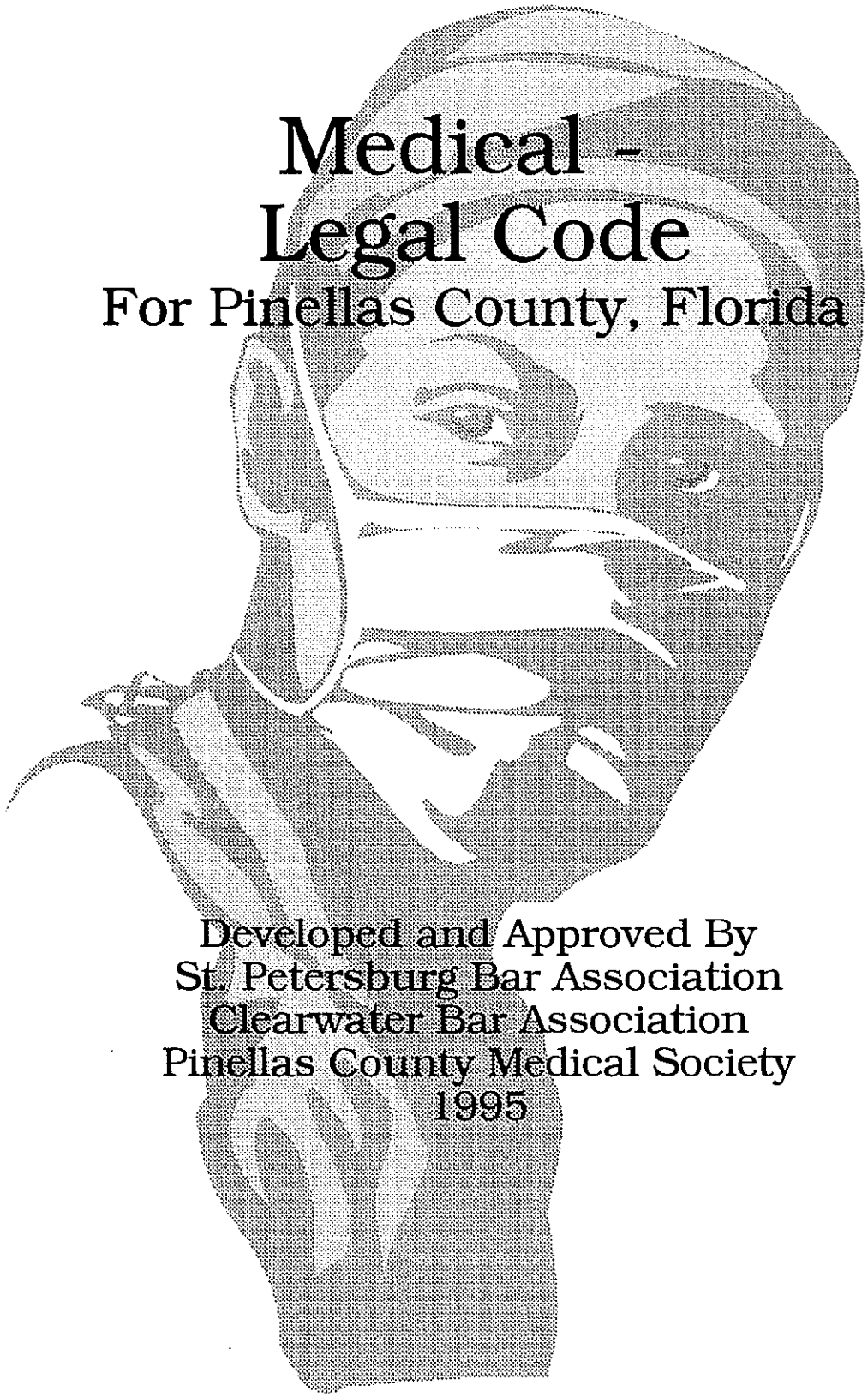

Medical - Legal Code

For Pinellas County, Florida

Developed and Approved By
St. Petersburg Bar Association
Clearwater Bar Association
Pinellas County Medical Society
1995

May 17, 1995

MEDICAL - LEGAL CODE

This document began as a project of the St. Petersburg Bar Association and was developed by the medical / legal committees of the Pinellas County Medical Society and the St. Petersburg and Clearwater Bar Associations. It was subsequently approved by the governing bodies of those organizations.

