

(1) Number of pages 28(2) Date of repair 24-6-43(3) Initials of the Referencer J.

MADRAS RECORD OFFICE.

Government of Madras.

Initial DEPARTMENT.

G.O. No.	*928	Press <u>Mis.</u>
Dated	19. 4.	1888.

Not to be folded or roughly handled

19TH APRIL 1888, No. 928, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper :—

From G. BIDIE, Esq., M.B., C.I.E., Surgeon-General with the Government of Madras, to the Chief Secretary to Government, dated Fort St. George, 13th March 1888, No. 207.

I have the honor to submit, for the consideration and orders of the Right Honorable the Governor in Council, certain correspondence which has taken place regarding the nature of the medical certificates to be granted by medical men in cases examined by them which are to form subjects of trial in criminal courts.

2. Surgeon G. L. Walker, who first raised the question as to the character of the certificate to be rendered by the medical man in such cases, is of opinion that it should be as brief as possible, so that there may be no details offering "temptation to the police to get up a case." He also suggests that by making the medical certificate brief, the legal agents for the defence would not, when the case is under trial, have the same opportunity for vexatious cross-examination of a medical witness as when the document enters into minute description and explanation.

3. The Inspector-General of Police, to whom Dr. Walker's letter was referred, is of opinion that the certificate "is intended to assist the police," and, to be of any use in this respect, details would be necessary.

4. I have further to submit copy of Proceedings of the Session Court of Tinnevely, under date 7th December 1887, in which the Judge says that "these documents" (medical certificates) "are absolutely useless and ought not to be asked for or given by medical officers."

5. As there is such divergence of opinion amongst authorities and the question is purely a legal one, I have to solicit the orders of His Excellency the Governor in Council on the subject for future guidance.

ENCLOSURES.

From Surgeon G. L. WALKER, M.D., Acting District Medical and Sanitary Officer, Madura, to the Secretary to the Surgeon-General with the Government of Madras, dated Madura, 12th November 1887, No. 1359.

I have the honor to bring to the notice of the Surgeon-General with Government that there appears to be no regular form for the certificates granted by a medical officer or medical subordinate, in the case of a dead body sent for *post-mortem* examination.

2. Some police officers are satisfied with a certificate to the effect that the body has been received and examined, and that death was due to violence; whilst others demand a detailed account of the injuries. In both cases the medical officer or subordinate has subsequently to appear before the magistrate and give his evidence on oath; the evidence then given comprises all the details of the injuries, together with opinion of the cause of death.

3. It would seem therefore that the original certificate giving details is only called for in order to assist the police. I submit, however, that the intention of the certificate, and of the medical evidence, is to assist the *Magistrate* to a decision, and not to assist the *Police* in getting up a case; the very fact of giving the details of injuries is a temptation to the police to get up a case "to fit" those injuries.

4. I think the primary certificate should be a brief statement to the effect that the body was received from so and so, at such a time, that it was examined, and that, in the opinion of the medical officer or subordinate, death was due to violence, or to natural causes, as the case may be; the details are given subsequently in sworn evidence.

5. There is another point in connection with these detailed certificates that appears to me objectionable, that is, that the unfortunate medical subordinate is closely cross-examined on them in court by the vakeels for the defence, who have books on medical jurisprudence often before them to refer to, and if the medical subordinate makes a slip, an endeavour is at once made to discredit his whole evidence; this could not so easily be effected if the primary certificate did not go into details.

6. The matter of certificates also in the cases of *wounded* persons brought by the police needs, I think, consideration. Should the certificate be issued at the time the wounded person is brought to the hospital, or when he is discharged? And should it give details of the injuries, or simply state that he was slightly, or severely, wounded, as the case may be? I think the latter, as the detailed evidence is usually called for before a magistrate subsequently.

7. These matters have cropped up several times in my experience, and appear to be in an unsettled state. I therefore refer them to the consideration of the Surgeon-General for such steps as he may deem advisable.

No. 6459.

Referred to the Inspector-General of Police.

The undersigned is inclined to agree with the District Medical Officer, but will be glad to get the Inspector General's views.

Return requested.

FORT ST. GEORGE,
6th December 1887.

(Signed) G. BIDIE,
Surgeon-Genl. with the Govt. of Madras.

From Colonel C. A. PORTEOUS, Acting Inspector-General of Police, to the Surgeon-General with the Government of Madras, dated Madras, 19th December 1887, No. 6315.

I have the honor to furnish you with my views on the points raised in letter, No. 1359, dated 12th November 1887, from Surgeon G. L. Walker, M.D., Acting District and Sanitary Officer, Madura, to your address, referred to me with your docket, No. 6459, dated 6th instant.

