

## EXPERT OPINION ANALYSIS OF BODILY HARM

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**Abstract:** *The expert opinion analysis of bodily harm is one of the most wanted and most popular forensic medical expert analysis. It is used to solve problems and issues that are closely related to human life and health. Forensic -medical expert opinion analysis can be used as a material evidence in the criminal proceedings. This expert opinion analysis must be conducted on the law basis, legal rules and norms and principles of modern achievements in medical science. In terms of form, that opinion must be clear, complete, conscientious and objective and to be justified and based on established facts. The court that is conducting the procedure must be careful when it comes to expertise, professionalism, moral, ethical and legal capacity of the doctor - expert.*

*In everyday legal practice in the field of medicine, the most common forensic - medical expert opinion analysis is performed to qualify bodily harm. Moreover, it is necessary to address not only the type and nature of the injury, but also the other issues related to the injury itself. Expert opinion analysis of doctor-specialist of bodily harm over living individuals consists of the following obligations: providing findings and opinion in written form; providing diagnosis and opinion in written form with expert opinion analysis of personal injury in criminal cases after an immediate revision of the injured person and providing diagnosis and opinion orally.*

**Keywords:** *means of evidence, facts, qualification, morality, ethics.*

### 1. SIGNIFICANCE, VALUE AND NEEDS FROM JUDICIAL MEDICAL EXPERIENCE

Every judicial medical examination must be carried out according to the principles of medical ethics, as well as on the basis of the best knowledge and skills of a particular expert. In this way, the expert examination is of paramount importance when making a final court decision, that is, a quality and objective judicial medical examination contributes to the preservation of the highest human values during the judicial process, such as the fate, honor, freedom, the life of man, etc.<sup>10</sup>

The importance of forensic medical expertise is becoming more and more the same, and it consists of:

- explaining and establishing certain facts in order to provide expert assistance from lawyers, and what is of great importance in the exercise of his function;
- use as evidence in court proceedings, if the expertise is carried out and based on objectivity and complete expertise, and
- use the latest medical achievements and their application in solving a number of problems and issues in court proceedings.
- The value of forensic medical examination consists in the fact that it can also be used in court proceedings as material evidence, if:
  - is performed in accordance with legal provisions, legal rules and norms;
  - designed and executed on the basis of the principle of modern achievements in medical sciences;
  - correctly in view of the form of the given expert judgment,
  - and useable, if the conclusion or opinion arises from the established facts and is reasoned clearly and comprehensively.

The need for judicial medical examination

<sup>10</sup> Belokaposki and others. Judicial Medical Exercise-Objectivity, V Congress of Forensic Medicine of Yugoslavia with International Participation, Proceedings, Herceg Novi, 1997, p.

235-417. Duma i sar. Objectivity in artificial - basic principle of medical expert, XV Congress of Doctors of Macedonia, Collection of abstracts of the Macedonian Medical Society, Ohrid, 1999.

in the field of criminal offenses against life and body, criminal offenses against the sexes and morals, crimes against human and criminal offenses against traffic safety, consists in clarifying and resolving a number of issues, including related to: □ the severity of body injuries; □ time and manner of execution of the criminal offense; □ the means by which the criminal offense was committed and □ the mutual position between the injured party and the perpetrator.

## 2. THE ROLE OF SHEET-LADY IN THE BODY OF BODY BREEDS

For proper and objective assessment of the degree and severity of bodily harm, the expert doctor must be familiar with the basic principles of expertise, that is, legal provisions, legal rules and norms of the Code of Criminal Procedure and the Criminal Code of the Republic of Macedonia, to possess knowledge and experience from all medical fields they deal with diagnosis of procedures and the therapy of injuries and that they rule in forensic analysis and diagnosis. The expert witness is an uninterested person who has special expertise and whom the prosecutor, or the court, has asked to assist him in establishing important facts in the criminal proceedings.<sup>11</sup>

The expert witness should assist the court in establishing important facts based on his professional knowledge, knowledge and experience, observing the facts and giving expert opinion.<sup>12</sup>