The Pinellas County Medical Society and the St. Petersburg and Clearwater Bar Associations maintain their respective medical / legal committees on a continuing basis. The Purpose of the medical / legal committees is to promote better communications and understanding between physicians and attorneys; promote the welfare and well-being of the patient or client, and establish guidelines that conform with the highest code of ethics consistent with both professions. These committees also endeavor to conciliate any dispute between physicians and attorneys. Should members of either profession have questions concerning this guide, or find themselves in need of assistance in settling a dispute, we encourage you to call upon the appropriate medical / legal committee.

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The Committee
would like to pay special recognition
to:

Fran Schattenberg for her valuable efforts in developing a gender neutral Code.

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PREAMBLE

Members of the medical and legal professions recognize that physicians and attorneys are drawn into steadily increasing association. Knowledge and services of both professions are required so that the rights of individuals may be determined before various courts, administrative hearings, and tribunals. It is appropriate to develop a voluntary contact of goodwill between physicians and attorneys to clarify and delineate the uncommon language and common problems, and, in addition, communicate to both the medical and legal professions, through an Interprofessional Code, the manner in which both professions can best serve the public and assure the best medical and legal services obtainable.

The provisions of this Code constitute a series of explanations of procedures between physicians and attorneys. The Code is helpful in achieving a harmonious working arrangement between the two professions. The stated purposes of the Code are intended to assist both physicians and attorneys in their interrelated practice as follows:

1. To promote better communications and understanding between physician and attorney.

2. To promote the welfare and well being of the patient or client.

3. To establish guidelines that conform with the highest Codes of Ethics consistent with both professions.

4. To establish guidelines mutually acceptable to both professions.

INTERPROFESSIONAL RELATIONSHIPS

The United States system of justice requires that both courts and litigants have the power to compel the attendance of witnesses and the giving of testimony, and the disclosure of contents of records. Within this framework, it is mutually recognized that the attorney should scrupulously observe the convenience and time of physicians in requesting the assistance of members of the medical profession to produce evidence in adversary proceedings. The medical profession is oriented to diagnosis, therapy and improvement of the patient. The attending physician's professional time is beneficially employed by agreeing to cooperate with counsel in litigation.

The adversary system depends upon the willingness of the physician who is a witness to the facts, as well as an expert witness, to furnish professional opinions and records, without being an advocate. The attorney, although an advocate for the client, should be seeking truth and justice.

ARTICLE I
ROUTINE MEDICAL RECORDS REQUEST

A. Generally

Quite often, the physician will receive a request from the patient's attorney for copies of the patient's medical records. This situation is to be distinguished from the request for a specially prepared medical report. (See Article II.) Because the attorney is requesting to see the records as part of an evaluation of the client's case and preparation for a possible trial, it is desirable that records be legible and reasonably detailed. Moreover, sufficient detail as to history and symptoms benefit the physician in the event the physician is later called to testify in a deposition or trial, or to give an opinion about causation of a patient's medical problems, when physical impairments are apportioned among successive injuries, for example.

B. Medical Authorization

1. Statutory Requirement

As provided by Section 455.241, Florida Statutes (attached as Exhibit A to Appendix), the physician shall not be expected to furnish copies of patient records except upon written authorization of the patient. here are exceptions to the requirement of written authorization with respect to independent medical examinations requested by an attorney or insurance company. (See Article III.)

2. Form of Authorization

There are no specific formal technical requirements for the signed authorization. Any paper bearing the patient's signature, or a legible photocopy of such a document, which expresses the patient's request that the physician share information with the patient's attorney, is adequate for that purpose. Photocopies of authorizations should be accorded the same status as originals. Once a proper authorization for release of patient records has been received, it shall continue to be considered valid for all purposes until such time as the patient, or the attorney, notifies the physician, by another signed writing or photocopy thereof, that the patient wishes to revoke the prior authorization.

C. Scope of Request

The right to share information about a patient's condition between professions is just as important as the right to keep such information confidential, and cooperation between the patient's physician and attorney, within the bounds of professional responsibility, is encouraged. As a general rule, the attorney is encouraged to be as specific as possible about the actual records sought, and the physician is encouraged to direct enabling staff to comply as fully as possible with any specific request(s). In the absence of a more specific communication broadening or narrowing the scope of the request, the physician will be expected to provide any and all progress notes or narrative records appearing on a patient's chart, regardless of whether they originated in that physician's office or with other health care providers or facilities (such as consultative reports). Other records, such as test data,

routine X-ray reports, and the like, shall be provided if the request seeks "all" records or specifically requests such items. However, financial and accounting forms, such as insurance claim forms, shall not be copied and provided unless they are specifically requested by the attorney.

