

CODE OF COOPERATION

AMONG



WITNESSETH:

WHEREAS, members of the Maine State Bar Association (MSBA), the Maine Trial Lawyers Association (MTLA), the Maine Medical Association (MMA), the Maine Osteopathic Association (MOA), and the Maine Chiropractic Association (MCA) recognize problems of co-operation between the medical and legal professions and the duties of both professions to the public and to the administration of justice and further recognize that medical-legal co-operation is necessary in order to maintain the proper attitudes of mutual respect of each of these learned professions for the other;

WHEREAS, the MSBA, MTLA, MMA, MOA, and MCA have appointed their respective members study these problems;

WHEREAS, as a result of discussions among the associations, it is agreed that it is in the best interest of the parties and persons involved that the professions work together cooperatively; and

WHEREAS, the parties acknowledge that the actions of the respective members hereunder shall be governed by their respective codes of professional ethics and state law, this agreement notwithstanding.

**NOW THEREFORE, IT IS HEREBY
AGREED AMONG THE PARTIES AS FOLLOWS:**

**ARTICLE I
SCOPE OF CODE OF COOPERATION**

1. The code applies only in civil proceedings.

**ARTICLE II
MEDICAL REPORTS AND RECORDS**

1. *Physician's Duties.*
 - A. To limit the information provided to any party to only that which is released by the patient pursuant to Maine law or specifically required by law.
 - B. To provide adequate information to the attorney requesting the same concerning the patient, including results of examination, diagnosis, tests, prognosis, and up-to-date bill for services rendered pursuant to the patient's authorization or as specifically required by law.

- C. To supply such a report or record within a reasonable time after the same is requested.
- D. When requested by the attorney, to provide supplemental reports or records when any significant change occurs in the patient's condition after a reasonable length of time has expired following a prior report or as specifically required by law.
- E. To treat the attorney with courtesy, civility, and respect.

2. *Attorney's Duties.*

- A. To compensate promptly the physician for the report or copies of the record if said compensation is requested and to provide such compensation in advance if the physician so requests. Payment should not be dependent upon the success of the lawsuit. For the purposes of the Code, prompt compensation or prompt payment shall be construed to mean payment within 30 days of receipt of a bill, unless otherwise agreed to in advance.
- B. To understand the physician's obligations regarding protected health information under the HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164, and the Maine confidentiality statute, 22 M.R.S.A. § 1711-C, and to provide the physician with an authorization as required by law permitting the physician to disclose the protected health information to the attorney.
- C. To disclose to the physician the fact of the lawyer's representation and the identity of the client.
- D. To treat the physician with courtesy, civility, and respect.

**ARTICLE III
CONFERENCES BETWEEN THE ATTORNEY AND THE PHYSICIAN**

- 1. It is agreed that it is mutually advantageous for the physician and attorney to discuss the particular case prior to time of trial. It is understood that the attorney shall pay the physician for the time involved in the conference, including the time involved preparing for the conference. The fee to be charged by the physician or the basis of the fee (i.e. hourly rate, etc.) shall be agreed upon prior to the conference and shall be commensurate with the value of the physician's time and overhead in his or her medical practice. This bill shall be paid promptly by the attorney and shall not be contingent upon the success of the lawsuit.
- 2. To the extent practical, the conference shall take place at the physician's office unless other arrangements are mutually acceptable. Arrangements for such conferences should be made a sufficient time in advance of the trial so that the conference can be fitted in the schedule of the attorney and the physician.
- 3. Prior to any conference, the attorney must provide the physician with an authorization as required by law permitting the physician to disclose the protected health information to the attorney.

**ARTICLE IV
COURT TESTIMONY**

- 1. The parties recognize that both professions must acknowledge and understand the time problems involved in court testimony. The medical organizations recognize that the legal profession faces calendar problems; including the uncertainty of dates in a fluid trial calendar. The legal organizations likewise recognize that the physician's appointments are made in advance and that physicians are, in addition, faced with pressing medical problems that cannot be deferred.
- 2. *Attorney's Duties.*
 - A. The attorney shall notify the physician of the proposed trial date as soon as practical after being informed of the date by the court and ascertain whether the physician will be available at that time.

- B. The attorney shall keep the physician's office advised of the status of the calendar and notify the physician as soon as possible prior to trial of the probable trial date.
- C. The attorney should give the physician as much notice as possible of the time when the physician's attendance in court is desired. Physicians should not be asked to appear until the attorney is reasonably certain that they will not have to remain at the courthouse more than a short period of time before being allowed to testify. The attorney shall endeavor to obtain the physician's testimony as soon as possible after his arrival in the courtroom subject to orderly and proper presentation of the case.
- D. In the event of settlement, the physician should be immediately notified so that the disruption of the physician's schedule is minimized.
- E. The attorney should not use a subpoena to secure the attendance of a physician in court unless the physician refuses to abide by the terms of this Agreement.
- F. The attorney and the physician shall agree upon the fee to be charged for the physician's participation in the trial as a witness. The fee shall be commensurate with the value of the physician's time and overhead in his or her medical practice. If the physician has a sub-specialty in forensic medicine, the fee may be consistent with customary fees for that sub-specialty. The physician should be compensated promptly for his appearance as a witness.