Qualification of bodily injuries occurs at the time of their occurrence, however in some cases qualification of bodily injuries

is made after the completed treatment - treatment, because some of them can leave lasting consequences, depending on the nature of the injury, the way, the length and the outcome of their treatment. It should be noted that, when giving an opinion on the severity of physical injuries, all individual traits of injury at the time of injury (sex, age, physiological condition, menstruation, pregnancy, fortified condition, various illnesses or injuries, etc.) must be assessed.<sup>13</sup>

It follows from the provisions of the Macedonian Criminal Code on bodily injuries that a physician-expert should assess the degree of severity of physical injuries in the absolute sense of the word, and he must identify and explain the violation through the defined conditions referred to in paragraph 3, article 131, or to do so by way of elimination mentioned qualification elements.<sup>14</sup>

In other words, it is necessary for the expert to explain in the case of physical injury the assessment of the medical facts that carry a bodily injuries with him, and in addition to harmonizing this data with legal provisions, legal rules and norms, to determine the medical characteristics of bodily injuries, to explain the medical content of bodily injuries, to determine the causal link between incriminated action and bodily injury, to determine the possible consequences and complications, as well as to determine and evaluate other facts related to bodily injury, which are of importance in criminal proceedings, such as the time of the occurrence of a bodily injury, the means and the way in which the bodily injury was inflicted.<sup>15</sup>

If the examination of a bodily injuries is

<sup>11</sup> Buturovic J., Stevanovic M., Psychiatric investigation in the criminal procedure (legal synopsis), JRKK, no. 3-4, Belgrade, 1980, p. 429-448

<sup>12</sup> Kostid M., Forensic Psychology, Institute for Textbooks and Teaching Resources, Belgrade, 2002, p. 150.

<sup>13</sup> Pejakovic S., Principles of Forensic Expertise and Judicial Medical Commentary of the Criminal Code, Naučna knjiga, Belgrade, 1973, p. 5-53, 74.93. Pejakovid S., Judicial Medical Examination and

Medical Error in Society and Court, Scientific Paper, Belgrade, 1991, p. 7-35, 41-42., 111-132.

<sup>14</sup> Duma A., et al. Qualification of bodily injuries, Association of Judges RM, Judicial Review, no. 1, 1999

<sup>15</sup> Gutevska A., Davceva N., Chakar Y., Poposka V., Boskovski K., Duma A., Expertise of Accidental Violations, Police, Prosecutor's Office, Court and Lawyer in Pre-Criminal Procedure, Ohrid, 2000, p. 423-429.

carried out in this way, it also allows the judge conducting the criminal proceedings to correctly understand the violation, its gravity, its possible consequences, and that it can fit it into one of the provisions foreseen in the Criminal Code.

It is proper that the expertise is checked, especially more complex, in an expert institution or a state body specialized in certain types of expertise. One or more pledges may be involved in the expert procedure, which depends on the type and complexity of the expertise.<sup>16</sup>

Expertise today in judicial institutions has become a regular part of the criminal procedure, a very important evidence of which much is expected, and, on the other hand, evidence that slows down the court processes due to all the complexity discussed.<sup>17</sup>

### 3. METHODS OF BEHAVIOR OF BODY VEGETABLES

As a case of forensic medical expertise, where a large number of medical questions arise, there are also expert evidence of bodily injuries in the criminal proceedings. According to the court, expert witnesses of bodily injuries are necessary for life-threatening offenses, including: crimes of violation of physical integrity and damage to health, physical injuries and serious bodily harm, criminal offenses against sexual freedom and sexual morality (sexual offenses) and criminal offenses against the safety of public transport (traffic accidents).<sup>18</sup>

The examination of bodily injuries is carried out as a rule - examination of the injured person, and if this is not possible or not necessary based on medical documentation or other data from the file.

After describing the injury, the expert gives his opinion, in particular the type and severity of any particular injury, and their overall effect from the aspect of their nature or the particular circumstances of the case itself, how usually these injuries are affected, and how in the specific case and how and in what way them.