D. Original Films, Tracings, etc.

If specifically requested for delivery to another licensed physician, the patient's original X-rays, EKGs, EEGs, and the like, or copies of them should be produced, provided that satisfactory arrangements for the prompt return of the items have been made through the requesting attorney.

E. Copying Expense

Copies of records are subject to a reasonable charge for copying and secretarial time. Recommended reasonable photocopying charges according to Rule 61F-26.003: $1.00 for the first 25 pages and 25 cents for each additional page. In the case of sizable charts, where such fees will be substantial, a prepaid deposit of copying fees or advance written confirmation of the charges are recommended. Refer to Exhibit A.

F. Timeliness

It is suggested that 15 to 30 days is reasonable time within which to comply with a request for records.

ARTICLE II.
WRITTEN MEDICAL REPORTS
(Prepared for Courts or Attorneys)

A. General

In addition to, or as an alternative to, a routine medical records request, the physician may receive a request from an attorney for a specifically prepared report.

1. As with routine records requests, when a report is requested on a physician's patient, the attorney must provide the physician with a signed authorization form from the patient or a copy of the order of the court. Under no circumstances should a physician furnish an attorney records, copies or reports without proper authorization or subpoena. However, no authorization is required when an attorney or insurance company retains the physician to conduct an independent medical examination of a person, as there is no physician/patient relationship.

2. Attorney requests for reports from a physician should be made in writing. Where possible, the attorney should advise the physician of the particular areas of concentration which are desired in the medical report. it is seldom wise to suggest to the physician any particular desired result, but it is helpful to the physician to know, as an economy of professional time, whether the examination should be limited to a particular area or a particular series of signs and symptoms.

3. The physician may charge as a reasonable fee for the preparation of this specific report.

4. The attorney should be aware that discussion of medical matters with patient/client may, in certain instances, produce adverse effects in that patient/client.

B. Content of Report

1. The following, where applicable, should be included in the report:

   a. Date, time and place of first visit.
   b. The history and named informant of the injury or medical conditions, including pre-existing disease or prior injury.
   c. Nature of examination and findings.
   d. Results of laboratory work, X-rays and consultations.
   e. Opinion, including (where information and the examination permit) diagnosis and prognosis. The opinion should evaluate future disability, the necessity for future treatment or surgery, if any, and the effect or aggravation of any pre-existing disease or prior injury.
   f. Extent of past, present and probable future disability impairment.

2. In addition, where the report is made by a treating or consulting physician with respect to a patient's condition the physician should:

   a. State the patient's condition and whether patient has been discharged.
   b. On subsequent examinations include complaints and evaluation of condition, nature of treatment, confinement to hospital or name, referrals to other physicians, patient's progress, results of X-rays, ECG's, EEG's, laboratory procedures and consultation, and a concluding diagnosis and prognosis (see 1.e. above).
   c. Enclose separately an itemized statement of charges for actual medical services rendered to date. Omit charges for medical reports or attorney consultations; these should be billed separately.
   d. Include estimate of probable cost of future medical care.
   e. Omit reference to insurance, patient payments or other compensation, unless requested by the attorney.

ARTICLE III.
MEDICAL EXAMINATIONS

A. General

1. A party to a lawsuit or worker's compensation claim may be required to undergo a medical examination by law, agreement of opposing attorneys or under a court order, with the written report of such examination to be provided to all parties.

2. When an appointment is made for the medical examination, the physician sets aside a part of the day for that purpose. The attorney for the party to be examined should give explicit instructions to such party that the physician must be notified in ample time (48 hours) if the party cannot keep the appointment. Otherwise, the physician is justified in making a reasonable charge for such cancelled time, if the physician's time is not otherwise professionally employed.

B. Scope of Examination

1. The scope of an examination may be limited by the agreement of the attorneys or the court order. The attorney requesting the examination has the responsibility of notifying the physician of any such restriction sufficiently in advance to permit the physician to refuse to conduct such limited examination, if the physician's professional judgment is an unwillingness to do so.

2. Subject to the limitation, the physician may take a history and perform such examinations as may be advisable in the physician's judgment to formulate an informed opinion regarding the nature and extent of the party's medical condition.

3. A third party, such as a court reporter, an attorney, or a representative of the patient, may attend a compulsory physical examination unless that presence would be disruptive, superfluous, or inappropriate.

