

# MEDICAL-LEGAL MATTERS

These fees cannot be correctly interpreted without reference to Preamble Section A, Clause 5 with the exception of the fees for Crown Counsel, which are negotiated separately.

## **Letter prefix 'A' designates services not paid by the Medical Services Plan.**

Physicians are often called upon to prepare reports, opinions and to testify in civil, criminal and administrative matters.

- Civil matters are generally compensated privately by whoever requests the physician's services. Examples of civil cases are those involving motor vehicle accidents, medical malpractice, family disputes, and disability or life insurance claims.
- Criminal prosecution and government administrative matters where evidence is given on behalf of the Crown are compensated by the Attorney General's office, while other government agencies may pay the physician directly.
- The Legal Services Society invariably pays the representative counsel for services provided to qualified persons in civil, criminal and administrative matters, who then pays the physician.

It is important that physicians clarify important issues in writing prior to agreeing to do any medical-legal work, including but not limited to:

- who is responsible for payment;
- the rate;
- payment in the event of short term cancellation;
- payment for waiting time prior to testifying; and
- when payment will be due.

## **1. EXAMINATIONS, LETTERS, REPORTS AND OPINIONS**

- a) Reports and opinions fall into two basic divisions:
  - i) Those given by an attending physician or consultant who has already seen the patient in the course of his/her ordinary professional duties.
  - ii) Those given by a non-attending physician or consultant who has examined the patient at the request of a lay person and who would not have seen the patient but for this request.
- b) In settling on fees in these matters, doctors should consider the time actually spent in:
  - i) Examination of the patient.
  - ii) Examination of hospital records, x-rays, etc.
  - iii) Preparation, dictation and revision of report or opinion.
- c) In many cases payments for letters, reports or opinions must be made by the patient himself/herself and not by any third party such as an insurer. If payment is to be received through or from a lawyer, the doctor should obtain a prior undertaking that the lawyer or law firm will be directly responsible for the physician's fee.

**2. EVIDENCE IN COURT/HEARINGS FOR CIVIL, CRIMINAL AND ADMINISTRATIVE MATTERS**

- a) Any expert witness in the Province of BC can be called to testify at an administrative hearing or in court. The witness may receive a subpoena from the requesting party accompanied by a witness fee set by law. Transportation costs may also be reimbursed. Failure of the expert to appear when subpoenaed can result in a contempt charge.

Civil Cases

- b) Civil cases are non-criminal cases, for example cases involving motor vehicle accidents, medical malpractice, family disputes, and disability or life insurance claims.
- c) Generally when parties request a physician to give evidence in a civil case, they will offer to pay an additional fee for time spent preparing to give evidence and for court attendance. If payment is to be received through or from a lawyer, the physician should obtain a prior confirmation that the lawyer or law firm will personally be responsible for the physician's fee.
- d) Successful parties to a lawsuit are generally entitled to recover from the losing side reasonable costs they incurred in retaining expert witnesses. This is never more than what has actually been paid. The fee may need to be defended before the Court Registrar who will disallow any portion of the expert's fee considered unreasonable in relation to work done or time spent and leave the retaining party to bear the cost of this portion.

Criminal and Government Administrative Cases

- e) Physicians may be asked to testify as an expert for the criminal prosecution in a criminal trial or for a government agency or board in an administrative hearing (for example a Provincial Disability Plan claim). In such cases physicians should make a claim for both court attendance and preparation in accordance with "Scale "B" below.
- f) Physicians who are testifying on behalf of the defence for an accused in a criminal matter which is being funded by LSS are also paid according to Scale "B". Legal Services pre-approves the retainer and specifics, such as the number of hours being funded etc. The physician should obtain a copy of this approval from the accused's counsel.
- g) Physicians who are testifying on behalf of the defence for an accused in a criminal case which is not being funded by LSS, or for an individual in a government administrative hearing, may charge either the rates at Scale "A" or "B" or whatever rates they can agree to with the accused or his/her counsel.

**3. GENERAL**

There is a joint committee of doctors and lawyers that reviews periodic problems arising over the responsibility for payment of medical-legal accounts. Please direct any such concerns in writing to the BCMA Director of Professional Relations.