3. *Physician's Duties.*

- A. In accordance with Opinion 9.07, Medical Testimony of the Code of Medical 8 & of the American Medical Association (AMA), the physician has an obligation to give testimony regarding his patient in court. If the physician undertakes the care of a patient and litigation ensues, the physician is duty bound to testify as to medical condition of that patient.
- B. When given reasonable notice of the time at which the physician will be called upon to testify, the physician should make a reasonable effort to be available at that time or shall notify the attorney promptly of any conflicts.

ARTICLE V DEPOSITIONS OF THE PHYSICIAN

- 1. The principles set forth in Article IV regarding court testimony shall be applicable with respect to obtaining the testimony of a physician by means of an oral deposition.
- 2. In the event that the oral deposition of the physician becomes necessary, the attorney and the physician should reach an agreement as to the time and place thereof, fees to be charged, and any policies regarding cancellation.
- 3. Unless otherwise agreed to in advance: if an attorney cancels a scheduled deposition within 24 hours in advance of the scheduled date for a *bona fide* emergency, then the physician may not charge the attorney for the physician's lost time; if a physician cancels the deposition within 24 hours in advance of the scheduled date for a *bona fide* emergency then the attorney shall pay the physician the agreed upon fee at the time the deposition is rescheduled. Unless otherwise agreed to in advance: if the attorney cancels within 24 hours for reason other than a *bona fide* emergency, then the attorney shall pay the physician for his or her time lost due to the late cancellation; if the physician cancels within 24 hours for reason other than a *bona fide* emergency, then the physician shall not charge the attorney for the deposition when it is rescheduled.
- 4. The attorney shall compensate the physician for the time spent in preparing for, attending, and reviewing the transcript of the deposition. The physician's fee shall be agreed upon by the attorney and physician in accordance with the guidelines outlined in Article IV(F).

**ARTICLE VI
PHYSICIAN'S BILL FOR MEDICAL SERVICES RENDERED TO PATIENTS**

1. If a "medical payment" provision of a property and casualty insurance policy is available and has not been paid, or been assigned to the physician, the attorney should use the attorney's best efforts to see that the proceeds of the insurance when received are applied to payment of medical and hospital bills.
2. Every attorney shall attempt to obtain written authorization from the client patient to pay all medical bills in full in the event of a recovery following trial or upon settlement. If such authorization is obtained, and if the attorney and physician reach a written agreement to protect the client-patient from billing for medical services rendered during the pendency of the legal action, it will be the duty of the attorney to pay the medical bills from the net proceeds of the case after deducting attorney's fees and costs. The parties understand that such a "letter of protection" is not a guarantee of payment and provides only that bills will be paid to the extent that judgment or settlement is sufficient to do so. If the client-patient refuses to provide written authorization to pay all medical bills from the recovery, the attorney shall use best efforts, consistent with Maine Bar Rules, to notify the primary or treating physician of that refusal.
3. To the extent that there is private or public health insurance coverage available and the doctor opts not to accept such payment, but rather to wait for a judgment or settlement, he or she should know that there is a risk that payment of the medical bills may be reduced by the "common fund doctrine" adopted by Maine's Law Court in *York Insurance Group v. Carol Van Hall*, 704 A.2d 366 (Me.1997). The common fund doctrine requires that whenever a fund is created to which more than one party has a claim; each party must pay their share of the expenses incurred in creating the fund, including reasonable attorney fees. Moreover, any recovery of deferred medical bills will be subject to the sufficiency of the judgment or settlement monies recovered by the client-patient and may be subject to a *pro rata* reduction in accordance with Maine's subrogation statute, 24-A M.R.S.A. §2729-A.
4. Consistent with Maine Bar Rules, it shall be the duty of the attorney to notify the physician when the trial concludes or when the case is settled and the amount of any recovery or settlement. Nothing in this section prohibits a physician from billing the patient for the balance of any medical bill not paid in full.

**ARTICLE VII
MEDIATION**

1. A Medical-Legal Co-operation Committee (the "Committee") shall be formed and composed of a member from each of the parties to this Agreement.
2. The purpose of the Committee shall be to mediate grievances between members of the medical profession and the legal profession.
3. If a dispute cannot be mediated in a manner satisfactory to all parties, the Committee may issue an opinion passing upon the conduct to the appropriate regulatory body of the professional.

**ARTICLE VIII
SOCIAL RELATIONS**

1. The parties agree that they will explore further areas of co-operation between them, such as joint educational seminars and lectures, or joint social gatherings to foster and improve relations between the two professions.

A revision of the Medical Legal Cooperation Code effective January 1, 2010, has been done with the cooperation and efforts of the following:

Sumner H. Lipman, Esquire
Chair, Medical-Legal Committee
Maine State Bar Association

Andrew B. MacLean, Esquire
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Maine Medical Association

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