4. The provisions of this section may be modified by court order or by agreement of both counsel and the physician.

ARTICLE IV.
DEPOSITIONS AND SUBPOENAS

A. Deposition Defined

A deposition is an official proceeding, authorized by law, whereby a person, such as a physician, may be required to give testimony and be cross-examined under oath outside of court before an official court reporter and in the presence of attorneys representing the parties. The physician may be required to produce pertinent medical records a the deposition. The physician may also be requested to release the records to the court reporter for duplication and immediate return. A physician who does not wish to part with original records when brought to the deposition should bring a complete photocopy of them available for submission to the court reporter.

B. Subpoena Defined

A subpoena is a legal document issued under the power of the court by the attorney preparing and issuing the subpoena. A subpoena commands a witness' presence with or without documents and record, and cannot be ignored. A physician must honor a subpoena served personally or through an authorized representative (nurse or other employee). Legal counsel should be sought in the physician feels that the subpoena is improper for any cause.

C. Physician-Patient Privilege in Florida

1. In a personal injury suit or worker's compensation claim, the law provides that the plaintiff, by bringing the action, places physical and emotional conditions in issue as to those matters concerning the claimed injury.

2. With certain exceptions, according to present Florida law, there are no privileged communications for physicians as there are for psychotherapists.

3. It is the duty of the physician to answer questions or disclose the contents of medical reports, unless excused by order of the court.

4. When the physician is in doubt as to furnishing records if one lawyer is telling the doctor "to tell it" and another is telling the doctor "don't tell it," the physician should seal the records and give them to the court reporter.

D. Time and Place

The time and place of the deposition should be set by the attorney through mutual agreement with the physician. Unless there is a compelling reason to the contrary, it should be taken at the physician's office. A physician, however, is required to appear wherever the notice of deposition specifies as to time and place. Failure to attend a deposition may subject the physician to contempt of court. The physician and attorney should respect the scheduled time and attend the deposition at the scheduled time and place.

E. Subpoena to Appear

1. If the deposition of a physician cannot be set by the attorney through mutual agreement, the physician's attendance can be required by subpoena. As a courtesy, the attorney should notify the physician that a subpoena will be served. A subpoena is not an irrevocable order to appear at whatever cost. Under ordinary circumstances, it should not require the cancellation of surgery or of appointments, some of which may be for persons traveling a great distance.

2. In the event that the subpoena is truly inconvenient, the physician may:

   a. call the subpoenaing attorney and explain the difficulties which the subpoena creates in an attempt to resolve the scheduling conflict.
   b. contact his own or other legal counsel, such as counsel for the party for whom the examination was made, and move the court to nullify the subpoena as burdensome or oppressive, or to set an alternative time.

3. The physician should be advised that reasonable compensation will be awarded in any case requiring the physician's professional opinion. If an agreement cannot be reached with the subpoenaing party as to the amount, the physician is entitled to have the court determine the amount, including the preparation time. The cost of litigation ultimately is borne by a party in the litigation and should always be kept to a minimum, and the spirit of cooperation between the professions will work to this end.

4. Charges for pre-deposition or post-deposition conferences should be billed to the attorney scheduling the conference.

F. Subpoena of Medical Records

In many cases, the physician's custodian of records will be subpoenaed (Duces Tecum) to produce all of the records pertaining to the patient. Custodian of records means the person who has the delegated responsibility for control of the files in the office, and usually this requirement is met by the office manager, nurse or receptionist. The custodian of records must bring theoriginal records unless the attorney subpoenaing such records state a photocopy is sufficient. The physician may make a reasonable charge for the photocopying of records. Suggested reasonable charges are set forth in Article I,

Section E. Other arrangements satisfactory to the physician may be made for the reproduction of records by a record service, investigator, or other authorized parties.

Under the Florida court rules, a party desiring production of records may accomplish this without a deposition by obtaining issuance of a subpoena for records without deposition. A subpoena will be issued for the production of documents and delivered to the physician's office. In the absence of an objection from a party litigant or the physician, the physician can deliver or mail legible copies of the documents to the party serving the subpoena.

The physician may condition the preparation of copies of the documents on payment in advance of reasonable cost of preparing the copies.

G. Preparation and Demeanor

Since the testimony given at deposition may be read at the trial, it is important that the physician, prior to deposition, prepare as if for trial and the attitude and demeanor at deposition be similar to that at trial. The attorney's time is also valuable. Therefore, the physician should make every effort to commence depositions on time.

