



General and peculiar aspects of psychiatric certification

Iris Bonfitto¹, Maria Rosaria Gigante², Giovanni Moniello³, Leonardo Vitale⁴, Antonello Bellomo^{1,5}

¹ Department of Mental Health, ASL FG Province of Foggia; ² Specialist in Occupational Medicine, Doctors Order, Bari; ³ Specialist in Geriatrics and Gerontology, ASL CE Province of Caserta;

⁴ Specialist in Legal and Insurance Medicine, Doctors Order, Bari; ⁵ Department of Clinical and Experimental Medicine, University of Foggia

Abstract

The certification activity, especially in the psychiatric field, takes a quite peculiar meanings and characteristics, also due to the reflexes that it can determine on the therapeutic relationship with the patient and for the consequent of medical-legal implications.

The authors propose a review of the literature and the regulations concerning the methods and purposes of the certifications in psychiatry and hope for the formulation of suitable guidelines to standardize the processes.

Introduction

Those who choose the medical profession should have the constant awareness that every act, however simple and banal it may seem, is fraught with ethical, deontological and medico-legal implications. To these implications is not eluded the certification activity which, especially in the psychiatric field, takes on particular meanings and characteristics. The psychiatrist, more than any other specialist, in the act of drawing up a certificate should always maintain full awareness of the limits of his knowledge, of his forecasting abilities and, even more, of the potential iatrogenic effect of any diagnostic and prognostic hypothesis even necessary as they are aimed at the affirmation of certain rights, if negative they can negatively influenced life of the patient and the course of the illness, inducing in the same incapacity, inactivity and social de-responsibility ¹. Among other things, it would be desirable for authorities and institutions to develop national and international guidelines that suggest a unified procedure for drafting the certificate in order to minimize the ambiguity that the psychiatrist is inevitably faced whenever it is required to certify ².

The possibility of ascertaining facts whose demonstration has legal and / or administrative significance both for the company and for the individual entity and to issue a certification derives from the general principle that the qualification to exercise a given profession involves the recognition of specific technical competence in that field ³.

The activity of the health professional does not end, therefore, at the time of clinical-diagnostic evaluation, but extends to very different tasks that materialize a real administrative continuation of the medical act in order to witness the recurrence of conditions possibly produced from particular consequences foreseen by the law.

It is therefore a primary characteristic of the medical profession *the duty to certify* that is achieved through the drafting of the certificate, the undoubtedly most widespread form of documentation of medical activity ⁴. If by certus we mean what is true, real, concrete, for the healthcare professional this concept of truthfulness can only correspond precisely to what is objectivable by him and therefore clinically verifiable ⁵. According to Gerin (1964) *“the certificate is the written act which declares to be in accordance with truth facts and conditions of a technical nature for which it is intended to prove existence”*; that is, written testimony on technically evaluable circumstances and facts, the dem-

Address for correspondence:

Antonello Bellomo
Department of Clinical
and Experimental Medicine,
University of Foggia
E-mail: antonellobellomo@tiscali.it

© Copyright by Pacini Editore Srl



onstration which can determine the assertion of particular subjective rights provided for by law, or produce certain consequences for the individual and society, having legal and / or administrative relevance. From this we can see its great importance both on the deontological level and on the more properly juridical one, placing itself as an ideal link between the personal and private sphere of the patient and the social sphere ⁴.

The issue of a certificate by the physician takes place at the request of the patient, visited or otherwise interested or, eventually, by the legal representative (parents for the minor, guardian for the interdict etc.) and its content must be limited to what the applicant intends to make manifest.

Certificative activity and relationships with the judicial authority

According to the penalistic qualifications provided for by our penal code, the health care professional can take on the role of public official (Article 357 of the Criminal Code), in charge of a public service (Article 358 of the Criminal Code) or a service of public necessity (Article 359 of the Criminal Code). Depending on whether it is attributable to one of these three legal figures there will be different consequences as regards the configurability of the criminally relevant facts, the gravity of the offenses committed and the applicability of ancillary penalties. The “minimum” criminal qualification referable to any health care professional is that of “a person performing a public necessity service”; therefore, in the performance of his duties, the doctor is never considered (criminally) an ordinary person. For the doctor who works in a national healthcare system (SSN) or who, in any case, performs the role of public official **public official** (Article 357 of the Italian Criminal Code) during the course of his duties, the refusal to certify could constitute the crime of “refusal or omission of official deeds” (Article 328 of the Criminal Code). According to the Court of Cassation, they also have the status of a public official: “the ASL outpatient specialist doctor” (Cassation Section VI, 20 January 1989); “The doctor who exercises his professional activity in the care of a clinic affiliated with the Ministry of Health” (Cassation Section V, 21 January 1981); “The health professionals who carry out their professional activity in the context of and in the care of a civil hospital”; “The medical director of a hospital because its organizational function involves powers of authority and direction”; “The sanitary who proceeds to the fiscal visits” (Cassation Section VI, 1 April 1980); “*The doctor who ascertains the existence of the pension requirements, the one who works as an expert or technical consultant, the medical doctor at the time when he ascertains death*”; “*The doctor who draws up a certificate of fitness to drive*” (Cassation Section VI, 20 January 1989).

