

STANDARDS OF PRACTICE  
GOVERNING  
LAWYERS AND DOCTORS

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## **STANDARDS OF PRACTICE GOVERNING LAWYERS AND DOCTORS**

**PREAMBLE:** Acknowledging that a substantial part of the practice of law and medicine is concerned with the problems of persons who are in need of the combined services of doctors and lawyers, and that the public interest and individual problems in these circumstances are best served by standardizing the efforts of all concerned, we the members of the Geauga County Bar Association and the Geauga County Medical Society do adopt and recommend the following declaration of principles as standards of proper conduct for lawyers, doctors and others concerned, subject always to the rules of law and standards of legal and medical ethics prescribed for their individual professional conduct.

### **WITH RESPECT TO ATTORNEYS AND DOCTORS, GENERALLY:**

1. Unless an attorney and a doctor have had a history of previous dealings, it should be recognized that potential areas of disagreement may arise. Therefore, whenever possible, the nature and extent of services and fees should be agreed upon in advance.
2. Whenever either a doctor or an attorney believes that services or fees are or will be either substantially less or greater than normal or standard services or fees in a particular case, that belief should be communicated to the other in advance so that an agreement may be reached.
3. The doctor and the attorney should look for and discuss ways of minimizing the burden of medical/legal services on the doctor and the attorney, and the costs thereof to the patient/client. It should be recognized that direct communication between the doctor and attorney is preferable to communication between secretaries and receptionists.
4. Whenever an attorney and a doctor are unable to agree in advance on the cost of medical/legal services, the two professionals should;
  - A) continue to act in the best interest of the patient/client;
  - B) define the disagreement as narrowly as possible, agreeing on as much as possible;
  - C) submit the disagreement to the joint Medical/Legal Committee (see last page) and cooperate with its members;
  - D) accept the decision of the joint committee as binding; and
  - E) refrain from unprofessional remarks or conducts and avoid personal comments.

### **WITH RESPECT TO ATTORNEYS:**

1. An attorney intending to call or subpoena a doctor to testify in court or by deposition should notify the doctor as far in advance as possible. He should also call the doctor after a trial has started to give the doctor as much advance notice as possible. Further, the attorney should withdraw a witness from a witness stand and put the doctor on, out of turn, whenever possible.
2. An attorney intending to call or subpoena a doctor to testify by deposition should, if possible, attempt to schedule the deposition at a time and place convenient to both the attorney and the doctor.
3. An attorney seeking only a doctor's records should, after consultation with the doctor, subpoena a custodian of those records rather than the doctor, whenever possible.

4. An attorney intending to call or subpoena a doctor to testify as an expert witness should recognize that the doctor has a right to be compensated for such expert testimony regardless of the outcome of the case.
5. An attorney should arrange a pre-testimonial conference with the doctor to review his testimony with him and to review the standard procedures of cross-examination.
6. An attorney and a doctor should agree in advance as to the amount of compensation owed to the doctor for pre-testimonial conferences, testifying or preparing a report. A doctor may ask for all or any portion of such fee in advance.
7. Attorneys should refrain from giving advice to clients on medical management.
8. Unless otherwise specifically requested, an attorney requesting a medical report from a doctor is asking for a report which follows the following guidelines:
  - a. date of initial examination
  - b. history of injury and resultant symptoms
  - c. examination and description of findings
  - d. results of diagnostic studies (i.e. x-rays and laboratory)
  - e. initial impression or diagnosis if the patient was seen only for evaluation
  - f. recommended therapy (i.e. medications, therapy, hospitalization, etc.)
  - g. course of subsequent treatment, including dates of each visit, symptoms and findings elicited on each visit and treatment and/or recommendations rendered at each visit
  - h. response to treatment
  - i. final diagnosis, including a statement as to causal relationship, if any, between patient's injuries and accident
  - j. prognosis, if possible.

Such a report shall be considered a standard or normal report.

9. Immediately following a request as is described in paragraph 8 above, the attorney should call the physician or visit with him in person to specify exactly what he is looking for. The attorney should also, at that time, determine whether the doctor can contribute anything to the case, or whether his testimony would be superfluous or unnecessary. Whenever possible, background information, including other medical reports, etc., should be forwarded to the doctor to assist him in preparing his report. Care should be taken by the attorney that no privilege is violated in the event other doctors' reports are forwarded. The attorney should not ask for a medical report prematurely, but should consult with the doctor regarding the patient's status and whether a report should await further treatment.
10. An attorney who obtains the services of a doctor as a medical expert in preparing reports as above-described or in testifying as a witness (whether in trial or by deposition, and whether obtained voluntarily or by subpoena) is personally obligated to the doctor for such services. As the Canon of Ethics require, however, the patient/client remains liable to reimburse the attorney for any such expenses.
11. An attorney should urge his client to pay his physician for professional services rendered as soon as possible regardless of the status of the lawsuit, and should advise his client that it is improper to withhold payment until the lawsuit is disposed of.

12. When the doctor has not been fully paid by the patient for his medical (as opposed to his medical/legal) services, the attorney shall request the permission of the patient to pay the doctor for such services out of any recovery of money which the attorney may receive on behalf of such patient. If there is no recovery, the attorney has an obligation to remind the client/ patient of his obligation to pay the doctor.
13. On the medical information release form, the attorney shall include the following language. "I hereby authorize my attorney to pay any unpaid medical bills relating to the subject injuries at the time of receipt of settlement or judgment proceeds, if any". Such statement shall be signed by the client/patient.
14. An attorney should notify any doctor whose services he has retained as a medical expert of the outcome of the litigation.
15. The attorney and the doctor should understand that the charge or medical fee of the doctor must not be contingent upon the outcome of the trial.
16. An attorney who desires to interview or photograph a hospitalized patient should consult with the doctor beforehand.