H. Deposition/Conference Fees

1. Since the physician whose deposition is taken may be called upon to give expert testimony, the physician is entitled to charge a reasonable fee for the deposition. It is urged that the attorney discuss this charge with the physician before the deposition is taken. The physician may request payment in advance. In a worker's compensation claim a health care provider's deposition fee may not exceed $200.00.

2. When an attorney requests the services of a physician for a deposition, the attorney is responsible for the physician's fee. it is desirable that such request and authorization be specified in writing prior to the physician's testimony. The deposition fee should take into consideration that the deposition is set in the physician's office for the physician's convenience.

I. The Physician As A Witness

The physician should testify in a dignified, forthright manner whether in court or at a deposition. The physician may be firm in expresing opinions, but should not testify as an advocate.

J. Choice of Language by Medical Witness

The physician should use appropriate language whenever possible. The physician should bear in mind that testimony is addressed to lay people. if it does not help explain and clarify, it has not achieved its purpose. Technical expressions should be followed with simplified explanations. Simplicity is the hallmark of excellence in testimony.

K. The Physician on the Witness Stand or at Deposition

It is proper for opposing counsel to cross-examine the physician with respect to qualifications, fees, accuracy of memory, records, the diagnosis, prognosis and other opinions, as well as any other facts bearing on the weight and credibility of the physician's testimony. A witness should avoid being discourteous to the cross-examiner. By becoming discourteous, the physician may lose effectiveness as a witness.

ARTICLE V.
RELATIONSHIP OF PHYSICIAN AND ATTORNEY PRIOR TO TRIAL

A. Privileged Information

When a physician has been retained to act as an expert witness to one of the parties in a legal matter, the physician should not consult with the opposing parties, unless authorized by the retaining attorney. Any information obtained from the attorney is privileged under the lawyer-client privilege, or may be privileged as part of the attorney's work-product. A physician who is presently treating a patient should not agree to act in a consulting capacity to a party in opposition to the patient, not should an attorney request such.

B. Conferences Between Physician and Attorney

1. The physician and retaining attorney may confer prior to trial (or deposition or hearing), at which time medical legal issues may be discussed.

2. Frequently, medical opinions and legal results do not coincide. An attorney will often have a pre-deposition or pretrial conference with a physician to explain how the law applies in a given case so a physician can render medical opinions in a lucid and coherent manner which conform with the rules of law.

3. The conference should be held at a time and place mutually convenient to the physician and attorney. The attorney and physician should fully disclose and discuss the medical information involved in the controversy. Occasionally, attorneys have conflicts and must cancel depositions or conferences on short notice. Since a physician's schedule has allotted time to have conferences, reasonable notice should be given to the physician so time can be properly utilized. Should an attorney cancel a conference on shorter notice, the physician is ethically entitled to charge a reasonable fee, if so wishing, for the unfilled time. in the event of a medical emergency, the physician should notify the attorney as soon as possible so that the attorney can properly utilize that time.

4. Charges for these conferences or depositions should be reasonable and fees are due and payable in full by the attorney within thirty (30) days of submission of the physician's bill. The amount of the physician's bill should never be contingent upon the outcome of the case or the amount of damages awarded.

5. Any fees to be charged by any physician in conjunction with litigation should thoroughly be discussed at the beginning of the association between the physician and attorney. This should include consultation fees, "independent medical examinations," deposition time, court appearance, and copying. A follow-up letter should be sent to the physician for confirmation of the fee arrangement.

C. Punctuality at Conferences and Depositions

When an appointed time is arranged for a deposition or a conference, all parties shall so arrange their schedules as to be available at the agreed time and place. Each party shall promptly notify the other party if unable to be present or will be late.

ARTICLE VI.
THE PHYSICIAN AND THE LAW

A. General Information Concerning Trial

1. All jury cases are set for trial for a one, two or three week period, commencing on a Monday morning. As a result, physicians are sent subpoenas for the trial period and a definite time is often impossible to set for the physician's appearance. The physician is placed on standby (alert). This should be stated or attached to the subpoena so the physician will know a call to testify will come sometime that week or the following two weeks. The attorney's secretary should periodically keep the physician advised as to the progress of the case so the physician will have some advance notice and can schedule patients accordingly. If a case is concluded and the physician is not required to testify even though on standby, a fee cannot be charged for standby, unless the physician's practice schedule had to be altered. When a case has been concluded, the attorney should notify the physician as soon as possible. Communication between the two offices is absolutely essential to maintain and promote good will between the professions.