Compared to the public official, the professional has greater discretion in the performance; these, in fact, in his legal role as an **essential public service** (Article 359 Criminal Code), has different constraints and, without prejudice to ethical and deontological ones deriving from the medical profession itself, in the event of illegal acts its function involves different penalty from what is provided for the public official. Some certificates issued by freelancers

(for example, the sickness insurance certificate for private insurance) are sometimes referred to as “private papers”. In current legislation it is possible to distinguish between **statutory certificates**, which the citizen has the obligation to show if he intends to assert his right, and **non-mandatory certificates** if they are requested on the basis of an interest of the assisted person to be presented to public or private bodies order to document the state of health. The obligation nature, therefore, is to refer to the existence of the certificate itself which is necessary to start a specific course or administrative procedure, while the doctor cannot and must not refrain from issuing the certificates requested by the patient.

Also for the doctor those certificates which he must send on his own initiative and not at the request of a private person are obligatory, on the basis of a duty that the law puts on the health care professional.

The acts of required information (**complaints**) have some fundamental characteristics: they derive from an unavoidable legal provision; they start at the initiative of the complainant (and not at the request of the patient); they concern facts of public interest and therefore are aimed at the social protection of the community and not at safeguarding the interests of the individual; they are intended for a public administration and may involve criminal penalties (generally of a violation type). Then, depending on the administrative body concerned institution, the complaints to which the doctor is held are classified into three main types: *administrative*, to be addressed to the Mayor or to the Civil Status Office of the municipality, concerning the activities of the public administration (eg certificate of birth assistance, necropsy certificate, report of causes of death); health, aimed at protecting hygiene and public health, in general in relation to prophylaxis activities (eg, reporting of infectious and diffusive diseases, reporting of venereal diseases, reporting of occupational diseases, reporting of mandatory vaccinations, etc.); *complaints* to the Judicial Authority, represented by the report and the report (or report of crime).

The report, in particular, is the report that the operator of a health profession who has provided his service in cases that may present the characteristics of a crime for which he must proceed automatically, must present to the judicial authority or other authority and has the obligation to report ⁴.

According to the Article 365 of the Criminal Code in which is expected that the health care professional (even in a profession) formulates a judgment of possibility on the existence of a punishable offense under the law, according to Article 361 of the Criminal Code “*The public official who omits or delays reporting to the judicial authority, or to another authority that has the obligation to report it, a crime of which he has been informed in the exercise or because of his functions, is punished with a fine by sixty thousand to one million lire ... The preceding provisions do not apply if it is a crime punishable by a lawsuit against the injured party* “. In the case of the report, therefore, explicit reference is made to having information about a crime that can be prosecuted ex officio, thus extending the mandatory nature of the report also to fines (less serious crimes,

punished with arrest or fine) . Furthermore, no exemption is envisaged (as required, instead, for the report in the case in which the assisted person is exposed to criminal proceedings) so that the healthcare professional who performs the function of public official is always obliged to report. In addition, the report must be presented as soon as possible and it is sufficient that the health care professional is aware of the crime, as its performance is not necessary.

Outside the mandatory situations described above, the doctor can, however, maintain a certain discretion in the bargaining of the demand that often requires clarification on what can be certified or not. Specifically, **the issue of a certificate can and must be refused**: if untruthful content is requested (ideological falsehood: Article 480 criminal code); if the certification requires skills that the healthcare professional does not possess; if the certificate is required in a free-professional context, since it is the responsibility of the NHS (eg, issuing a driving license or procedures concerning the IVG beyond the ninetieth day).

Certificate failure

The penal code provides for a long series of articles (from 476 to 493-bis) which govern the false document. The legislator distinguishes between **material falsehood and ideological falsehood**. This distinction is closely connected to the double meaning that the concept of false can assume, that is, not genuine or untruthful; in the first case we will speak of false material, in the second of false ideology.

More precisely, the **false props**, excluding the genuineness of the document (where genuine means that document which actually comes from the person who appears to be the author and has not undergone modifications, of whatever kind they may be, after its formation), it can come in two forms: counterfeiting, if the document is written by someone other than the one who appears to be the author; and alteration when, on the other hand, the document drafted by the person appearing as an author has made changes of any type (additions, deletions) in a post-editing period. Otherwise, the **ideological false** relates to the content of the act, taking the form of a document that is not counterfeit or altered, but containing false statements by its own author, which do not correspond to the truth, which the legislator expresses with the term “false testimony”⁶.

