



NOVA SCOTIA BARRISTERS' SOCIETY

## **GUIDELINES FOR MEDICAL-LEGAL REPORTS POLICY**

### **Scope**

These guidelines shall apply to all civil, criminal, quasi-judicial and administrative proceedings at which the attendance of a physician may be compelled by subpoena. For civil matters, new CPR 55<sup>1</sup> applies, and therefore the lawyer must determine if it is a report that is being requested (R. 35.04) or a treating physician's narrative (R. 55-14).

### **Direction and Disclosure**

1. The lawyer should provide the physician with clear and simple instructions, in writing, as to the matters to be addressed by the physician in the report. The letter of request should follow the guidelines set out in Schedule "A" attached.
2. The physician must be fully informed by the lawyer of all available medical information concerning the injuries.
3. The physician should ensure the medical-legal report answers all the questions posed by the lawyer, and is written to be easily understood by non-physicians.
4. If possible the medical-legal report should be typewritten.
5. The form of medical-legal report can follow the guidelines set out in Schedule "B" attached.

### **Confidentiality**

1. The lawyer should provide the physician with adequate written consent from the patient, spouse, parent, guardian or next of kin.

### **Obligation to Provide a Prompt Report**

1. A report requested by a patient or authorized agent in respect of any examination or treatment performed by the physician should be provided by the physician within 45 days of the receipt of the request. If it is not possible to provide the report within 45 days, you should, within that time period, advise the requesting party of that fact and the reason(s) therefore.

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1 [http://www.courts.ns.ca/rules\\_revision/revised\\_rules\\_feb\\_08.htm](http://www.courts.ns.ca/rules_revision/revised_rules_feb_08.htm)

### **Prompt Payment of Fees**

1. The lawyer should pay the physician's fee within 45 days of the receipt of the report unless the lawyer indicates, in writing, at the time the request is made, that he or she is not prepared to meet this obligation personally in which case a physician is not obligated to prepare the report.
2. It is not appropriate for a lawyer, as a matter of course, to disclaim responsibility for payment of the physician's fee or to make payment contingent on the litigation. It is for the lawyer to make necessary arrangements with the client/patient.
3. It is not appropriate for a physician to demand his or her fee in advance.
4. It is not appropriate for a physician to charge a fee for a copy of file material other than a reasonable charge for the photocopying of the material.

### **Appropriateness of Fees**

1. The factors to be taken into account in establishing a fee for a medical-legal report are:
  - (a) The amount of time spent;
  - (b) The expertise and experience of the particular physician;
  - (c) The complexity of the case;
  - (d) Whether an examination was done;
  - (e) Whether the report is a repetition of previous work already done or a follow-up on an earlier report;
  - (f) Whether the report discloses relatively routine attendances and observations;
  - (g) The number of documents reviewed.
2. The physician must, on request, disclose the basis for the fee charged.
3. A physician should not charge for a follow-up request to a medical-legal report where the information was requested in the first instance.

### **Attendances**

1. A physician who attends, on request by a lawyer or by Order, an interview, hearing, trial or discovery examination is entitled to expect the lawyer to pay the physician's fees within 45 days of the attendance.
2. The factors to be taken into account in establishing a fee or an attendance are:
  - (a) The amount of time spent;
  - (b) The expertise and experience of the particular physician;
  - (c) The complexity of the case;
  - (d) The amount of preparation involved;
  - (e) The amount of money that would otherwise be earned by the physician during the time spent.
3. It is not appropriate for a physician to demand his/her fee in advance.

4. The lawyer must inform the physician as soon as possible concerning attendances, adjournments, and cancellations and should inquire as to any cancellation fees.
5. The physician is entitled to charge a reasonable cancellation fee, based on income lost.
6. The physician must, on request, disclose the method of calculation of a cancellation fee to be charged if one is to be charged.
7. The lawyer should meet with a physician to prepare his/her evidence for discovery or trial on behalf of the patient.

*See Schedule "A" - Sample Letter of Request attached.*

*See Schedule "B" - Outline for Long-Term Medical Report attached.*

## Schedule "A"

### **Sample Letter of Request/ Instruction Letter to Physician**

1. Identify who you represent and the nature of the matter; e.g. car accident, work injury;
2. Enclose authorization;
3. Include a brief relevant history of the events surrounding treatment;
4. Outline the nature of the request; if the physician is not treating the client, attach all relevant prior medical reports;
5. Request that the physician respond to the attached outline (Schedule "B") and/or answer the following specific questions;
6. Request a cost of his or her C.V.;
7. Undertake to pay fees for report within 45 days of receipt or advise of alternate payment proposal [failure to agree otherwise will obligate you to pay within 45 days].
8. If appropriate, include a copy of CPR 55, so the physician is aware of the Court's requirements.

## Schedule "B"

### Outline for Medical-Legal Reports

Reports must comply with requirements new CPR 55.04.

1. Your qualifications or copy of C.V. (if you have not already submitted them to an earlier report dealing with this patient).
2. The patient's name (preferably as stated in the pleadings).
3. Date, place and reason for the examination.
4. Other reports and material reviewed.
5. History as related by the patient:
  - (a) the patient's version of what he or she believes caused his or her condition (i.e., the mechanics of the injury - how it was caused, not who was at fault);
  - (b) a complete list of the injuries or conditions complained of by the patient (whether these seem significant and relevant or not and whether the patient has recovered or not). If consulted as a specialist, confine yourself, if you think it appropriate, to matters relevant to the topic to be reported on.
6. Your findings which do (or do not) corroborate each of these items of complaint, or which indicate the results of an injury which have not been noticed:
  - (a) physical corroboration (spasm, limitation of movement, etc.) of complaint A, of complaint B, etc.;
  - (b) diagnostic corroboration (s-rays, EEG, etc.) of complaint A, of complaint B, etc.
7. Diagnosis:
  - (a) a description of diagnostic procedures undertaken by you or by others with respect to each symptom or condition;
  - (b) your conclusions.
8. Causal connection with the accident - consider and give your professional opinion on the precipitating factor or "cause" of the patient's condition. The court must know if the injury or condition for which damages are claimed was probably caused, aggravated or accelerated by the accidents or events complained of.
9. Treatment:
  - (a) the treatment you recommended for symptom A, for symptom B, etc.;
  - (b) whether or not your recommended treatment has been followed. If not, why not, and the probable result.

10. Degree of disability:

- (a) the extent of impairment of function at the time of your examination which (i) should be treated and (ii) cannot be treated (this is most important if it exists), (iii) is unlikely to improve spontaneously, and (iv) will probably improve spontaneously.
- (b) the pain, suffering, inconvenience and discomfort which you would expect (i) the patient has suffered, and (ii) will probably suffer (or not) in the future.

11. Prognosis:

- (a) your opinion as to the probability of future recovery;
- (b) your opinion as to the probable nature of permanent impairment;
- (c) the probable time within which maximum recovery can be expected;
- (d) having regard to the individual and his or her personal activities, the extent to which his or her activities should or will be curtailed.

NOTE: Throughout your report avoid vague expressions such as "it is possible that". Express the matter in terms of percentages if you can (e.g. "there is a 10% chance of recurrence within five years"). Throughout, use technical medical terms for the sake of precision and then follow these by a description couched in ordinary lay language.

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(Signature of the reporting doctor)