2. The attorney is encouraged to ascertain when the physician's schedule will best accommodate a court appearance and attempt to organize the case accordingly.

3. It is also suggested that the attorney notify the physician of the date of trial as soon as this fact is known. If the physician is going to be unavailable during that period, the attorney should be alerted immediately so the attorney can act accordingly; i.e., postpone or continue a trial. This also gives the attorney advance notice, should there be a need to depose the physician o have the testimony given by the physician videotaped to mutually assist each professional.

B. Subpoenas for Trial

Some attorneys will not subpoena a physician they expect to call as a witness, preferring to make personal arrangements with the physician and relying upon the physician's promise to appear. Other attorneys subpoena medical witnesses because:

a. it may be desirable in a particular case for the physician to be able to so testify, if asked, or

b. it may be essential in order to secure a continuance if for any reason the physician is unable to appear as planned.

C. Recommended Policy Regarding Subpoenas and the Physician's Appearance

1. An attorney should notify a physician in advance of the service of a subpoena, unless it would be detrimental to the client's interest to do so.

2. The attorney shall make advance arrangement with the physician regarding the time the physician will be called to testify. An attorney must often rearrange the order of witnesses for various reasons. The trial attorney must give the physician as much advance notice as possible of any change in the time the physician is going to testify.

3. Recognizing the time demands of the medical profession, attorneys shall make every effort to avoid unnecessary inconvenience for the physician. Notwithstanding, the physician's testimony may not occur on

schedule. The process of law and the time of other individuals must also be recognized and respected by the physician.

D. Duty to Testify

Our system of justice depends upon being able to require any citizen's attendance at a judicial proceeding and to give testimony regarding the case. There is a legal obligation of the physician to respond to a subpoena as any other citizen.

ARTICLE VII.
TRIAL PROCEDURE

The attorney should treat the physician on the stand with courtesy and tact; however, the physician should realize that under the "adversary system," it is permissible and not unusual that other than a completely objective attitude may be used by the attorneys during cross-examination.

A. The Province of the Objection

Trials are governed by the rules of evidence. When an attorney makes an objection to a question, the attorney is merely requesting the court to decide the legality of the question. If, after the court makes its ruling, and the physician is in doubt whether to answer the question, the physician should ask the judge. Any witness may ask for clarification of a question.

B. Categorical Answers

When a physician feels that "yes" or "no" will not accurately answer a question, this should be so stated. Permission will usually be given to qualify or explain the answer.

C. Hypothetical Questions

1. It is occasionally necessary to use hypothetical questions in eliciting testimony from expert witnesses, but these questions can be very troublesome and confusing unless proper care is taken to be sure that all of the elements of the question are clearly expressed and are not ambiguous. They further must properly reflect the testimony which has been submitted or that which the party expects to submit in support of the contentions. It is therefore recommended that, wherever feasible, the questions should be submitted by the attorney to the physician in advance written form to eliminate as far as possible any misunderstanding that might otherwise arise. If the hypothetical question is lengthy or complicated, it is preferable practice, wherever possible, for the attorney to submit it to opposing counsel and, if need be, to discuss it with court in chambers in advance of reading it to the physician on the stand. Circumstances and time constraints may not permit this practice before and during trial.

2. The expert witness, in answer to the question, must make sure that all of its elements are understood and that it is complete enough so that the expert witness can properly predicate an opinion thereon.

3. The answer to the hypothetical question must be based exclusively on the facts stated in the hypothetical question. No other facts can form the basis for the answer. Unless told by the judge to do otherwise, the physician must assume the facts presented in a hypothetical question are true.

ARTICLE VIII.
COMPENSATION TO PHYSICIAN

A. Physician Charges for Professional Services Rendered

1. Many physicians find the problem of appropriate professional charges for services related to cases in litigation confusing. Such confusion is encountered whether the services are requested by the patient or by the attorney for either side. Recent rulings have held that fee schedules amount to probable violations of anti-trust laws.

2. All physicians are accustomed to setting a fixed fee for an office visit. Upon analysis, such fee is based upon an average amount of time which they expect to spend with the patient. The time required will necessarily fluctuate from patient to patient. The fixed fee for an office visit is based upon the education, experience, time and professional expertise and professional standing of the physician.