The offences of false related to certification vary according to the acts in which the certifying authority of the physician takes place (certificates, report, complaint, recipe, report, evaluation and technical advice, etc.) which may have a different legal nature (private writing, deed public or administrative certification) and consequently different criminal protection, due to the juridical qualifications that the doctor can cover according to the public or private nature of his functions. For example, the medical record, the operating room register, the first aid register, the certificate of fitness to drive, the death certificate are peacefully recognized as public documents; those acts, in essence, in which the administrative aspect prevails, that is the public incidence that the act takes with respect to the professional activity of the doctor.

The doctor with public functions is liable for material falsehood (Article 476 of the criminal code in public deed and Article 477 of the criminal code in administrative certification) if in the drafting of the certificate he commits alteration or counterfeiting through erasures, abrasions, subsequent additions aimed at making the conditions required for the its validity. In the event of false material, the professional responds to the Article 485 of the Criminal Code in which penalties are less severe than those reserved for doctors with public functions.

The doctor with public functions is liable for ideological falsehood (Article 479 of the Criminal Code in public deed and Article 480 of the criminal code in administrative certification) if the diagnostic judgment expressed in the certificate is based on facts, not adhering to the truth, regardless of whether they are explicitly declared or implicitly contained in the judgment itself (Cassation Section VI, 24 May 1977). The doctor who carries out free-professional activities in the event of ideological falsehood responds, instead, to the Article 481 of the Criminal Code: even in this case the penalties provided for are less severe. In any case, the “fraud” is an indispensable condition for the crime of ideological forgery to take shape. In fact, our jurisprudential system does not provide for the crime of negligent certification, that is the case in which, in good faith, the doctor has certified false data (Cassation Criminal Section V, 31/01/1992). In particular, a clear distinction is made between false and erroneous diagnosis: false is that certification which is based on objective premises that do not correspond to the truth, while it is wrong (and therefore without fraud) if the interpretation given to justify the clinical judgment is unreliable (Cassation Criminal Section V, 03/18/1999).

The ideological falsehood cannot be attributed to the normal citizen being a crime proper of the public official and / or person in charge of the public service. The citizen who makes false statement is instead punishable pursuant to Article 374-bis of the Civil Code (with greater penalties if the offense is committed, once again, by a public official, in charge of a public service or a healthcare professional).

Certification in psychiatry

Psychiatric certification is a specialized medical certification related to the mental state of an individual; as such, it assumes the same legal and medical-legal significance attributed to all other medical certification activities, thus being subject to the same legislation^{7,8}. As in the other disciplines of medicine, even in psychiatry the certification of any condition must always and in any case be preceded by a suitable clinical evaluation of the patient which must be carried out remembering that the purpose is, however, of a medical-legal nature, since the subject of the certificate is not the suffering of the patient, but the individual himself as a juridical person and, therefore, depository of rights and duties. Among other things, it is essential to try to maintain a neutral position in order to identify the elements necessary to satisfy the purposes for which the certificate is requested and produced, setting aside interpretations or personal considerations and avoiding, above all, that the certificate can become a tool for bargaining

with the patient. In doubtful cases (eg when the patient is not well known by the certifier) it may be useful to spend more time collecting more detailed information, using, if necessary, the consultation of other operators who know the patient better.

In any case, psychiatric certification is essentially based on the detection and quantification of ongoing psychopathological alterations, or on the explicit confirmation of their absence. To this end, an accurate psychic physical examination and a careful medical history are in themselves sufficient to identify / exclude the psychopathological alterations in question. However, in some circumstances that are more difficult to find, for the formulation of a correct categorical diagnosis (or even simply to document the recovery from a previous disease condition), it may be necessary to perform a psychodiagnostic deepening through the use of psychometric tests and / or instrumental examinations. In the presence of linguistic barriers and / or significant cultural differences, it will instead be possible, always with the user's consent, to use interpreters and cultural mediators, having then the care to report the assessment methods in the document drawn up and highlighting any difficulties encountered. It is also always possible, once the condition of the disease has been ascertained, to express an opinion regarding the possible consequences on the level of functioning and on the skills that can be highlighted, except for all those certifications subject to the examination of specific commissions (for example, carrying weapons, disability, driving license), in which case it would be more appropriate to limit oneself to clinical evaluation only, leaving the conclusions to the dedicated committees.

Finally, it is admitted that the doctor can issue a "retrospective" certificate based on memory (historical certificate), better if supported by documents or clinical evidence notes found by the same healthcare professional at the time which the certification refers.

