

MEDICAL-LEGAL REPORTS: FEES

Background

The Code of Conduct requires that physicians:

"Will supply, upon the patient's request, the information that is required to enable the patient to receive any benefits to which the patient may be entitled."¹

"In determining professional fees to patients, consider both the nature of the service provided and the ability of the patient to pay."²

The College interprets "benefits" to include economic benefits. When a patient's lawyer asks a physician to provide a report respecting that patient, the physician is providing a report primarily for the patient. The fee charged to the lawyer will ultimately be a cost to the patient. Accordingly, the requirements of the Code apply.

Scope:

This Guideline applies to circumstances where a physician is asked to provide a report respecting his/her own patient. 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:

1. Determination of Fees

- The physician must take into account the ability of the patient to pay. Although lawyers should clearly state any unusual financial restrictions which exist in the request for a report, physicians are also expected to take into account any personal knowledge the physician has of the patient's circumstances.
- The Manitoba Medical Association publishes a guideline on fees for medical reports. If a physician believes that upward variation from the guideline is warranted, the physician should notify the lawyer in advance of the report preparation. Similarly, if the physician believes that the report will be of unusual length or complexity, the physician should advise the lawyer in advance of the report preparation.
- Although it would be prudent for a lawyer to request a fee estimate, physicians should recognize that not all lawyers do so. Therefore, even when the fee to be charged is within the Manitoba Medical Association guidelines, physicians may wish to notify the requesting lawyer of the cost of the report in advance, so as to avoid misunderstanding or controversy.

1-G31

¹ Article 24

² Article 28

No. 113

- In addition to preparation of reports, physicians may be asked to provide other services, such as discussions with the lawyer or appearance at a trial to give evidence. Although lawyers should understand that there will be a cost for such services, physicians are advised to discuss the issue of fees for such services in advance of providing the services, so as to avoid misunderstanding or controversy. Factors to be taken into account in assessing a fee for such services include:
 - the amount of time spent
 - the expertise and experience of the physician
 - the complexity of the case
 - the amount of preparation involved
 - the amount of money that would otherwise be earned by the physician during the time spent.

2. Collection of Fees

1. Where a lawyer has given an undertaking to pay for the report, the lawyer is personally obligated to pay the account. According to the Code of Professional Conduct for lawyers, 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 physician is entitled to expect the lawyer to pay the physician's fee within a reasonable time 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 that the physician must look to the patient for payment. In such cases:
 - a. the physician is not obliged to provide the report until satisfactory arrangements for payment have been made, and
 - b. when satisfactory arrangements have been made, they should be documented in writing.
3. If reasonable efforts to collect the account have failed, the lawyer's failure to pay can be reported to The Law Society of Manitoba.
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.

First Print CC/06-03
Revision CC/02-95
2nd Revision Exec/10-02

A guideline is practice generally recommended.