1. The circumstances under which a dead body should be sent to the nearest medical officer are stated in section 174 of the Criminal Procedure Code.

2. When a body is sent by a police officer for *post-mortem* examination, a memorandum should also be sent stating the supposed cause of death (paragraph 5, Police Order, No. 236.)

3. The medical officer, in a criminal question, "is not, in the first place, a witness;" he is, like the police themselves, "an active agent in the enquiry," assisting by his professional knowledge to throw light on a matter in which there must otherwise be a deal of groping in the dark.

I am therefore clearly of opinion that the medical certificate is intended to assist the police, whereas it is mainly on the medical evidence on which a Judge or Magistrate has to rely for a decision. Dr. Walker travels somewhat away from the point strictly at issue when he writes of temptations to the police to get up cases, &c. Temptations are not confined to the police.

4. The medical man's official statement (*i.e., certificate*) of the cause of death, as revealed in his autopsy, cannot be too concise, but must be fully to the point. When, later on, his evidence comes to be taken, he is generally examined, not upon plain facts, but upon obscure points of opinion and judgment.

Norman Cheser's Medical Jurisprudence.

Dr. Walker's letter, paragraph 5.

5. The medical certificate should, I think, be forwarded by the medical officer making the *post-mortem* examination direct to the nearest Magistrate empowered to hold an inquest, from whom the police can obtain a copy, if necessary, but medical officers should (for reasons already given in paragraph 3 of this letter) on oral examination by station house officers, afford such information as will facilitate the clearing up of the case before them.

6. Regarding a wounded person, the certificate should be furnished immediately he is brought to the hospital and the character of his wound becomes known. This is necessary in order to decide whether the police are to proceed with the case or otherwise, for it is only if the hurt is of a serious nature and the case is a cognizable one (coming under Sections 324, 325, 326, 335 of the Penal Code) that the police are authorised to proceed with the investigation. Should the hurt be of a petty nature, the case, coming under section 323 of the Penal Code, would be non-cognizable, and the police would not be justified in interfering further with it. The certificate not being evidence, in any case the examination of the medical officer would be necessary at the trial or enquiry.

7. When an officer in the position of a District Superintendent of Police applies to a District Surgeon for information regarding a *post-mortem* examination or a wounded person, such information, I am of opinion, should be given to him.

No. 1043.

PROCEEDINGS of the Session Court of Tinnevely, dated 7th December 1887.

Read medical evidence filed as Exhibit D at the trial of Session Case, No. 84 of 1887 (Register Case No. 7 of 1887 on the file of the Second-class Magistrate of Srivilliputtur).

The Acting Session Judge desires to draw the attention of the Acting District Magistrate to the manner in which the medical evidence is recorded by the committing Magistrate, who, instead of examining the medical witness as to the cause of death, has thought fit to assume that the medical certificate was evidence or could be used to show the cause of death, and has examined the medical witness only as to the correctness of the certificate. This has necessitated the staying of further proceedings in the case and the summoning of the medical officer who gave the evidence to be examined again in this court. The Acting District Magistrate is requested to instruct the committing Magistrate that in future it is not enough merely to examine the medical witness as to the correctness of the certificate given, but also that it is necessary to examine him as to the cause of death and to record the same in the deposition.

A copy of the exhibit referred to is herewith sent

The Acting Session Judge is of opinion that the only way to prevent such mistakes as the above, which have occurred more than once in the last few months, is for the District Magistrate to issue an order that committing Magistrates are not to make any use whatever of the so-called certificates of cause of death. Those documents are absolutely useless, and ought not to be asked for or given by medical officers. The only reason they are given is because the police persist in asking for them and medical officers do not like to refuse to give them. The Acting Session Judge has spoken to the Superintendent of Police in the matter, but apparently with no result. Therefore a copy of these proceedings will be sent to the Superintendent of Police and one to the District Surgeon for communication to all medical officers in the district.

(True Extract.)

(Signed) W. F. GRAHAME,
Acting Session Judge.

To the District Surgeon, Tinnevely.

ORDER—dated 19th April 1888, No. 928, Judicial.

The Government entirely agree with the remarks of the Inspector-General of Police in his letter, No. 6315, dated 19th December 1887. The importance of a full and complete record of appearances observed being made immediately after the examination of the dead body or wounded person can hardly be exaggerated, and though a medical certificate thus recorded is not, *prima facie*, evidence, it may be made so by the medical officer who gave it swearing to its truth and offering himself for cross-examination. Far from being useless for other purposes, such a certificate should be a valuable guide in tracing crime, and the police are entitled to the information contained in it.