Generally the psychiatrist is required two main types of certification aimed at documenting, respectively: absence or ascertainment of pathology compatible with the ability to obtain authorization to carry out certain activities; existence of pathology so that the affected person can exercise a right (pension, social security, etc.).

As already mentioned, psychiatric certifications present elements common to every other medical certificate, but there are specific and completely peculiar characteristics such as:

- the problem of objectivity;
- the fact that sometimes not only a diagnosis or an opinion on the present is requested, but a real forecasting judgment on possible future consequences;
- the "possibility" of issuing certificates not on request, but in the interest of the patient;
- the possibility of separating clinical functions from certification (and medico-legal functions in general) due to the very serious implications that certification often creates for the patient.

With regard to the first point, it is well known that it is impossible to document almost all psychiatric symptoms with instrumental and / or laboratory investigations. As repeat-

edly stated, the certificate must attest the truth, or what was directly reported by the doctor, inevitably affected by a series of variables that can be modified based on the quality and context of the patient medical relationship, the attention and availability of the psychiatrist, but also of the insight and patient "honesty". Often, the problem of lack of objectivity is related not only to the possible simulation by the patient but also to the aura of suspicion that surrounds psychiatric diagnoses, due to the stigma surrounding mental illness⁹. All these difficulties cannot, however, exempt the psychiatrist from a rigorous and categorical description of the symptoms that can actually be found. In the absence of different criteria of objectivation it can perhaps be said that the certificate should contain a description of the average and repeatable case, corresponding to what could be written by different specialists compared with the same case¹⁰.

Related to objectivity is the problem of lexicon: psychiatric certification is often the translation and reduction of a personal history and an intersubjectivity in psychiatric terms and codifications. If for the physician this terminology can involve some diagnostic labels to refer now to one patient now to another, for the assisted, instead, even a single term or a simple expression can take on a meaning of irreversibility and be lived as if they were a final judgment. Therefore, for the psychiatrist there is the problem of "how to say" in respect of the truth. It is also necessary to consider that in psychiatry a diagnostic label can change as the diagnostic system used changes, the environment in which the patient lives or that of the doctor who is treating him¹¹.

Among other things, more and more frequently, not only is the psychiatrist required the drafting of certificates to describe an objectivity present, but also to attest the possible and probable future consequences of such objectivity on the reality of life of the patient. Typical, in this case, the certificate required for the issue of the driving license or the license to carry firearms, whose substantial question (underlying the apparently simpler formal license) requires a future assessment of the probability that the patient's psychopathological problems manifest with inappropriate behavior. It is a question of formulating a completely different judgment from the ordinary prognosis that in psychiatry introduces in the reasoning such and many variables as to make it in practice extremely difficult and unreliable¹².

With regard to the third criticality, it is appropriate to consider that the psychiatric patient, especially if suffering from a serious pathology, can incarnate a "weak" individual that third persons (eg family members), even without having a real legal protection, want to protect with the certification. In some cases the patient opposes the release of his health certificate, losing or not obtaining the benefits of which he would also be entitled to an economic nature, and the request made by a family member involves difficulties that cannot be easily managed by the health care provider who any case should operate only if authorized by the patient and in compliance with professional secrecy. In fact, both from an ethical and a medical-legal point of view, no document should be prepared at the request of third parties, even if the attendant himself deems it useful

and “to protect” the patient: therapeutic alliance and privilege of the doctor-patient relationship must be privileged in any case, even to the detriment of the interest deriving for the patient from the execution of a single procedure. Therefore, all the certifications on the conditions of the assisted or visited person, released to third parties, potentially constitute a serious violation of professional secrecy. If the certification takes place within a continuous therapeutic relationship, it is, in fact, a fundamental moment, not to be separated from the relationship itself. Considering, in fact, its possible implications on the patient’s life, both positive (obtaining benefits) and negative (limitations of various kinds), certification cannot be considered a mere bureaucratic act, having a strong impact on the therapeutic relationship and on its evolution. Within the doctor-patient relationship, however, problems may arise due to the more or less conscious inclination of the psychiatrist to draw up a certificate that complies and is convenient to the therapeutic project and the patient’s expectations, as well as the risk of complacency for treatment purposes. When, on the other hand, the certification represents the only act of the relationship between doctor and patient, as in the case of a specialized assessment requested by the patient for forensic purposes, one can easily incur in those peculiar critical issues, concerning diagnosis, prognosis and absence of objectivity, without counting the risk of a relationship in which, on the contrary, a suspicious and inquiring attitude of the doctor corresponds to a defended and manipulative behavior by the patient. Being able, therefore, a psychiatric certification entail potential, and often real, negative effects on the therapeutic relationship, the possibility (sometimes the necessity) of separating the clinical functions from those of the certifier should always be evaluated. This separation should be absolute at least in the case of official medico-legal assessments, technical consultancy and expert assessments; in fact, if it is true that the carer is the one who knows the patient best, for the same reason it is equally true that he will hardly be able to observe his patient with a different point of view, being able, among other things, to run the risk of reaching conclusions conflicting with its therapeutic action.

