expert, because it is very important as a forensic object and different traces of evidence can be observed on it.
10. The autopsy must be complete, every inner organ and cavity must be examined.

Reasons of forensic autopsy.

Forensic medical examination (investigation) is necessarily appointed by inquest bodies in the following cases:

Violent death or its suspicion.

Sudden death.

Unknown cause of death

Death of unknown persons.

Death as a result of forbidden treatment methods by the person who does not have the right to do it.

Death in hospital:

- If death is connected with violence or suspicion of it.
- If the diagnosis is uncertain.
- If there are complaints of the relatives on malpractice of the medical personnel.

Requirements for forensic-medical documentation. «Expert's conclusions» (Testimony) and «Report of forensic-medical investigation» are the basic forensic documents. As legal angle, all of these forensic official papers have great importance, that's why they must be written by an expert very carefully, according to the following guidelines:

The style and language of these documents must be simple, without special medical terms.

The documents must be clear and understandable in a court sitting.

The documents must be printed in at least two copies (for the investigator, for the archive of Forensic Bureau and for the personal archive of the expert).

The text is written without paragraphs.

Any foreign or special terms should be explained

An expert signs the document two or three times (depending on the kind of document - testimony or report), a stamp of the Bureau is placed at the end as well.

The scheme of the Report of Forensic Autopsy. There are 3 main compound parts in the structure of the report: general data of the examination, research part, medicolegal diagnosis and forensic conclusion (testimony).

I. General Data of the examination (is stated on the title):

- Date and hour of examination.
- Conditions which are important for the examination - light (natural or artificial, temperature of air).
- Reason of autopsy (direction or decision).
- Place of examination.
- Name of the expert and his qualifying position.
- Full name and age of the decedent.
- Persons who are present at the autopsy.
- The list of the investigator's questions.
- Circumstances of case and death.

II. Research Part. This includes the external and internal findings revealed during the autopsy. They are: external examination—description of the clothes and shoes worn by the decedent (type, color, degree of deterioration, contents of pockets, damage, dirtiness, blood stains etc); general data about the body (sex, age, length); Common conditions of the skin (color, elasticity, presence of blood stains or ground); Post-mortem phenomena (temperature of the body, post-mortem lividity, cadaveric rigidity, late changes if present); after this, the body is examined very

thoroughly up and down. The forensic pathologist continues his examination from the decedent's head and describes the hair, face, eyes, contents of oral cavity (teeth, lips, tongue). Then, the ears, neck, thorax, mammary glands, abdomen, genitals, back and extremities are investigated. External investigation is accomplished with full description of external injuries. Internal examination consists of medico-legal section of cranial, thoracic and abdominal cavities and includes a complete investigation of all inner organs and their morphological properties and injuries.

This part of the report includes the results of laboratory research as well.

III. Forensic medical diagnosis and forensic conclusion (complete answers to investigator's questions).

General Principles of forensic diagnosis and forensic conclusion
(*testimony*).

Forensic medical diagnosis consists of the 3 main parts: 1. A basic injury or disease, must be confirmed by the list of attributes. 2. Complications of the basic injury or disease causally causing death. 3. Accompanying changes, which aren't connected with cause of death.

Forensic conclusion (testimony) is the most important chapter of the report. It is an expert opinion concerning the investigator's or court's questions. Forensic testimony is a very important source of evidence in a court sitting too; because it helps decide specific questions and ascertain the truth in the case being investigated. That's why a forensic expert must make his conclusion carefully using modern scientific knowledge in forensic pathology. Common answers which must be given in the testimony are: cause of death, presence of injuries, mechanism of their infliction, instruments used, marks of violence upon the body, whether the observed injuries are caused before or after death, severity of the injuries, time of death etc. All of the expert's answers must be completed as a scientific angle and perfectly motivated.