WITH RESPECT TO DOCTORS:

1. It is recognized that the duty of the doctor includes not only the treatment of the physical and mental difficulties of the patient, but also making available for the benefit of the patient, the facts of his situation to the end that justice may be served. Accordingly, the doctor, when properly requested, in writing, by the patient either directly or through his attorney, shall provide reports, appear in court or attend depositions and testify with full, fair and candid answers to the questions propounded to him concerning such facts and his opinions relative thereto.
2. Although a doctor has a right to request that his testimony be taken by way of deposition, he must recognize that the law may require his presence in court and that his patient's best interests may be served by his presence in court.
3. A doctor who has been called to testify by deposition should attempt to schedule the same at a time and place convenient to both the attorney and the doctor.
4. A doctor is entitled to fair and reasonable compensation for medical/legal services, but the same shall not be conditioned upon nor measured by the amount of the patient's recovery in damages in the litigation. Even though payment of charges for medical/legal services is the attorney's obligation, ultimately it is the patient who pays. Hence, charges for medical/legal services should be no higher than a doctor's charges for other medical services, and shall be computed having due regard for the time, effort and skill consumed. Such fees shall neither be so high as to have the effect of preventing the patient from obtaining the doctor's medical/legal services, nor so high as to give the appearance that the doctor is attempting to capitalize on the patient's legal problem. A doctor may ask for all or any portion of such fee in advance.
5. Doctors should **refrain from giving patients advice** on legal matters or expressing opinions on legal matters to patients.
6. A doctor on testifying in court shall not decide legal questions by making up his mind that

certain questions are improper and either refusing to answer or treating the question as if it were unimportant or insignificant, and therefore answering only in part. If a doctor feels that a question is improper and there is no objection from counsel putting him on the witness stand, he may ask the Court whether he is bound to answer such question.

7. Where a report is requested, the doctor should insist upon written authorization from a patient before providing the requested information or report. When a medical report is properly authorized, the physician should furnish the report, within a reasonable time.
  - (a) Where there is no dispute over the amount to be charged by the doctor for the report, the doctor may refuse to provide the report where the amount is not paid in advance.
  - (b) Where the amount to be charged by the doctor for the report is in dispute, the doctor shall furnish the report after being paid the amount not in dispute. The balance, in dispute, shall be submitted to the Joint Medical/Legal Committee. (See last page)
8. Unless otherwise agreed upon in advance, a standard or normal report should follow the guidelines referred to in number 8 above (with respect to attorneys). Such a report shall command a standard, reasonable fee.

#### **WITH RESPECT TO SPECIAL SITUATIONS:**

1. As a general principle, an attorney investigating the possibility of bringing or maintaining a medical malpractice suit on behalf of a patient has an obligation to disclose that fact in any communication with any treating physician of that patient. Such notice must be unequivocal and shall be clearly expressed, in writing. If the attorney, at the time of the communication, believes that the doctor with whom he is communicating is, or may be, a possible defendant, the lawyer shall clearly advise the doctor in writing that the doctor is considered a possible defendant so that the doctor may notify his counsel or insurer, if any.
2. A doctor receiving a communication from an attorney advising that the attorney is investigating the possibility of bringing or maintaining a medical malpractice suit on behalf of the doctor's patient or former patient (accompanied by proper authorization) has a general obligation to honor the authorization and provide the attorney with copies of his office records or, if illegible, a legible and literal transcription of the same into legible form. If the doctor has been notified, in writing, that the attorney considers him to be a possible defendant, the doctor shall not be obligated to provide the patient's attorney with any response to his request until after the doctor has notified and consulted with his insurer, if any, and his own counsel or the counsel retained by his insurer; the doctor shall furnish such response, if applicable, within a reasonable time. Such doctor shall not be obligated to provide such attorney with anything more than copies of his office records, or if illegible, a legible and literal transcription of the same into legible form.
3. An attorney representing a person who is bringing or intends to bring a medical malpractice claim should advise, in writing, and in advance, any doctor to whom the client is thereafter referred by the attorney for treatment or examination in respect to the alleged malpractice injuries of his client's malpractice claims, actual or intended. A doctor not so notified, in writing, may refuse to provide a report to his patient's attorney.
4. An attorney representing a person who is bringing or intends to bring a medical malpractice claim should make a reasonably thorough examination of the claim before filing suit, to determine the existence of probable medical malpractice, including consultation with another doctor in the same area of specialty involved, if possible.

## **STANDING JOINT MEDICAL LEGAL COMMITTEE:**

A standing Joint Medical/Legal Committee shall be designated to handle expeditiously all questions of doctors and attorneys relative to inter-professional problems. This Committee shall investigate the question, prepare specific findings and recommendations, and if it deems necessary, shall refer the matter with a complete report of its findings to the Board of Directors or Executive Committee of the appropriate organization. The decision of the Joint Committee shall be binding on the members.

In addition to the handling of problems referred to above, the Committee shall conduct a general meeting twice per year, and may have special meetings at the call of the Chairman or Co-Chairman. The Committee shall be comprised of four members of the Geauga County Bar Association and four members of the Geauga County Medical Society. The Chairman of the Committee shall be alternated from year to year from one profession to the other; likewise, the Co-chairman shall be alternated from year to year from one profession to the other; the Chairman and Co-chairman shall not be from the same organization at any given time. A quorum shall consist of a minimum of two members from each organization, and need not include the Chairman or Co-chairman; the first order of business in the event the Chairman or Co-chairman is not present will be to select a temporary Chairman for that meeting only. The Geauga County Bar Association and the Geauga County Medical Society intend that the terms of the members be stable, with as little turn-over as possible.

The Standards of Practice should be publicized in the regular publication of each organization, if any, or copies be distributed to members of both professions.