Examples of psychiatric certifications

- **Certificate of assessment proposal or mandatory medical treatment** - The current rule provides that any doctor can request the mandatory health check if the subject refuses any evaluation contact (ASO) or make a proposal for mandatory health treatment (TSO) by certifying the existence of psychic alterations such as to require urgent therapeutic interventions, the impossibility of practicing the same treatments in extra-hospital conditions and the refusal of the same treatments by the patient, after the same has been adequately informed of the conditions in which it is found and of the need for therapy. In both cases, including the validation of TSO, the legislation provides that the intervention is carried out by the competent public health facility (law December 23, 1978, No. 833).
- **Certificate on the ability to express consent or denial**

of diagnostic and / or therapeutic procedures - To assess the possession of mental faculties that make a subject able to express a valid informed consent or refusal to undergo diagnostic and / or therapeutic procedures, it is necessary first of all to verify the degree of awareness of the disease on the part of the same, as well as the level of understanding of the information prior to consent. In addition to the assessment of mental status, the clinical examination must also make use of any laboratory-instrumental data that can document the presence of organic elements capable of compromising normal mental processes (toxic and / or dysmetabolic states). In particularly serious cases, if the conditions are met, the state of necessity may be present (Article 54 Criminal Procedure Code); outside these circumstances, the temporary appointment of a guardian may be considered.

- **Civil disability** - The certification is aimed at defining the psychiatric diagnosis and the user’s level of functioning starting from the clinical evaluation and considering the contextual presence of any organic comorbidities; in fact the disability can also derive from the presence of more concomitant pathologies. The reevaluation of the invalidity percentage is done periodically. In these cases, if significant variations do not emerge, a medical history update is sufficient.

- **Advice aimed at ascertaining the psychosexual conditions of the person concerned** - according to current legislation to rectify the assessment of sex completed at the time of birth and thus reaching a new “attribution”, the Italian legislation is based on “changes occurred in the sexual characteristics”, understood in a physical sense, and on the conviction of the subject to belong to a sex different from the one ascertained. This last requirement provides for the acquisition of a consultancy intended to ascertain the psychosexual conditions of the interested party (Rules on the subject of rectification and attribution of sex - L. April 14, 1982, n. 164). If a subject asks to undergo medical and surgical interventions with definitive effects, the clinical evaluation, supplemented by the psycho-diagnostic evaluation, must be particularly thorough and include a preparatory program aimed at changing and acquiring the new gender identity through an adequate psychotherapeutic process.

- **Certificates of psychophysical suitability at the port of rifle for hunting use and at the port of arms for personal defense use** - The Ministerial Decree of 28 April 1998 identifies the minimum psychophysical requirements for the issue and renewal of the authorization to carry guns for hunting purposes, and to carry weapons for the sport of sport shooting or for personal defense (Articles 1 and 2). According to the aforementioned decree, for the issue of certification of suitability to carry weapons, in addition to the minimum, purely physical, auditory, visual, neurological and motor requirements, the presence of “mental, personality or behavioral disorders must be excluded. Specifically, there must be no dependence on drugs, psychotropic substances and alcohol, as well as the occasional intake of drugs and the abuse of alcohol and / or psychotropic drugs “. Therefore,

the psychiatrist has the task of excluding or confirming the presence of the clinical conditions identified in articles 1 and 2. In addition to a detailed psychic and medical history examination, in these cases it is fundamental to define the subject's lifestyle, his tendency to be irritable or impulsive, that is all those personality characteristics (to be understood in terms of functional individual and socio-working modalities with respect to oneself and the environment) that could be ill-reconciled with the suitability to carry weapons. In this sense, even information that is not strictly clinical in nature, such as, for example, the suspension of the driving license due to exceeding the blood alcohol limits, although occasional event, may prove to be unjust to express an incompatibility judgment with the firearms. Hence the need to converge more information, favoring the integration of different professional skills to provide an assessment as comprehensive as possible¹³. In doubtful cases it may be useful to make use of psychodiagnostic assessments of the personality and / or of a specialized consultation of the Ser.D. for what concerns the more strictly toxicological or alkological aspects. It is therefore a complex evaluation with important medical-legal implications. In fact, in case of incompetence and negligence, the certifying doctors could answer for the hetero-harmful acts committed by the patient in possession of the firearms. Similarly, the user who declares the forgery or deliberately omits significant anamnestic information commits an offense punishable ex officio (Articles 495-496 of the Criminal Code, "False statements") which, as such, should be reported by the health care professional if the right exists cause to disclose professional secrecy.

