

Suggested Guidelines for Determining Medical/Legal Fees

A. Fees for Furnishing Existing Records: A request for copies of medical records(iii) should be treated and billed as a clerical function, not a physician service. Since a certain amount of time is required to locate, identify and send out medical records, whether one page or many, a flat fee for locating and sending the records, plus a nominal per-page increment for copying, is reasonable(iv).

B. Fees for a Narrative Report: A narrative report is a report prepared by a physician in response to an inquiry for patient information, containing a review of the patient's history, initial examination, diagnosis, course of treatment, prognosis and, if requested, relationship to incident or event.

It is reasonable to charge on either an hourly or flat rate basis for the preparation of a report. In determining the hourly rate to be used, the physician should consider the fact that the time spent preparing narrative reports need not conflict with hospital, surgical or patient examining time(v).

Many physicians prefer to charge a flat fee for a narrative report, rather than compute a precise fee based on time spent(vi). This practice is reasonable, provided that:

1. The flat fee is arrived at by determining the amount of time spent for the preparation of a typical narrative report multiplied by a reasonable hourly rate; and,
2. Where the actual time spent on a report is far in excess or below the average, the flat fee may be adjusted accordingly.

C. Fees for Conferences: When an attorney wishes to meet with a physician, it is reasonable for the physician to charge for that conference on an hourly basis(vii).

D. Fees for Deposition Testimony: Depositions impose greater demands upon the time and scheduling convenience of the physician than do narrative reports(viii). Deposition charges may include travel time, research, and pre-deposition conference time. It is reasonable to charge a somewhat higher hourly fee for the deposition itself. It is common for a physician to charge a stated amount for the deposition which includes the first hour of time with an additional hourly charge for depositions that run beyond the first hour.

A cancellation fee is reasonable where notice of the cancellation policy is given in advance. A cancellation fee should not be charged if notice of cancellation is given sufficiently in advance to allow the physician to reschedule the time in a productive manner.

E. Fees for Courtroom Testimony: Courtroom testimony will frequently involve a serious disruption to a physician's practice. Where a physician can be placed on call, and can continue daily business until actually needed in court, waiting time should not incur additional charges. If an attorney requests that a physician come to court and wait to testify, or where a physician's schedule must be cleared in anticipation of being called, it is reasonable that the physician be paid for waiting time as well as testimony time.

F. Agreement in Advance: Misunderstandings and disputes over fees can usually be avoided if fees and cancellation charges are agreed upon in advance between the physician and the attorney.

-

-These guidelines are a cooperative effort of the Oakland County Bar Association, the Oakland County Medical Association, and the Oakland County Osteopathic Association, to balance the interests of physicians who, often times, have no desire to be involved in legal matters in the first

place, and attorneys who, in the representation of their clients, have no choice but to call upon a physician who has already rendered an examination or treatment to the patient/client. Both parties must realize that a physician's time is valuable, but that the patient/client ultimately pays those charges by law, whether the ultimate recovery to the client is large or very small. The organizations involved have attempted to balance these conflicting problems in these guidelines.

It is not the intent of this document to suggest when a physician should or should not release information. These matters are the subject of doctor-patient privilege and are well handled elsewhere.

The question these guidelines address is how to charge an appropriate fee for providing information that may or may not require the addition of professional time for interpretation.

- Although these guidelines may be useful for setting any medical/legal fee, they are less important in the situation where an attorney specifically retains a doctor on a medical/legal matter who has had no prior contact with the patient, but is being retained solely by reason of his/her expertise in the field. In this situation, the physician having the ultimate right to refuse the work altogether may set the price within a wider range. The requesting party, if dissatisfied, can simply take the business elsewhere.

The physician who has already seen the patient for purposes of medical treatment is in a different position. He/she may well be the sole source of the information needed in the preparation of the client's case. The requesting party has no alternative but to employ the services of that physician subject to the following limitations:

- a. He may subpoena records (if the matter is in suit) and pay only standard copying charges; and
- b. If the physician is called to testify, the court has ultimate jurisdiction over the fees charged pursuant to statute and court rules.

