

Statement of Principles between Physicians and Lawyers

PREAMBLE:

In recognition of the public service obligations of the medical and legal professions and of the obligations of each profession to the patients and clients whom they serve, and in the belief that such action will promote a closer cooperation and assistance in maintaining a harmonious and compatible relationship between the two professions, thus serving the public interest and the interest of the respective patients and clients, the Michigan State Medical Society and the State Bar of Michigan hereby adopt the following Statement of Principles governing physicians and lawyers.

Medical Reports Requested By Attorneys

1. Where a report is requested by the patient's attorney, upon properly executed authorization from the patient, the physician will furnish to the attorney such report with reasonable promptness. A reasonable fee based upon preparation for said report may be charged by the physician and shall be promptly remitted by the attorney requesting such report; such attorney shall, in compliance with ethics requirements, look to the client for reimbursement.
2. In requesting such report, the attorney should clearly specify the information desired, such as diagnosis of the patient's condition, treatment, prognosis, disability evaluation, etc.
3. In the event a conference with reference to the contents of the report is deemed necessary by the attorney, both the attorney and the physician should be cognizant of the demands of time made of each other and should cooperate to arrange such conference at a time and place indicated by them to be the most convenient and suitable.

Cooperation Between Physicians and Attorney in Cases Expected to be Tried and Where Attorneys Propose to Present Physician as Witness

1. It is the duty of the attorney to furnish the physician reasonable advance notice that the case is approaching trial and that the physician is expected to be called as a witness.
2. It is the duty of the attorney to make inquiry and ascertain from the physician as to any hospital records in appropriate cases, or other records not under the direct control or possession of the physician, including x-rays or reports thereof or any medical records and reports the physician desires to have available at the time of his/her being a witness on the trial of the case, and to make the necessary arrangements so that such reports are thus available for the use of the physician at such time.

3. It is the duty and responsibility of the attorney to request and remind the physician to bring at the time his/her appearance as a witness his/her own office records with reference to his/her patient and to arrange for the patient to be seen by the physician before trial if the physician so requests.
4. It is the duty of the physician to review his/her office records and any others pertaining to his/her patient so as to cooperate with the attorney in the preparation of the case.
5. While the physician may have heretofore furnished a medical report permitting the attorney to properly plead the client's medical claims in a case, it may be necessary or advisable for the attorney to request a supplemental and amplified report. It is the duty of the physician to cooperate with the attorney to furnish such supplemental and amplified medical report where authorized by the patient. The reasonable cost of preparation of such supplemental and/or amplified medical report shall be the responsibility of the attorney who shall look to the client for reimbursement pursuant to the attorney's duties under the canons of ethics.
6. The physician should recognize the moral as well as the legal obligation of appearing in court as a witness on behalf of his/her patient and should understand that medical testimony is frequently indispensable to prove or disprove medical claims presented in the case.

The Physician as a Witness on the Trial of a Case

1. The attorney owes a duty to the physician witness to notify him/her when he/she is to testify in a trial as far in advance as possible and to keep the physician informed of changes with respect to the time of appearance in court as the trial develops.
2. The attorney shall notify the physician promptly of any settlement or other development during the trial such as adjournment, delay, etc., the result of which is to eliminate or postpone the calling of the physician as a witness; the physician thus has the opportunity of making other commitments for his/her time.
3. The attorney shall have available for the physician, when he/she appears as a witness, all hospital and other records which the attorney and the physician have theretofore agreed shall be at the place of trial for the physician's use. The physician shall bring office records that have been requested by the attorney.
4. The physician shall attend court at the time appointed. The attorney should appreciate, however, that a physician has continuing and often unpredictable responsibilities to his/her patients. Insofar as the attorney is able, he/she should therefore make arrangements to permit the physician to testify with a minimum of inconvenience and delay.
5. The physician, while testifying, should do so objectively, concisely and fairly, using a terminology that will be most understandable to a jury or laymen.

6. In giving testimony, the physician under no circumstances should permit any bias, prejudice, favoritism or personal interest to influence or affect the testimony given.
7. An attorney who calls a physician to testify as an expert witness should, in advance of the physician's appearance in court, advise the physician of any intention to qualify and question the physician as an expert witness and should advise him/her as to the nature and extent of his/her contemplated testimony, including the use of hypothetical questions, etc.

Compensation for Services of Physician

1. The professions, represented by the Michigan State Medical Society and the State Bar of Michigan, consistent with their recognition of their responsibility to their respective patients and clients, further recognize that the patient/client will be responsible for payment of the physician's reasonable fees rendered at the request of the client's attorney.
2. As between the attorney and physician, it is the duty of the attorney to compensate the physician on the basis of reasonable fee for services for time expended in a particular case at the request of the attorney. The attorney shall look to the client for ultimate responsibility for the bill, pursuant to the canons of ethics.
3. Where a physician is to testify as a witness, the attorney should explain to the physician in advance that his fee will be set by the court and under no circumstances shall be contingent or determined by the amount of recovery of the patient in litigation, or the success of the patient's case.

Reimbursement for Medical Expenses

1. For the medical and legal professions to perform the full duties owed to society by each, it is required that the members of each profession extend toward the other full courtesies and amenities and engage in a mutual understanding of the problems of the other.
2. It is recognized to that end that the attorney and the physician recognize equally the vast demands made upon each profession and cooperate in such a manner as to avoid unnecessary expenditure of time by either.
3. Courtesy requires that the attorney assist and enlighten the physician with respect to his/her position as a witness and the rules to be observed in connection with giving testimony in court.
4. Courtesy requires of the physician that he/she aid the attorney so that the attorney may be enlightened on the highly specialized aspects of the case and may be assisted in properly presenting on the trial of the case the medical phases involved through sufficient understanding with the physician to conduct an intelligent and yet objective examination of the physician witness.

5. Courtesy requires that the attorney cooperate with the physician to minimize, as far as practicable, the time required for the physician to remain in court.
6. If any attorney plans to have a subpoena served upon a physician, wherever practicable, the physician should be notified in advance and service made under arrangements convenient and acceptable to the physician.

(Prior to 1990)