• **Certificate of suitability for driving motor vehicles**

- Article 330 of the D.P.R. 495/92 and the article n. 119, paragraph 4, of the Highway Code (C.d.S.) delegate to the local medical commission the competence of the evaluation on the psycho-physical suitability to the guide. According to the Article 320 of the C.d.s. "The driving license must not be issued or confirmed to candidates or drivers who are affected by mental disorders due to illness, trauma, post-surgery surgical procedures on the central or peripheral nervous system or those suffering from severe mental retardation or who suffer from psychosis or of personality disorders, when such conditions are not compatible with driving safety, except in cases that the local medical commission may evaluate differently, making use, where appropriate, of specialist advice at public facilities". The driving license must not be issued or confirmed even to those who are in a state of current dependence on alcohol, narcotics or psychotropic substances or to people who habitually consume substances capable of compromising their suitability to drive without danger. In the case of a previous dependency of the local medical commission, after having assessed with extreme caution the risk of a possible relapse using appropriate clinical and laboratory assessments, also through the request of a specialist consultation, it will be able to express a favorable opinion or contrary to release. In all cases so far discussed, the validity of the license cannot exceed two years. The same principles apply to confirmation and revision.

In summary, a specific certification for the driving license

must include: a diagnosis, the current psychopathological status, the possible therapy taken and the adhesion or not to the treatments; any toxicophilic behaviors of which one is aware must be certified by the competent services (Ser.D. and Alcoholic Services).

• **Voluntary interruption of pregnancy (IVG)** - The law 194/78 "Norms for the social protection of maternity and on the voluntary interruption of pregnancy" foresees two different types of attitude of the sanitary with regard to the interruptions of pregnancy depending on of the time of the same, setting the watershed 90th day of gestation. While for IVG within the first ninety days the doctor (specialist, trust or counseling), at the request of the expectant mother, issues a certificate attesting to the state of pregnancy and the request to interrupt it, based on Article 6 of the same law, the IVG after the first ninety days can be practiced exclusively on the occurrence of two conditions, namely: a) when the pregnancy or childbirth involve a serious danger to the life of the woman; b) when pathological processes are ascertained, including those relating to significant anomalies or malformations of the unborn child, which cause a serious danger to the physical or mental health of the woman. The following article postulates that the pathological processes contemplated in the Article 6 are ascertained by a doctor of the obstetric-gynecological service of the hospital in which the intervention is to be carried out which, if deemed necessary, can avail itself of the collaboration of specialists.

The psychiatric evaluation to ascertain the psychic danger must first of all be based on the investigation of the risk factors, as well as on the finding of an objective symptomatology detectable with common parameters. To this end, an accurate psychic examination, with a detailed collection of anamnestic data, must be accompanied by an assessment of the social conditions that may negatively affect the state of mental health of the woman; given the complexity of the evaluation, the use of psychometric or psychodiagnostic tools for further study is desirable. At the end of the diagnostic procedure, the certificate should include: general information about the patient, any personal and / or family history positive for psychiatric pathology, diagnostic orientation and any psychopharmacological treatments assumed or prescribed. If the conditions envisaged by the law are set, the following wording should be reported: "These conditions are among those provided for by article 6 of law 194/78".

Since this is a service that could conflict with one's own conscience or clinical conviction, the doctor can refuse his own work when you raise conscientious objection, unless this behavior is of serious and immediate harm to the health of the assisted person and must provide the citizen any useful information and clarification (Article 9 law 194/78; Article 22 CDM). Furthermore, the position of "objector" does not relieve the doctor from the obligation to provide the necessary assistance to the woman in the phases preceding and following the interruption.

• **Treatment with interferon** - The therapeutic use of interferon, currently very limited by the application of the new anti-hepatitis therapeutic protocols, is contraindicated in the case of Mood Disorders. In this case, therefore, the

psychiatric evaluation (and related certification), before starting such therapy and / or during treatment, aims to highlight psychopathological elements and / or significant anamnestic factors that may represent contraindications to treatment .

- **Interventions of plastic reconstructive and aesthetic surgery** - Psychiatric support interventions both psychotherapeutic and pharmacological for patients who have to face or who have already undergone post-traumatic reconstructive surgery (eg, in cases of burns), can foresee the issue of a certification. Otherwise, the assessments required before a cosmetic surgery intervention, directly by the patient or, as a preliminary consultation, by the surgeon require, beyond the clinical state, a particular attention to the motivation to change that should be evaluated in the context of the personality of the subject and relationship with one's own body. In this last case it will be opportune to make use of appropriate psycho-diagnostic aids.