If the attorney resorts to the court's subpoena powers, the resultant hostility between the physician and the attorney can jeopardize the patient's interest. These guidelines are especially intended to assist physician in dealing with a determination of fees in this context.

- Records include not only office notes, but copies of hospital summaries and reports prepared for referring physicians, insurance companies, etc.
- A request to merely photocopy records and send them out (accompanied by the appropriate authorization) should be the easiest request to fulfill and the least expensive for the requesting party for the reason that a clerical function should not be equated with the professional time in determining the fee to be charged. Most charts can be located, copied and mailed in less than a half hour. A flat administrative expense based on the average time input is an appropriate method for dealing with such requests.

Once interpretation is required - a narrative report - the considerations understandably change. This, akin to a consultation, ought to be handled on a basis which compensates the physician for his/her time spent.

- Since contingent fees to physicians in medical/legal matters are prohibited by legal and ethical considerations, the only alternative basis for computing medical/legal fees would be arbitrary flat rates and hourly charges. Because the time input of the physician may vary widely from case to case, it is believed that hourly rates multiplied by the actual time spent constitute the best basis for determining medical/legal fees.
- The practice of charging a flat fee for a medical report whether it is long or short has obvious administrative advantages to the physician but can lead to difficulties, particularly where the physician determines to charge a substantial fee for report writing. The problem occasionally arises that the physician has either not treated the patient for the malady or, for one reason or other, has no option concerning the question raised, and can say so in three sentences or less. In this instance, a call to the requesting party indicating that there is really nothing to report is a

courteous and sensible way of preventing the ill will which comes from charging as much for that two or three sentence report as one would for a two or three page narrative.

-Every attorney should realize that a physician's schedule can be very hectic and that, therefore, it benefits both the physician and the lawyer if consultations of this nature are set up for after-hours, or periods within the physician's office schedule where patient loads are the lightest.

-Depositions are increasingly common aspects of medical/legal work. They are frequently essential to the development of a case and may, in many circumstances, take the place of courtroom testimony by the physician. Depositions may be recorded stenographically or videotaped or both. There are some court rules and statutes which apply to depositions and courtroom testimony and which affect fees as well.

Theoretically, a physician who is being asked to more than to relate a history given to him/her and a statement of his/her sensory observations (without expert interpretation) may be called upon to testify for a standard subpoena fee. Rarely is a doctor's testimony sought only to this extent. Once expert interpretation or evaluation is sought, the physician is entitled, under existing court rules and statutes, to be paid a reasonable fee which must be set by the court, pursuant to RJA Sec. 600.2164.

As a practical matter, reasonable fees for deposition testimony are routinely paid without application to court for special approval. However, the power is there and constitutes an important consideration for both the attorney and the physician in dealing with a dispute over fees.

Despite the use of depositions at trial, most attorneys agree that the in-person presence of a physician at trial can have a big impact on the persuasiveness of the testimony. For this reason, an attorney may be justifiably unwilling to rest on a deposition - even on a videotape. The hourly rate charged by a physician for courtroom testimony should not be intended as a penalty to the attorney for not using deposition testimony, but should fairly compensate the physician for the actual time spent and the added inconvenience.

(Prior to 1990)

(These guidelines have been approved by the Michigan State Medical Society, the State Bar of Michigan and the Michigan Osteopathic Association.)

Physicians are often asked to provide medical records, narrative reports, consultations and testimony concerning their patients. The following guidelines have been prepared(i) to assist physicians in determining appropriate fees for these services(ii). Additional information may be found in the "Inter-Professional Code for Oakland County Physicians and Attorneys" (1983). Sample formats follow this text.

No effort is made to suggest actual fees as this is the prerogative of the parties involved.