



Montgomery County Medical Society

Pennsylvania Osteopathic Medical Association

District 10 - Montgomery County

Montgomery Bar Association

2004

Contents

TABLE OF CONTENTS	3
MEDICAL/LEGAL CODE OF ETHICS	8
Montgomery County Medical Society	8
Montgomery Bar Association	8
Pennsylvania Osteopathic Medical Association	8
District 10- Montgomery County	8
PREAMBLE	8
I. ATTORNEY’S DUTIES TO CLIENT	8
II. PHYSICIAN’S DUTIES TO ESTABLISHED PATIENT	8
III. MEDICAL AUTHORIZATION	8
IV. MEDICAL REPORTS	9
V. MEDICAL RECORDS	9
VI. REASONABLE COST FOR PRODUCTION OF RECORDS	10
VII. EXAMINATION AND/OR EVALUATION	
BY A NON-TREATING PHYSICIAN	10
VIII. CONFERENCES BETWEEN PHYSICIAN AND ATTORNEY	11
IX. SCHEDULING TESTIMONY	12
X. SUBPOENAS ON PHYSICIANS	12
XI. CONDUCT OF PHYSICIANS AS WITNESSES	12
XII. CONDUCT OF ATTORNEYS TO PHYSICIANS AS WITNESSES	12
XIII. PHYSICIAN’S FEES	13
XIV. COMPLAINT OF VIOLATIONS	14
Medical/Legal Joint Professional Committee	15



MONTGOMERY BAR ASSOCIATION

100 West Airy Street / PO Box 268 / Norristown, PA 19404-0268
(610) 279-9660 / FAX (610) 279-4321
E-Mail: mail@montgomerybar.org

Marc Robert Steinberg, President
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October 9, 2003

On behalf of the Montgomery Bar Association, I commend the Members of the Medical Legal Joint Professional Committee for their diligent efforts on behalf of our two great professions to achieve completion of the revisions to the Medical Legal Code. This is an important document which addresses many of the concerns the two professions share when dealing with one another.

This Code of Ethics is an effective guide towards mutual understanding between the medical and legal professions in order for all of us to better serve our patients and clients. It fosters civility between physicians and attorneys, and helps maintain the line of communications necessary for effective advocacy on behalf of all.

The Montgomery Bar Association endorses the Medical Legal Code, and looks forward to a strong partnership with the Montgomery County Medical Society and District 10 of the Pennsylvania Osteopathic Medical Association in providing the finest professional care and service to the public.

Respectfully yours,

MARC ROBERT STEINBERG
President, Montgomery
Bar Association

MRS:say

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19404

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ALBERT R. SUBERS

October 28, 2003

I have reviewed the 2003 revisions of the Medical/Legal Code of Ethics and again find them to be an excellent example of the continuing cooperation and commitment of the Montgomery County Medical Society, Pennsylvania Osteopathic Medical Association District 10 – Montgomery County, and the Montgomery Bar Association to define and promote mutually beneficial standards of conduct.

To effectuate a better relationship between the professions by establishing standards of ethics and civility, inures to the benefit of the patient and the client, and is essential to the effective administration of justice.

The Court of Common Pleas of Montgomery County is pleased to recommend support for and implementation of the revised Medical/Legal Code of Ethics.


S. GERALD CORSO, President Judge

SGC/mm



Montgomery County Medical Society

December 1, 2003

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Dear Colleague;

Medical ethics originated in the fifth century B.C. with the Oath of Hippocrates. In 1803, Thomas Percival, an English physician published his Code of Medical Ethics. In 1847, at the first official meeting of the American Medical Association, an updated code of medical ethics, was written. The general concepts of these publications have remained the same and guide our professional conduct today.

The Board of Directors of the Montgomery County Medical Society is pleased to share with our members the most recent version of the Medical-Legal Code of Ethics. Through a joint effort with the Montgomery County Bar Association, the enclosed document has been prepared.

This code of ethics is intended as a guide to professional responsibilities and obligations. The Board of Directors encourages comments and suggestions for future editions of this publication.

King of Prussia Medical Center

491 Allendale Road, Suite 323

King of Prussia, PA 19406

Sincerely,

Charles Cutler, M.D.
Chairman
Board of Directors

Tel: 610-878-9530

Fax: 610-878-9533

Alice J. Zal, D. O., FACOFP
Family Medical Care

710 East Johnson Hwy - Norristown, Pennsylvania 19401-3110
TEL: 610-275-5599 FAX: 610-275-2157
610-316-8079

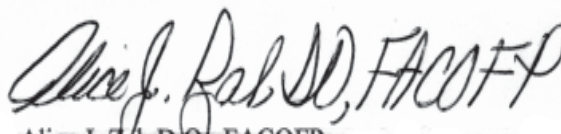
Certified in Family Practice / Geriatrics

November 15, 2003

The Medical Legal Code of Ethics is an essential part of District 10 of the Pennsylvania Osteopathic Medical Association. It has a distinguished history of providing aid and support to individuals with medico-legal problems. The actions of this code have provided relief from unnecessary grief to many residents of Montgomery County over the years.

This third revision of the Joint Medical-Legal Code reflects the ever changing face of medical confidentiality and patients rights. It is through a joint effort, set forth in this document, that we hope to provide the best coordination of care to the physician's patient and the lawyer's client.

District 10 of the Pennsylvania Osteopathic Medical Association is pleased to support the magnificent efforts of the Medico-Legal Committee to achieve its Code of Ethics. We are looking forward to a very positive relationship with our medical and legal brethren to provide superior services to the citizens of Montgomery County.