The previous Code of Criminal Procedure has provided the basic norms on the method of carrying out an expert assessment of a bodily injury. According to Article 271 of this Law, the examination of a bodily injury is done as a rule examined - injured, and if this is not possible or not necessary based on medical documentation or other data contained in the files. The new Criminal Procedure Code, in Article 249, regulates in a general manner the issues of: physical examination, taking of blood and other medical activities. The physical examination of the defendant or other person shall also be carried out without their consent if it is necessary to establish the facts that are relevant to the criminal proceedings. Taking blood and other medical interventions in medicine are done for the purpose of analyzing, identifying the person and identifying other facts that are important for the criminal procedure. This can also be done without the consent of the person being examined, unless it does not affect his health. So, the examination of bodily injuries is carried out in two ways: examination of the injured person or - insight into medical records or other data related to injuries, which are contained in the case files. The medical documentation should contain all data related to injuries and damage to health, the manner of their diagnosis, the taken therapeutic measures and the treatment method. In other words, medical documentation is a realistic and objective document, if it is the same comprehensive and well-written.<sup>81</sup>

<sup>16</sup> Stevanović Č., Đurđić V., Criminal law: process entities, process actions, Student Cultural Center, Niš, 1998, p. 254.

<sup>17</sup> Gerben Meynen, op. cit. in Milanovic S., Significantly reduced accountability in criminal law of BiH, Travnik 2016, p. 248

<sup>18</sup> Tasid M. et al., Judicial Medicine, Zmaj, Novi Sad, 2006, p. 5-35. Zečević D., et al., Expertise on the severity of physical injuries in criminal proceedings, Informator, Zagreb, 1986

Medical records include medical certificates, however, it may be a release list, a history of illnesses, medical examination reports, rent records, laboratory findings and other medical documents related to the treatment of the injury. A medical certificate is a means of proof that often leads to a final judgment. However, only the medical certificate, or any other medical document relating to the flow and treatment of an injured person, can not be the basis of the expert judgment by which a final court verdict can be issued, because it does not follow from the order of the court, that is, the court does not elect a doctor, a doctor chooses injured.<sup>19</sup>

#### **4. LIABILITIES AND TASKS OF THE JUDICIAL-MEDICAL LABEL WITH THE EXERCISE OF BODY BREEDS**

In its day-to-day operations, one of the tasks of a forensic medical expert is to provide the expertise of bodily injuries in living beings in written form.<sup>20</sup>

The carrying out of the judicial medical examination of bodily injuries in living beings consists of: giving diagnoses and opinions on the type and nature of the injuries after direct examination of the injured person, giving diagnosis and opinion on vision and karate injury in the examination of bodily injuries in criminal cases and giving oral opinion in progress court proceedings.

a) Providing diagnosis and opinion on the type and nature of the injury after the immediate examination of the injured person In the Republic of Macedonia, at the Institute for Forensic Medicine and Criminology, which is part of the Medical Faculty in Skopje, the most frequent is a physical examination of the injured person who received the injury for the time a criminal act - a fight or a fight, and an injured person who has received a violation during rape or some other unnatural

blasphemy (in which case, besides physical examination, insists on the anal), in order to determine the existence of injuries that have occurred criminal activity. The examination of bodily injuries during the examination of the injured consists of two phases. The first phase relates to the examination of the injured person and consists of the following tasks: □ taking general information about the injured person (name, surname, birthdate, address, marital status and occupation), □ taking data from an injured person related to the place of occurrence, the time (exact date and hour), the means used and the way in which the injury occurred, - □ the specification of the date and time when the inspection was carried out, - □ the inspection of the body injured in the presence of visible injuries, - □ the finding of each individual injury, which means accurate localization, vision and characteristic of injuries and their introduction, or drawing a special scheme, □ photographing each individual injuries.

In special cases, a court order may also be sought: □ examination of the wardrobe, in the sense of the possible existence of suspected biological traces (blood, hair, sperm), and if any of these traces are found, their laboratory analysis is carried out to determine the affiliation of the blood group or the existence of sperm, □ gynecological or anal examination by taking vaginal or anal swabs, □ and taking blood from the vein and urine for possible evidence of the presence of ethyl alcohol, psychoactive substances and medicaments. □ The second phase refers to the provision of diagnosis and opinion in a written form consisting of: □ headings, listing all the questions raised in the delivered written order by the court or in a written written request by the injured person, □ a finding in which all the information obtained during the examination of the injured person or the general about the person, a description of the occurrence-event and a detailed description of each injuries detected in terms of the exact localization that is

<sup>19</sup> Aleksandric B., Pandurovic S., Doctoral certificate, Medical subsp., XXXIV year, no. 4, 1982.

