

MEDICAL REPORTS TO LAWYERS - PREPARATION

*Prepared jointly and approved by
The College of Physicians and Surgeons of Manitoba
and
The Law Society of Manitoba*

Background:

There are a wide variety of medical reports sought by lawyers. To avoid misunderstanding or dispute respecting the content of the report or the fee charged, it is preferable to have a clear agreement between the physician and the lawyer before the report is prepared.

Scope:

This guideline refers to requests for reports from a patient's attending physician. It does not apply to circumstances where a physician who has not previously attended an individual is asked to see that individual for the sole purpose of report preparation.

Recommendations:

I. Request for a Report

A lawyer requesting a report from a physician should make the request in writing. The request should include:

1. A clear statement as to whom the lawyer represents.
2. A clear statement of the nature of the matter in issue (e.g. motor vehicle accident, workplace injury, etc.).
3. A properly executed written authority from the patient for the release of the requested information. Lawyers should be aware that physicians are advised to be wary of general consent forms, and to specifically review with the patient the scope of authority for release of information.
4. A clear statement of the specific type of information requested by the lawyer, for example:
 - (a) a brief summary of the circumstances of the injury;
 - (b) the nature of the injury;
 - (c) the extent of the injury;
 - (d) the treatment prescribed;
 - (e) the severity and location of pain;
 - (f) a prognosis as to the duration of the injury;
 - (g) the degree of the present and residual impairment.

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5. A clear statement of any specific questions the lawyer wishes the physician to address.
6. An undertaking to pay the fee promptly upon receipt of the report or a clear statement as to the alternate arrangement proposed. Where an alternate arrangement is proposed, the physician is not obliged to prepare the report until an agreement as to payment is reached.

II. Response

1. Physicians should provide the medical report requested within a reasonable time. The College regards 30 days as a reasonable time frame for a response. If a physician is unable to respond within that time frame, the physician should promptly notify the requesting lawyer of that fact and the reason for the delay.
2. Physicians should provide a report which addresses all the points raised by the lawyer and which is easily understood by non-physicians.
3. If a final opinion cannot be rendered because of the current state of progress, an interim report should be provided to the lawyer.
4. Members of the Canadian Medical Protective Association may access the publication "Preparing Medico-Legal Reports: Guidelines for Physicians" for additional information on preparation of reports.

III. Fees for the Report

1. Physicians are referred to the Manitoba Medical Association publication "Direct Billing for Uninsured Services - A Guide for Manitoba Physicians" and to College Guideline No. 113 "Medical-Legal Reports: Fees".
2. Where a report is expected to be of unusual length or complexity, it is reasonable for a physician to notify the lawyer of the estimated cost before the report is prepared and to obtain written agreement to proceed.
3. In all cases, it is reasonable for lawyers to request an estimate of the cost of preparing a report in order to avoid misunderstanding or controversy.

IV. Payment for the Report

1. Where a lawyer has given an undertaking to pay for the report, the lawyer is personally obligated to pay the account. Where a request for a report is silent as to payment for the report, the lawyer is deemed to have accepted the obligation to pay the account personally. In either case, the lawyer should pay the physician's fee within a reasonable time (30 days) pursuant to the lawyer's professional duty to meet financial obligations incurred in the lawyer's practice.

2. The Code of Professional Conduct for lawyers states that the lawyer is not obliged to pay an account personally if the lawyer has indicated in writing at the time of the request that the physician's account will not be paid by the lawyer personally, and the physician must look to the patient for payment . It is not appropriate for a lawyer, as a matter of practice, to disclaim responsibility for payment of the physician's fee. It is the responsibility of the lawyer to make necessary arrangements with the client/patient.
3. Where alternate arrangements for payment of the physician's account have been agreed to between the lawyer and the physician, the agreement should be in writing.
4. It is inappropriate for the physician to request payment in advance. It is acceptable for the report to be provided in exchange for the payment.
5. If reasonable efforts to collect the account have failed, the lawyer's failure to pay can be reported to The Law Society of Manitoba.
6. Lawyers requesting medical reports are referred to the Law Society Practice Direction 83-01, "*Payment for Medical Reports*".

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A guideline is practice generally recommended.