(True Extract.)

H. E. STOKES,
Chief Secretary.

To the Surgeon-General with the Government of Madras.
" Inspector-General of Police.

Exd. A. Raitt.

Gobt. of (1888) Madras.
JUDICIAL.

Issued .

Recd.

Encl.

G.O., 19th April 1888, No. 928.

APRIL.

Medical Certificates for Police
Purposes.

Passing orders on reference from the Surgeon-
General with the Government regarding the im-
portance of —.

ET

Cy No 1359.

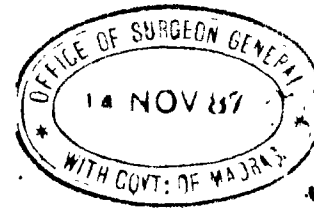
From.

Office of the District Medl.
& Sanitary Officer, Madras,
12th November 1887.

Surgeon. G. L. Walker M.D.
District Medl. and
Sanitary Officer
Madras.

To,

The Secretary to the
Surgeon-General with the
Government of
Madras.



Sir,

I have the honor to bring
to the notice of the Surgeon-General with
Government, that there appears to be
no regular form for the certificates
granted by a Medical Officer or Medical
Subordinate, in the case of a dead body
sent for Post-mortem Examination.

2. Some Police Officers are
satisfied with a certificate to the effect
that the body has been received and
examined, and that death was
due to violence; whilst others
demand a detailed account of the
injuries. In both cases the Medical
Officer or subordinate has subsequently
to appear before the Magistrate and give
his evidence on oath; the evidence then
given comprises all the details of the
injuries, together with opinion of the cause
of death.

3

It would seem therefore that
the original Certificate giving details

is only called for, in order to assist the Police; I submit however that the intention of the Certificate, and of the Medical evidence, is to assist the Magistrate to a decision, and not to assist the Police in getting up a case; the very fact of giving the details of injuries is a temptation to the Police to get up a case "to fit" those injuries.

4. I think the primary Certificate should be a brief statement to the effect that the body was received from so and so, at such a time, that it was examined, and that in the opinion of the Medical Officer or subordinate death was due to violence; or to natural causes, as the case may be, — the details are given subsequently in sworn evidence.

5. There is another point in connection with these detailed Certificates that appears to me objectionable, that is, that the unfortunate Medical Subordinate is closely cross-examined on them in Court, by the Vaccars for the defence, who have books on Medical Jurisprudence often before them to refer to, and if the Medical Subordinate makes a slip, an endeavour is at once made to discredit his whole evidence, this could not so easily be effected if the primary Certificate did not go into details.

6. The matter of Certificates also in the cases of wounded persons brought by the Police, need I think consideration; should the Certificate

be issued at the time the wounded person is brought to the hospital for when he is discharged? and should it give details of the injuries, or simply state that he was slightly, or severely, wounded, as the case may be? I think the latter, as the detailed evidence is usually called for before a Magistrate subsequently.

7. These matters have cropped up several times in my experience, and appear to be in an unsettled state. I therefore refer them to the consideration of the Surgeon-General for such steps as he may deem advisable.

I have the honor to be
Sir,
Your most obedt. Servant

Godwin M.D.
Surgeon
Dy. Dist. Med. Officer

119
No. 6459

Memo

Referred to the
Inspector General of
Police.

The undersigned is
inclined to agree with
the District Medical
Officer, but will be glad
to get the Inspector
General's views.

Return requested.

Edric
Surgeon General
with Govt of Madras.

For W. 6th Decr 1887

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119

Medl.

Depd.

From

The Dist. medl. &
Sanitary Officer
Madras.
To, The Secretary to the
Surgeon General
with the Govt of
Madras.

Dated 12. November

No. 1359.

Bringing to notice of the
Surgeon General the various
forms in which the Corpsals
of P. M. Examinations are
required by Police Officer,
as well as of wounded persons
and offering his remarks
on them for consideration
by the Surgeon General
for reasons hereinafter stated.

No. 6315

CHIEF OFFICE OF THE INSPECTOR GENERAL OF POLICE,

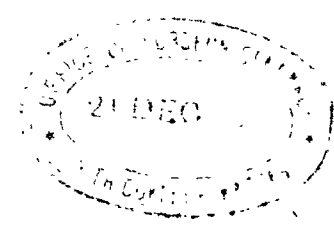
Madras, 19th December 1887.

FROM

Colonel J. A. Porteus
Inspector General of Police,

TO

THE Surgeon General
with the Government of Madras
Fort Saint George.