3. It is suggested that charges for professional services related to cases in litigation be established in a similar manner. As an example, a physician is asked to appear and testify in a trial. It is preliminarily estimated that the physician's attendance will be required between 9:00 a.m. and 12:00 p.m. The physician should be compensated for travel time. Applying a "time scale" based upon the physician's own experience, the calculation could be made as to how many office visits the physician would normally be able to accommodate in this same period of time. Allowances can be made for any special circumstance, such as travel expense or the requirement of cancellation of other appointments, and a fair charge would be based upon the "unit" measure of office visits.

B. Responsibility for Payment

1. Whenever the attorney requests services from the physician, the attorney is responsible for the payment of those services promptly when billed unless other arrangements are made in advance. It is recognized that these charges may ultimately be borne by the patient. Examples of services which may be requested and paid for by the attorney are the following: examination and preparation of written reports requested by the attorney; conferences with the attorney; research; record review and appearance for deposition; and court or administrative appearances.

2. An attorney is not to request the physician to testify, nor should the physician be subpoenaed, without prior arrangements having been made for reasonable compensation. As to reasonable compensation charges, refer to preceding paragraphs.

3. Physicians may request payment in advance of rendering the service requested by the attorney. in any event, it is contemplated that the service will be billed and paid promptly. A subpoena is legally binding regardless of payment.

4. When there is a disagreement as to the fee or service involved, both parties should resolve the dispute by submission of the matter to the appropriate medical/legal committee established hereafter by this guide.

5. A physician may not, under any circumstances, ethically charge a fee for an examination, or for testifying, which is contingent upon the outcome of the litigation in which the physician testifies.

6. The patient is responsible for the physician's charge for treatments even though the patient's injuries may be the subject of litigation. It is the responsibility of the attorney to make such obligation known to the attorney's client. This responsibility of the client for treatment is to be distinguished from the direct responsibility of payment by the attorney for services requested by the attorney as described above.

7. In some cases the patient cannot pay all of the physician's bills for services as they are rendered. There are various ways of dealing with this. For example, the physician may have the client execute an assignment, or the physician may ask the attorney to execute a letter of protection with the client's permission. (See Exhibits B and C.)

ARTICLE IX.
CONSIDERATION AND DISPOSITION OF COMPLAINTS

A. Avoiding Interprofessional Complaints

The public airing of any complaint or criticism by a member of one profession against the other profession, or any of its members, is to be discouraged. Such complaints of the violation of principles of this guide, should be referred by the complaining physician or attorney through their appropriate Association to the joint committee of both professions and all such complaints or criticism should be promptly and adequately processed.

To this end, the Pinellas County medical Society and the St. Petersburg and Clearwater Bar Associations have appointed members to a standing committee which volunteers to arbitrate disputes among professionals in Pinellas County. Both sides involved in the dispute will be contacted by a member of the committee and an informal, advisory opinion rendered.

B. Disputes/Arbitration

1. When the dispute is no resolved informally, the physician and attorney involved may submit, upon agreement, their grievance directly to a formal arbitration committee established by either of the bar associations and the medical society, or a committee established by those organizations, and agree to be bound by the findings of the arbitrators. This is a purely voluntary procedure but one that shall be open to all professionals.

2. Alternatively, if the parties cannot resolve their dispute, they may agree to submit the matter in controversy to alternative arbitration and to be bound by the findings of the arbitrators. The suggested arbitrator is one member designated by the physician, one member designated by the attorney and both of the designated parties to elect a third member. The arbitrators shall then hear the matter and receive whatever information they deem necessary to the resolution of the problem and thereafter render their decision in writing, which shall be final. This is an alternative method only, and it is suggested that the method described in (1) above, be utilized whenever practical.

3. The bar associations and the medical society shall establish a joint committee for the purpose of establishing policies and procedures for binding arbitration. The policies and procedures established shall be made known to the parties before they agree to submit to such arbitration.

Exhibit "A"

Florida Statute, §455.241 Patient records; Report or Copies of Records to be Furnished. –

1. Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or patient's legal representative the practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such copies shall not be conditioned upon payment of a fee for services rendered.