<sup>20</sup> Boskoski K., *Expertus*, Independent editions of Gjurgja, Ohrid, 1994, p. 15-29.

carried out over a fixed-point point on the body, □ and an opinion in which an answer is given to the questions asked, which must be written in a language comprehensible to all legal entities.

b) Providing diagnosis and opinion on the type and nature of injuries based on medical records (examination of bodily injuries in criminal cases) This form of expertise meets in three stages. The first phase relates to the overall and detailed viewing, acquaintance and study of the questions set out in the written order and the files contained in the case (indictment against the accused) filed by the Basic Public Prosecutor's Office, the decision with which the investigation against the Accused was conducted by a public prosecutor or a private criminal complaint filed by the injured party. These documents contain all data regarding the criminal offense, that is, the date, time, place, means and manner of the occurrence of the violation, medical documentation relating to the injured person's injuries, the record from the investigation, statements made before the court by the injured party, the accused and by the witnesses, photo documentation and sketches of the place of events prepared by the MUP's crime technique, expert examination by the MUP technician's crime, and if there is an expertise of a doctor of another specialty. The second phase relates to the written notification of the injured person to the Institute with the aim of delivering supplementary medical documentation which is not in the case and to be screened. At this stage, medical documentation is completed that is related to the treatment of the injured person's injury, and the examination is performed if there are any consequences, complications or scars.

The third phase relates to the delivery of findings and opinions in a written form, and it consists of: □ headers, indicating who is seeking expertise and questions set out in the written order contained in the case files, □ the findings in which it is quoted the overall medical documentation related to

the injured person's injuries, and in some situations, certain facts from the records on the inspected place of the place, the statement of the injured party, the accused and the witness are given before the court, □ the findings of other expert witnessing, among which is the expert's assessment by the doctor specialties, opinions that are the last and most responsible part of the expert examination explaining the important facts and details that have been established and arising from the findings, and giving an opinion in relation to the severity and severity of each individual injury and their overall effect.<sup>21</sup>

In cases of non-existence of all necessary facts in the attached medical documentation (incorrect, imprecise or unclearly written) and other files in the case, which are crucial for giving opinions, and in cases when the treatment has not been completed, we can not be produced with absolute certainty, so in such cases we often hear expressions like -not excludes the possibility "; - there is a small and a high probabilityl. c) Provision of oral findings and opinions during court proceedings Although in practice the examination of bodily injuries is most often in writing, it is of utmost importance that the statements of a court medical expert during court proceedings are given verbally. In giving an oral testimony before the court, a forensic medical expert has the following tasks: he should not participate in the interpretation of legal issues and questions concerning who is guilty; the questions asked by the judge and the participants of the conflict to give explanations only to those questions that are specifically set up in the field of medicine and are medically resolved; if they are asked questions in relation to clarifying and assessing new data collected and supplemented by medical records, in this case, may request access to them or may request that he be given a certain period of time in order to give an opinion on specific emerging issues, can pose questions to participants dispute, whose possible answers could be of great

<sup>21</sup> aneska B., Expert and Expert, Doctor for Physicians, Modern Diagnostics and Therapy in

Medicine, Chapter XXIX, Skopje, 2000, p. 2118-2119.

importance in establishing the rule of truth in the present assessment.

## Conclusion

During expertise violation of one of the most important questions posed in front of a doctor - a specialist is that to estimate the degree of difficulty of bodily injury in the context of the legal provisions and the conditions defined in the Criminal Code, or to determine whether it is a case of physical injury or a serious bodily injury. Qualification of the violation is done at the time of its formation, but in some cases is done qualification grievous bodily harm after completing treatment, because some of them may leave permanent damage, which will depend on the nature, manner, length and outcome of treatment. The doctor-expert in the expertise of physical injuries need to decide not only on medical facts that carries bodily injury, medical characteristics and medical content violations, but also in terms of cause - effect relationship between incriminated reaction and personal injury, possible consequences and complications, time its origin, as well as the way and means with which the injury occurred. Qualification of a violation is a special procedure prescribed by the Criminal Procedure Code. Any infringement case for himself, and to carry out criminal legal qualification needed is that all injuries are analyzed in terms of localization and type some and the clinical symptomatology, and then to define the qualification elements contained in the provisions for personal injury of the Criminal Code.

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