SIR,

Enclosure.
One.

I have the honor to furnish
you with my views on the points
raised in letter No. 1359, dated
November 12th 1887 from Surgeon
H. Walker M. D. Acting District and
Sanitary Officer, Madras to your
address referred to me with your
Docket No. 6459, dated 6th Instant.
1. - The circumstances under which
a dead body should be sent to the
nearest Medical Officer are stated
in Section 174 of the Criminal Procedure
Code.

1887
3

code -

2. When a body is sent by a Police officer for post mortem examination a Memo should also be sent stating the supposed cause of death (para 5 of Police Order No 236) -

3. The Medical officer, in a Criminal question is not, in the first place, a witness; he is, like the Police themselves, Norman Chivers "an active Agent in the enquiry" - assisting by his professional knowledge to throw light on a matter, in which there must otherwise be a deal of groping in the dark. Medical jurisprudence

I am therefore clearly of opinion that the Medical Certificate is intended to assist the Police, whereas it is mainly on the Medical Evidence on which a Judge or Magistrate has to rely for a decision. Doctor Walker travels Somewhat

Somewhat away from the point strictly at issue when he writes of temptations to the Police to get up cases &c. Temptations are not confined to the Police -

4. The Medical Man's official statement Norman Chivers = Medit (i.e. Certificate) of the cause of Medical jurisprudence death, as revealed in his autopsy, cannot be too concise - but must be as full as the point. When, later on, his evidence comes to be taken, he is generally

Doctor Walker's letter para 5.

examined not upon plain facts, but upon obscure points of opinion and judgment.

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and the Police would not be justified in interfering further with it - The Certificate not being evidence,¹³ in any case the examination of the Medical Officer would be necessary at the trial or inquiry -

7. When an officer in the position of a District Superintendent of Police applies to a District Surgeon for information regarding a post mortem examination of a wounded person, such information, I am of opinion, should be given to him -

I have the honor to be
Sir
Your most obedt. Servant
W. A. P. Stewart Esq.
of Inspector General of Police

End ^{mt}
Cpd by

(1887) DEPARTMENT.

FROM

Chas. A. Porteous
INSPECTOR GENERAL
of Police.

104/35-1887

No. 6315

Dated 19th } December 1887.
Received

No.

SUBJECT.

Furnishes with his views
on the points raised in letter
No. 1359 dated November 12
1887 from Surgeon G. C. Walker
M. D. Acting District and
Sanitary Officer, Madura.

12/12/87

Proceedings of the Session Court of
Tinnevely, dated 7th December 1887. 17

Read medical evidence filed as
Exhibit D, at the trial of Session case No. 84
of 1887 (Register case No. 7 of 1887 on the file
of the 2nd class Magistrate of Srivelliputtur)

The acting Session Judge desires
to draw the attention of the acting District
Magistrate to the manner in which the
medical evidence is recorded by the Committing
Magistrate, who, instead of examining the
medical witness as to the cause of death, has
thought fit to assume that the medical
certificate was evidence or could be used to
show the cause of death and has examined
the medical witness only as to the correctness
of the certificate. This has necessitated
the staying of further proceedings in the
case and the summoning of the Medical
Officer who gave the evidence to be examined
again in this court. The Acting District
Magistrate is requested to instruct the
Committing Magistrate that in future
it is not enough merely to examine the
medical

medical witness as to the correctness of the certificate given but also that it is necessary to examine him as to the cause of death and to record the same in the deposition.

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982
These Proceedings will be sent to the Superintendent of Police and one to the District Surgeon for communication to all medical officers in the district.

(True Extract)

(Signed) W. F. Grahame

Acting Session Judge.

To The District Surgeon
Tinnevely

(True copy)

(Signed) H. Hyde

Surgeon Major

District Surgeon Tinnevely

(True copy)

Sd/-

M. B., b. I. E.

Surgeon General

with Govt of Madras

Fort St George 12th March 18

D

CURRENT NO. 124

OFFICE OF SURGEON-GENERAL

WITH THE GOVERNMENT OF MADRAS,

Fort St. George, 13th March 1888.

No. 207

From G. Bidie Esq. M. B., B. S. E.

THE SURGEON-GENERAL WITH THE

GOVERNMENT OF MADRAS,

FORT ST. GEORGE,

To

THE

Chief Secretary to Government
Judicial Department.

SIR,

I have the honor to submit for the consideration and orders of the Right Honorable the Governor in Council, certain correspondence which has taken place regarding the nature of the medical certificates to be granted by medical men in cases examined by them which are to form subjects of trial in criminal courts.