2. Except as otherwise provided in s. 440.13(2) such records may not be furnished to, and the medical condition patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization to any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent or when compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical record shall be furnished to both the defendant and the plaintiff. Such records may be furnished in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or patient's legal representative by the party seeking such records. Except in a medical negligence action when a health care provider is or reasonably expects to be named as a defendant information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given. The department or the Agency for Health Care Administration, as appropriate, may obtain patient records pursuant to a subpoena without written authorization from the patient if the department or the Agency for Health Care Administration and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a practitioner has practiced his profession below that level of care, skill and treatment required as defined by this chapter or any professional practice act; provided, however, the patient record obtained by the department or the agency pursuant to this subsection shall be used solely for the purpose of the department or the agency and the appropriate regulatory board in disciplinary proceedings. The record shall otherwise be confidential and exempt from s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the practitioner shall release records of treatment for medical conditions even if the practitioner has also treated the patient for

mental or nervous disorders. If the department or the agency has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department or the agency may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine or any part thereof are protected under the psychotherapist-patient privilege.

3. All patient records obtained by the department or the Agency for Health Care Administration and any other documents maintained by the department or the agency which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department or the Agency for Health Care Administration and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the Agency for Health Care Administration or the appropriate board. These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

4. A health care practitioner furnishing copies of reports or records pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board.

Rule 61F6-26.003 Costs of Reproducing Medical Records.

(1) Any person licensed pursuant to Chapter 458, F.S., required to release copies of patient medical records may condition such release upon costs of reproducing the records.

(2) Reasonable costs of reproducing copies of written or typed documents or reports shall not be more than the following:

(a) For the first 25 pages, the costs shall be $1.00 per page.

(b) For each page in excess of 25 pages, the cost shall be 25 cents.

(3) Reasonable costs of reproducing x-rays, and such other special kinds of records shall be the actual costs. The phrase "actual costs" means the cost of the material and supplies used to duplicate the record, as well as the labor costs and overhead costs associated with such duplication.

EXHIBIT "B"
ASSIGNMENT

I, _____, hereby authorize and direct my attorney, _____, to pay to _____, from the net proceeds* of any settlement or recovery as a result to the injuries sustained by me on _____, 19__, the unpaid balance of any reasonable charges for professional services rendered by said physician and the physician's associates on my behalf, arising as a direct result of said accident, said professional services to include those for treatment heretofore or hereafter rendered to the time of the settlement or recovery, as well as those for medical reports, consultations, and court appearances on my behalf. Payment of this amount as herein directed shall be the same as if paid by me. This authorization to pay my physician shall constitute and be deemed an assignment of so much of my net recovery from my case as shall cover the aforesaid charges. I understand that this assignment in no way relieves me of my personal responsibility and obligation to pay my physician for all charges for the services rendered.

Under no circumstances is this assignment revocable nor can it be changed unless proof of payment in full of the doctor bill is shown. And I hereby further give a lien on the net proceeds due me from my case to said doctor against any and all proceeds of any settlement, judgment or verdict, which may be paid to you, my attorney, or myself as a result of the injuries for which I have been treated or injuries in connection therewith.

In the event there are insufficient funds from my net proceeds with which to satisfy all protected medical expenses outstanding, then expenses will be paid on a pro-rata basis to all medical providers, so as not to unfairly prejudice or benefit one as to the other.

I understand that the physician's fee for services rendered is not contingent upon the outcome of this litigation and that said fees will be my responsibility regardless of the outcome of this litigation.

DATE:_____

I accept the above assignment:

_____

_____Name of Attorney

_____Address of Attorney

DATE:_____

_____Patient's Signature

_____Address of Patient

*Net proceeds are those proceeds to be paid after attorney's fees, court costs, and other court-related expenses incurred are deducted.

EXHIBIT "C"
LETTER OF PROTECTION

An attorney, with the consent of the client, can write the physician a letter of protection to delay collection and obtain further medical services for the client. The letter generally says that: (1) the attorney represents the client; (2) suit has been filed against the defendant with the intent of extracting a cash recovery; and (3) if and when monies are recovered, the physician will be paid in whole or in part.

Courts will likely construe letters of protection to be enforceable agreements to pay a debt out of an ascertained fund upon recovery of the fund. A letter of protection can relieve the client from collection efforts and make further treatment available during pendency of the suit. An attorney is protected in that the duty to pay on behalf of the client is contingent upon the receipt of funds. A letter of protection secures a physician by identifying a potential fund from which a physician's bills may be paid.

SAMPLE

RE: Patient:
Date of Accident:

Dear _____:

This Office represents the above referenced patient in connection with a claim for injuries received on the date indicated.

This will confirm that from the net proceeds of any settlement or judgment for damages recovered on the liability claim, we shall protect any outstanding balances with you for reasonable and necessary medical services.

Thank you for your cooperation in this matter.

Very truly yours,