- **Bariatric surgery** - Already the original 1991 NIH guidelines and the totality of the most recent international and national guidelines provide that the obese patient candidate for Bariatric surgery is subjected to a thorough pre-operative multidisciplinary evaluation that includes an assessment of mental status. In general, in addition to the clinical interview, a psychometric assessment is useful that includes a personality test, a general psychopathology test and other specific tests that concern eating behavior, body image, quality of life and motivation to change ¹⁴.

- **Organ transplants** - In organ transplantation, destructive or incongruous behaviors have been reported in particularly complex cases; for these reasons it is essential that transplant candidates undergo a careful evaluation, counseling and possible psychological and / or psychiatric assistance. The kidney transplant, for example, while representing the "liberation" from the restrictions imposed by dialysis, often and already in the pre-operative waiting phases, raises doubts, anxieties and possible anguish that in post-transplantation times can become fears for the infections, for the rejection and for the end of a hope with unpredictable results ¹⁵. Transplant patients can therefore develop from simple emotional stress to real affective disorders, such as anxiety and depression with consequent impairment of quality of life ^{16 17}. The experience of transplantation can also configure a psychosomatic response that requires, in order to be faced and allow the process of adaptation to the "foreign" organ, avoiding possible psychopathological repercussions, the mobilization of all biosychosocial resources available to the patient ¹⁸.

- **Prenuptial certificate** - The psychiatrist can be requested as an expression of the free will of the couples. In such cases it is first necessary to evaluate the two subjects individually, then, if necessary, integrate the evaluation with appropriate relational techniques in order to deepen the relationship between couples. In any case, it can never have predictive value.

- **Certificate of psychophysical suitability for the attainment of the qualification for the use of toxic gases**

- Doctors of the Hygiene and Prevention Sector, of the Occupational Medicine Service or of the ASL Medical-Legal Office as well as to the military doctors are assigned the competence in the field of certification of psychophysical suitability for the use of toxic gases. These may, therefore, make use of psychiatric counseling to ascertain the absence of mental illnesses and signs of alcohol intoxication or narcotic substances that prevent the safe execution of operations relating to the use of toxic gases (RD 9 January 1927, n. 147 and DPR June 10, 1955, No. 854).

- **Certification relating to results of torture and intentional violence** - Under the terms of Article 8, paragraph 3-bis, of Legislative Decree 251/2007 (amended by Legislative Decree 142/2015), the Territorial Commission for the recognition of international protection "on the basis of the elements provided by the applicant, may dispose, subject to the applicant's consent, medical examinations aimed at ascertaining the results of persecution or serious damage suffered according to the guidelines referred to in Article 27, paragraph 1-bis, of Legislative Decree 19 November 2007, n. 251, and subsequent amendments. If the Commission does not have a medical examination, the applicant can perform the medical examination at his own expense and submit the results to the Commission for the purpose of examining the application. Certification can help assess the congruence between medical and psychological symptoms and other medical evidence and narrations given by the applicant for international protection regarding torture, ill-treatment or trauma. The certification can also be produced for one or more of the following reasons: 1) to inform about "psychological" difficulties (fear, shame), which the applicant can manifest in the reconstruction of the events, giving indication and explanations on the possible emergence of inconsistencies and contradictions in the narration, due for example to memory disorders or dissociative episodes; 2) to ascertain serious invalidating states or long-term illnesses, which cause fragility and / or the need for long-term and continuous specialized assessments and treatments, as well as, in order to give an indication of the consequences on the mental health of a forced return in the social context, where the applicant has suffered episodes of torture or violence; 3) inform the ascertaining body of the impossibility for the applicant, due to his physical or mental health conditions, to take the hearing; 4) give indications on the opportunity that the applicant, due to the particular condition of emotional fragility or serious psychopathology, is assisted during the audition. The essential condition for being able to draw up a certification related to torture and intentional violence results is, therefore, always represented by a taking charge in a multidisciplinary path, which takes into account the holistic approach to the health and needs of the asylum seeker. The patient / applicant must be evaluated by specially trained personnel within centers recognized by the NHS, whose activity can be monitored and adequately evaluated at all stages of the process. The doctor who prepares the certification must be impartial and must not express any opinion on the merit of the request for protection. The certification, therefore, should not include conclusions or opinions about the truthfulness

of the applicant's narrative, but should rather limit itself to assessing whether the physical or psychological symptoms encountered are congruent, and to what extent, with the description of the events provided by the applicant with respect to the traumas suffered¹⁹.