2. Surgeon G. L. Walker who first raised the question as to the character of the certificate to be rendered by the medical man in such cases is of opinion that it should be as brief as possible, so that there may be no details offering "temptation to the Police to get up a case". He also suggests that by making the medical certificate brief the legal

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J.W.L. 105

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legal agents for the defence would not, when the case is under trial, have the same opportunity for vexatious cross-examination of a medical witness as when the document enters into minute description and explanation.

3. The Inspector General of Police to whom Doctor Walker's letter was referred is of opinion that the certificate "is intended to assist the Police"; and to be of any use in this respect, details would be necessary.

4. I have further to submit copy of Proceedings of the Session Court of Tinnevely under date 7th December 1887 in which the Judge says, that "these documents" (medical certificates) "are absolutely useless and ought not to be asked for or given by medical officers".

5. As there is such divergence of opinion amongst authorities and the question is purely a legal one, I have to solicit the orders of His Excellency the Governor in Council on the subject for future guidance.

J

I have the honor to be
Sir

²³
Your most obedient servant

Sidic M.B., C.S.E.
Surgeon General
with Govt of Madras

TD

1000-1-5-74
 1022-5-6-74
 1097-17-6-74
 1097-20-7-74

CURRENT NO. 12
 Judicial (1888) DEPARTMENT.

From G. Bidie Esq. M.B., B.I.E.
 THE SURGEON-GENERAL WITH THE

GOVERNMENT OF MADRAS,
 Fort St. George.

For order.
 Submitted that the Sg. of Police is right & that the Medl. Officer should give full information as to cause of death or nature of injuries. See para. 2 S.O. 5. June 1874. N° 1022. The suggestion that the Police will work up a case in accordance with the evidence ought hardly to be made. The Police, like other people, should be presumed to be innocent till proved to be guilty. Mr. Graham's remarks also seem out of place: medl. certificates might be & should be a valuable guide in tracing crime. No doubt when the case is before a Court, the medl. certificate should no longer be relied on.

Alf.
 10p.
 The importance of a full & complete record of appearances observed being made immediately after the autopsy, cannot I submit be overrated, and the Police are entitled to the information contained in it. As observed by Col. Porters, "temptations are not confined to the Police."

Alf.
 12p.
 Quite agree with you about with Col. Porters' remarks on the subject. Mr. Graham is right in saying that the medl. cert. is not evidence but it may be made so by having sworn to by the medl. Offr. who gave it swearing to its truth & offering himself for cross-examination. When we say that Certs. are useless for other purposes & not given he travels beyond his province

No. 207
 Dated 12th March 1888
 Recd. 15th

(No. of recd. 3.)



SUBJECT.

Submits for orders certain correspondence regarding the nature of medical certificates to be granted, to form subjects of trial in Criminal Courts.

[25]



Judl. Department.

25

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following paper

From the Sg. with Govt., 13th Mar. 88. N° 207.

order. 19 April 1888 N° 928

The Govt. entirely agree with the remarks of the Sg. of Police in his letter, no. 6315, dated 19th Dec. 1887. The importance of a full and complete record of appearances observed being made immediately after the examination of the dead body or wounded person can hardly be exaggerated, and though a medl. certificate thus recorded is no prima facie evidence, it may be made so by the medl. officer who gave it swearing to its truth & offering himself for cross-examination. Far from being useless for other purposes, such a certificate should be a valuable guide in tracing crime, & the Police are entitled to the information contained in it.

From orders.

Surgeon Genl. with the Govt.
 Sg. of Police } despatched 12/5

Alf.
 17p.
 12/5/88

10/11

96

TO AGAIN Order of Government, dated
No.

Page No.

Number Pages, No.

27

CLASS No.

1242 928
19-4-38

STATEMENT WITH-UNITED

OR. E.A. No. OF GOVERNMENT-A.

PREPARATION OF FILE FOR DISPATCH IN CASE
(as per)

NUMBER OF COPIES
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Letter only.
Order complete with Letter.

A.B.-

- A = Print in full
- B = Not to be printed.
- F = Print at first only.
- Q = Print heading only.
- E = Print, but not for monthly release.

ORDINARY, PRINTED

<i>Full</i>		DEPARTMENT.
G.O., DATED	<i>19 April 88</i>	
No.	<i>928</i>	

First copy sent to Press. *23/4*Returned for signature. *30/4*Despatched in print. *2/5*

[Despatch Abstract.]

Medical Certificates for
Police purposes : Passing
 orders on reference from
 the Surg. General with the
 Govt. regarding the importance
 of —