**SCALE "A"**

**MEDICAL-LEGAL FEES**

**CIVIL MATTERS (NOT CRIMINAL PROSECUTION OR CRIMINAL DEFENCE PAID BY THE LEGAL SERVICES SOCIETY)**

	<b>BCMA Fee (\$)</b>
A00070 For filling out an ordinary printed form reporting on a patient's condition or submitting like information in letter-form. This item should not be used for time loss benefit or insurance forms normally covered under A00059, A00060 and A00069 .....	146.00
A00071 A Medico-Legal letter or form is defined as a short factual written communication given to any lay person (e.g., lawyer, insurance representative) in relation to a patient for some purpose primarily unconnected with treatment .....	306.00
A00072 A Medico-Legal Report is one, which will recite symptoms, history and records and give diagnosis, treatment, results and present condition. This is a factual summary of all the information available on the case. It could also contain prognostic information about when the patient will be able to return to work and might mention whether there will be a permanent disability .....	917.00
A00073 A Medico-Legal Opinion will usually include the information contained in the medico-legal report and will differ from it primarily in the field of expert opinion. This may be opinion as to the course of events when these cannot be known for sure. It can include opinion as to long-term consequences and possible complications in the further development of the condition. All the known facts will probably be mentioned, but in addition there will be the extensive exercise of expert knowledge and judgement with respect to those facts with a detailed prognosis.....	1532.00
A00093 Transfer of patient records .....	30.65
<i>(See notes on next page)</i>	

**BCMA  
Fee (\$)**

Notes:

- i) This fee is recommended for a simple transfer of records. Photocopying may be charged in addition.
- ii) Other direct costs, such as courier services, may be charged in addition based on the actual cost.
- iii) A fee for review of records may be charged in addition if the physician reviews the records for the purpose of selecting current and necessary medical information to be transferred.
- iv) Original records must be retained by the transferring physician as required by Law.
- v) When multiple records are being transferred, the total time spent should be taken into account.

A00095 Review of records by physician (*for medical/legal purposes or transfer of patient records*) - per 15 minutes or portion thereof..... 85.60

NOTES:

- i) The fee for this service can be adjusted at the physician's discretion based on the extent of physician involvement and secretarial and other direct or indirect costs.
- ii) This fee is for review of the file only.
- iii) Photocopying may be charged in addition.
- iv) At the physician's discretion, an additional fee of \$1.35 per page is billable for large and/or complex charts.

A00096 Photocopying per page (first 10 pages) ..... 1.40  
 – subsequent pages - per page ..... .30

NOTES:

- i) A00096 is extra to A00093 and/or A00095.
- ii) The fee for this service does not include review and/or summary of the patient's chart.

**EVIDENCE IN COURT/HEARINGS**

A00074 Expert testimony in court, per day..... 2450.00

A00075 Expert testimony in court, per half-day or less ..... 1532.00

A00091 Court preparation by expert witness, per hour ..... 365.00

NOTE: This fee does not include charges for extra record keeping necessary to provide expert testimony. These charges are in addition.

A00092 Failure of notification of court adjournment or out-of-court settlement ..... 1838.00

NOTE: Fee item A00092 applies where the patient or legal counsel fails to give 5 working day's notice of cancellation of court or other legal appearance.

A00009 Mileage:  
 – per mile..... N/A  
 – per kilometre..... 0.50

**CROWN COUNSEL**

**SCALE “B”**

**GOVERNMENT EXPERT WITNESS FEES (INCLUDES CRIMINAL PROSECUTION AND CRIMINAL DEFENCE FUNDED BY THE LEGAL SERVICES SOCIETY)**

**BCMA  
Fee (\$)**

Effective *November 10, 2007*, the following fees and billing guidelines apply when a physician provides expert evidence for any ministry, board and agency of the Government of the Province of British Columbia, including criminal prosecution.

The Legal Services Society pays the same rates for the fees that are currently in place, and have adopted the Billing Guidelines for travel and wait times. LSS does consider payment for cancellation on a discretionary basis depending on the circumstances of each case

**Preparation and Court Time (Per Hour):**

– General Practitioner .....	192.00
– Specialist.....	225.00

**Travel Time (Per Hour):**

– General Practitioner .....	109.00
– Specialist.....	127.00

**NOTES:**

- i) “General Practitioner”, means a Physician who is not a specialist.
- ii) “Specialist” means a Physician who is a certificant or fellow of the Royal College of Physicians and Surgeons of Canada.

