
**PRACTICE GUIDELINES FOR REQUESTING
MEDICAL REPORTS
AND ARRANGING MEDICAL WITNESSES IN
NON – CRIMINAL MATTERS**

**A Joint Statement by the Law Society of Western Australia and the
Australian Medical Association (Western Australia)**

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1. INTRODUCTION

- 1.1 These guidelines are designed to assist legal practitioners (lawyers) and medical practitioners (doctors) in arranging for the provision of reports and evidence.
- 1.2 They recognise that inter-professional co-operation serves the interests of the client/patient and the administration of justice.

2. MEDICAL REPORTS

A report may be requested by a lawyer from a treating doctor or a doctor who has been asked to carry out an examination for medico-legal purposes.

2.1 Treating doctors' reports

- 2.1.1 A treating doctor (general practitioner or specialist) should provide to a patient's lawyer a report detailing attendances, history, examination, findings, diagnosis, treatment and prognosis on request.
- 2.1.2 A written authority to disclose medical information should be provided with a request by a lawyer who is acting for a patient.
- 2.1.3 A treating doctor may respond to a request for a report from a lawyer other than the patient's lawyer, but may not do so without the patient's written authority.
- 2.1.4 A treating doctor should respond to a request for a report within a reasonable time and if there is any circumstance which prevents, inhibits or delays a response, the lawyer should be informed promptly.
- 2.1.5 The cost of a report by a treating doctor should be reasonable, and proportionate to the time taken in preparation.
- 2.1.6 Unless the lawyer states otherwise, a doctor is entitled to assume that the lawyer requesting a report accepts responsibility for payment. A lawyer is not liable for treatment fees.
- 2.1.7 A treating doctor's report, although confidential, may be relied on by the patient's lawyer to make representations to other parties, including an opposing party, or be disclosed pursuant to procedural rules.

2.2 Medico-legal reports

- 2.2.1 "Medico-legal" describes a report of the examination and opinion of a non-treating doctor obtained for the purpose of legal proceedings.

- 2.2.2 A doctor who accepts a request to assess a claimant's case for the sole purpose of legal proceedings (pending or anticipated) is entitled to assume that the person making the request accepts responsibility for payment of fees in relation to both the assessment and any consequent report.
- 2.2.3 A doctor's report, although marked "confidential" or "privileged" or "without prejudice", might be relied upon by the person commissioning the report to make representations to other parties, including an opposing party, or be disclosed pursuant to procedural rules.
- 2.2.4 If an appointment for examination is made by telephone, the lawyer should promptly confirm the appointment in writing. In any case the lawyer should make a written request for a report clearly setting out what is required of the examining doctor.
- 2.2.5 The request for an examination and/or report to a non-treating doctor should set out:
- (a) the name of the party for whom the lawyer acts;
 - (b) the circumstances giving rise to the claim;
 - (c) the materials (eg copies of reports of other doctors) being enclosed;
 - (d) the specific matters which the doctor is asked to include in the report which might include history obtained from the examinee, examinee's complaints, findings on examination, diagnosis and the doctor's opinion on such matters as:
 - (i) the cause of the examinee's condition;
 - (ii) the prognosis;
 - (iii) the need for future treatment (if any);
 - (iv) whether there is any relevant residual disability, and if so, the nature and extent of such disability, and whether it is temporary or permanent;
 - (v) whether any further treatment is indicated;
 - (vi) the examinee's capacity for work;
 - (vii) whether any further investigations are required; and
 - (viii) whether the examinee's condition is stable.
- 2.2.6 Any other specific requests for the examining doctor's opinion should be clearly expressed.
- 2.2.7 It is not the role of an examining doctor to make referrals for investigation or treatment, but such may be suggested.

3. COURT ATTENDANCE BY A MEDICAL WITNESSES

- 3.1 Before an action is listed in which a lawyer intends to call a doctor as a witness, the availability of the doctor should be ascertained, if possible.
- 3.2 When an action is listed for trial a lawyer should advise the doctor as soon as possible and should endeavour to agree a basis for a fee and a mutually convenient day and time at which the doctor can expect to be called to give evidence. This arrangement should be confirmed in writing.
- 3.3 If an action is settled, or the trial dates vacated or changed, the lawyer should notify the doctor as soon as possible.
- 3.4 A lawyer should try to obtain a listing of an action so as to accommodate the doctor's other commitments so far as practicable, and should make an appointment for the attendance of the doctor on the same basis.
- 3.5 Doctors should endeavour to accommodate the reasonable requirements of the lawyer and the Court in the programming of witnesses.
- 3.6 A lawyer should make reasonable attempts to agree to the admission into evidence of reports which are not the subject of controversy so as to avoid the need for a doctor to attend court.
- 3.7 Where [a lawyer forms the view that] it is in the best interests of a client that a doctor be called as a witness, a lawyer may serve a subpoena on a doctor but the lawyer:
 - 3.7.1 should do so only after taking the steps outlined in 3.1, 3.2, 3.4, 3.5 and 3.6;
 - 3.7.2 should make it clear to the doctor that the subpoena is a formal method of compelling attendance that will not be called upon while the arrangements made under 3.2 are in place.

4. CONFIDENTIALITY

- 4.1 The information disclosed by a patient to a treating doctor is confidential and should not be disclosed without the patient's written authority. A treating doctor may assume from the fact that a lawyer is acting for a patient, and requests confidential information, that such authority has been obtained.
- 4.2 Medical reports obtained by the parties for the purposes of litigation are privileged but medical reports may be exchanged in the conduct of a claim.
- 4.3 The client of a lawyer is entitled to have access to all documents relevant to the claim including medical reports.
- 4.4 Care and discretion may be required if a treating or examining doctor wishes to convey information to the lawyer which, by reason of its nature, the doctor does not wish to communicate to the patient/client.

5. COMPLAINTS

5.1 If a member of either profession is aggrieved by the conduct of a member of the other profession, the member may report the matter to his/her professional body which will endeavour to mediate a fair resolution of the complaint. Where appropriate, such complaint may be referred to the AMA/Law Society Joint Committee for mediation or adjudication as the case may be. The procedures are informal and are designed to promote harmonious relationships between the members of the respective professions.

This Joint Statement was issued by the Law Society of Western Australian and the Australian Medical Association (Western Australia) in September 2006