• **Certification of mental health** - Considering that the indeterminacy of the demand in the absence of a well-defined purpose can constitute in itself a symptom of a more or less severe mental disorder, it will be necessary to evaluate the awareness of the applicant's illness, any concealments, as well as the its interest in using the certificate for purposes other than those stated. In such cases, prudence requires the most absolute clarity in the information for the purposes of consent, and this primarily through a detailed description of the evaluation procedure, thus communicating to the patient in advance the possibility of finding, at the end of the diagnostic process, of any alterations psychopathological and that, therefore, the content of the certification could report a different evaluation result than expected.

Conclusions

What the doctor is required to declare in the context of certifications, if on the one hand it is limited by respect for the truth, on the other it must always aim at protecting the confidentiality of information and the will of the patient. Faced with these and other problems, the golden rule of medicine assumes even more value for the psychiatrist, for whom systematically operating according to the rules of good practice or in any case of correct action, with diligence, prudence and skill, should represent the cardinal principle on which establish any activity, including certification. It is therefore desirable, on the part of authorities and institutions, to develop national and international guidelines that suggest a unified procedure for drafting the certificate in order to minimize the ambiguity that the psychiatrist is inevitably faced with whenever is called to certify.

Conflict of interests

The authors declare that there is no conflict of interests.

Bibliography

¹ Illich I. *Nemesi medica: l'espropriazione della salute*. Milano: Boroli Ed. 2005 (orig. tit.: *Limits to medicine-Medical Nemesi*; 1997).

- ² Ali F, Gowda GS, Gowda M. *Approach to and practical challenges in certification in Psychiatry*. Indian J Psychiatry 2019;61:S710-6.
- ³ Barni M. *Diritti, doveri, responsabilità del medico. Dalla bioetica al biodiritto*. Milano: Giuffrè 1999.
- ⁴ Norelli GA, Buccelli C, Fineschi V. *Medicina legale e delle assicurazioni*. Ed Piccin 2009, pp. 57-89.
- ⁵ Giusti G. *Trattato di medicina legale e scienze affini*. Ed. Cedam. 1998, sezione 4, pp. 151-371.
- ⁶ Guardabasso B, Lo Menzo G. *Il falso ideologico nella certificazione medica e nella consulenza tecnica di parte*. Fed Med 1985;35:722-4.
- ⁷ Volterra V. *Psichiatria forense, criminologia ed etica psichiatrica. Certificazioni in psichiatria e referto*. Elsevier 2010.
- ⁸ Severino P. *The role of certifications in psichiatria, iatrogenic effects and therapeutics functions*. Rivista Sperimentale di Freniatria 2011;135:111-29.
- ⁹ Nivoli GC, Loretto L, Sanna MN. *Aspetti di medicina legale rilevanti in psichiatria*. In: *Trattato italiano di Psichiatria*. II ed. Ed. Masson 1999, pp. 3916-31.
- ¹⁰ Marcassoli C. *Le certificazioni in psichiatria*. Congresso Nazionale di Psichiatria, Bormio 2012.
- ¹¹ Hillman J. *Revisione della psicologia*. Milano: Adelphi 1983 (orig. tit.: *Re-Visioning Psychology*; 1975).
- ¹² Illich I, McKnight J, Zola IK, et al. *Esperti di troppo – il paradosso delle professioni disabilitanti*. Gardolo (TN): Erickson; 2008 (orig. tit.: *Disabling professions*; 1997).
- ¹³ Pellegrino F. *Valutazione clinica per il porto d'armi*. M.D. Medicinae Doctor 2015;XXII(4).
- ¹⁴ SICOB. *Suggerimenti per la valutazione psicologico-psichiatrica del paziente obeso candidato alla chirurgia bariatrica* - 2011.
- ¹⁵ DeVito Dabbs A, Dew MA, Stillely CS, et al. *Psychosocial vulnerability, physical symptoms and physical impairment after lung and heart-lung transplantation*. J Heart Lung Transplant 2003;22:1268-75.
- ¹⁶ Dew MA, Roth LH, Schulberg HC, et al. *Prevalence and predictors of depression and anxiety-related disorders during the year after heart transplantation*. Gen Hosp Psychiatry 1996;18:48S-61.
- ¹⁷ Erim Y, Beckmann M, Valentin-Gamazo C, et al. *Quality of life and psychiatric complications after adult living donor liver transplantation*. Liver Transplant 2006;12:1782-90.
- ¹⁸ Griva K, Ziegelman JP, Thompson D, et al. *Quality of life and emotional responses in cadaver and living related renal transplant recipients*. Nephrol Dial Transplant 2002;17:2204-11.
- ¹⁹ Ministero della Salute. *Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale*. Roma, 22 marzo 2017.