**BILLING GUIDELINES FOR MEDICAL EXPERT WITNESS RETAINED BY THE GOVERNMENT, A GOVERNMENT BOARD OR GOVERNMENT AGENCY**

**1. Travel to Court**

- a) Time starts when the Physician leaves home, office or hospital to go to Court.
- b) Time ends when the Physician arrives at the Court or Crown Counsel office or otherwise begins direct work on the case.
- c) If work on the case does not start until the day after travel, then travel time ends upon arrival at the hotel or at 1800 hours, whichever is later.

**2. Return Travel**

- a) Time starts at the end of Court proceedings or when no other services (e.g., discussions) are required from the physician.
- b) Time ends when the Physician arrives at home, office, hospital, etc.
- c) If the Physician is unable to return home the same day, then travel time ends at 1800 hours on the day that work on the case is finished and restarts the next morning at 0900 hours or upon leaving the hotel, whichever is earlier.
- d) If the Court schedule and travel arrangements are such that a physician is required to stay away from home over a weekend, then travel time up to 8 hours per day is billed for the weekend days, to the extent that the physician's time is not occupied with the case work over the weekend.

**3. Court Time**

- a) Court time includes all relevant professional activities, including preparation, interviews, discussions, testimony, listening to other testimony and associated waiting time.
- b) Court time starts when the physician arrives at the Court or Crown Counsel office or at 0900 hours if he/she had already traveled away from home on a prior day.
- c) Court time ends when Court ends or no other services are required, but continues to 1800 hours if further services are required next day, if the Physician has traveled out of town.
- d) Time for preparation work prior to arrival or during evenings or weekends is billed in addition to the above and for the actual time spent.
- e) If lunch is primarily social, then a one-hour lunch break is not billable, but time for a working lunch is billable.
- f) In the event that out of town travel is necessary, in respect of single day trips only, and where the combination of Court/preparation and travel are less than 8 billing hours, the balance up to 8 hours shall be billed as Court/preparation time.
- g) Where physicians are testifying in their home community, Court time shall be compensated at a minimum of 4 hours for the morning session and 4 hours for the afternoon session. Any Court time spent in excess of 4 hours in either the morning or afternoon session shall be paid at the appropriate fee.

**4. Cancellations**

- a) A cancellation is defined as a situation where the physician is informed that a previously arranged Court appearance is no longer required or is to be rescheduled for any reason including testimony not needed, Court scheduling changes and adjournments.
- b) Where the physician is given 72 hours (3 working days) notice of cancellation of a Court appearance, no compensation is payable.
- c) Where the cancellation notice is received less than 72 hours (3 working days) prior to scheduled commencement of travel (as defined in 1.a, the physician will be paid the lesser of:
  - i) the estimated fees otherwise payable if the physician had attended the Court (travel time and Court time); or

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- ii) 1) 8 hours Court time if cancellation occurs with less than 24 hours notice or
- 2) 6 hours Court time for any day cancelled with less than 48 hours notice;  
or
- 3) 4 hours Court time for any day cancelled with between 48 and 72 hours notice.

### 5. **Expenses**

Expenses related to expert witness billing shall be in accordance with the rates established for "Group 2" (public service) employees. Such expenses may be claimed where the physician is required to attend court at a location more than 32 km from his/her residence or where unusual road conditions exist which, for example, requires travel by ferry.

### 6. **General**

- a) In cases of uncertainty as to interpretation of the above guidelines, or where unusual circumstances or large amounts of time are expected to be required (especially regarding preparation activities), the Physician and Crown Counsel should clarify their expectations as early as possible.
- b) In the case of accused persons who are assessed by the Forensic Psychiatric Services Commission, activities conducted by the psychiatrist as part of their employment by the Commission are not billable to Crown Counsel. Specifically, preparation of an initial report to Court is provided by the Commission, but subsequent review of such reports, related discussion and other preparatory activities are billable to Crown Counsel.