Alice J. Zal, D.O., FACOFP
Chairman of District 10
Trustee-at-Large
Pennsylvania Osteopathic Medical Association

MEDICAL/LEGAL CODE OF ETHICS

Montgomery County Medical Society Montgomery Bar Association Pennsylvania Osteopathic Medical Association District 10- Montgomery County

PREAMBLE

The purpose of this Code is to establish standards of practice for ethical conduct for and between physicians and attorneys in those areas where there is interrelationship of medical and legal practice so that the physician and attorney may render better service to the patient and client and promote more effective administration of justice.

In their relationships with each other, physicians and attorneys shall abide by the Canons of Ethics of their respective professions.

This Code constitutes recognition that the members of each profession have an obligation to the individual who obtains their advice and assistance, as well as to the community and society as a whole. That individual who the physician refers to as “my patient” is known to the attorney as “my client”.

I. ATTORNEY’S DUTIES TO CLIENT

To properly prepare the patient/client’s case for settlement or trial, the patient/client’s attorney has the duty of acquiring pertinent information from the attending physician. Before and/or during the course of litigation, it is necessary for the attorney to correspond or confer with the patient/client’s physician and obtain written reports.

An attorney shall not misrepresent any facts or issues in order to improperly influence or mislead the professional opinion of any physician.

II. PHYSICIAN’S DUTIES TO ESTABLISHED PATIENT

The physician has the duty to treat the patient with care. The primary goal of the physician is to relieve suffering, prevent untimely death and improve the health of the patient while maintaining the dignity of the person.

The physician has a duty to communicate with the patient’s attorney in providing medical information. Written reports and testimony as requested and agreed to shall be subjective to the payment of the physician’s fees.

III. MEDICAL AUTHORIZATION

The treating physician should not give written or oral reports concerning the patient to attorneys, adjusters, investigators, or to any party, without express written authorization from the patient. Effective July 1, 1991, the Pennsylvania Supreme Court adopted Rule 4003.6, which states:

“Information may be obtained from the treating physician of a party only upon written consent of that party or through a method of discovery authorized by this chapter. This rule shall not prevent an attorney from obtaining information from

- (1) the attorney’s client.
- (2) an employee of the attorney’s client, or
- (3) an ostensible employee of the attorney’s client.”

Therefore, no physician should communicate with an attorney or any other person concerning a patient without the written consent of that patient. However, a physician should understand that a subpoena, properly served, will require a physician to communicate about the patient in a court setting, traditionally a deposition, hearing or trial.

IV. MEDICAL REPORTS

When the attorney desires a medical report, the attorney should make a written request for it from the attending or treating physician. This request should be accompanied by an authorization signed by the patient for the release of the information sought from the physician. This request should be specific and contain sufficient information to permit the physician to give a specific, concise and prompt report to include the following:

- S**ubjective Complaints
- O**bjective Findings
- A**- Clinical **A**ssessment
- P**roposed Plan of Treatment and Care

Physician’s charges to date and anticipated expense for future medical or surgical treatment, if available.

The physician may request and receive payment before preparing the report. The physician, if not paid in advance, should attach a bill to the report. Report should be promptly completed and forwarded to the requesting attorney. Prompt payment of the bill is the responsibility of the requesting attorney.

V. MEDICAL RECORDS

The physician is obligated to produce copies of all medical records, including records of other medical providers, as well as hand written notes of the physician and staff, upon receipt of proper patient authorization or a proper subpoena. A physician may request a patient consent request in addition to the subpoena and proper patient authorizations.

If the physician believes there are records that should not be released, the requesting attorney should be advised as to the identity of the records withheld and the reason for so doing.

Records can be subpoenaed to be delivered to an individual attorney, law firm or representative thereof when a Notice of Intent to Serve Subpoena is served upon the attorneys for all parties at least 20 days in advance, and all parties agree to production at a location other than the courthouse.

A subpoena by a record copy service issued in accordance with Pa. R.C.P. 4009.21, et seq. is valid. Such a subpoena should include the statement "...You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought." Pa. R.C.P. 4009.26.

When responding to a subpoena for records by a record copy service, the physician has the option of copying the records and charging the copy service a copy fee (**the physician should never surrender the original records**) or to request a formal deposition.

VI. REASONABLE COST FOR PRODUCTION OF RECORDS

Pennsylvania Legislative Act 26 has designated the "reasonable costs" to be charged by health care providers and health care facilities (42 Pa. C.S.A. 6152 (a)(2)(i)). These costs change yearly, effective January 1, based upon changes in the Consumer Price Index. Please refer to PA Legislative Act 26.

VII. EXAMINATION AND/OR EVALUATION BY A NON-TREATING PHYSICIAN

Where an examination and/or evaluation by a non-treating physician is made at the request of either party, a written request should be sent to the physician by the requesting attorney setting forth the nature of the examination and/or evaluation desired, and include copies of all pertinent medical records. The patient's attorney should orient the patient as to the purpose of the examination before the physician makes the examination. Any patient may have a tape recorder or stenographer present during the examination.

Non treating physicians need to meet the standards set under Pennsylvania Legislative Act 13, Section 512 -Expert qualifications. General rule is no person shall be competent to offer an expert medical opinion unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony. Medical testimony including standard of care, risk and alternatives, causations and nature and extent of the injury must meet the following qualifications: Possess an unrestricted physician's licenses to practice medicine in any state or the District of Columbia and be engaged in or retired within the previous five years from active clinical practice or teaching. Additionally an expert testimony as to a physician's standard of care also needs to be substantially familiar with the applicable standard of care for a specific care issue as of the time of the alleged breach of the standard of care.

The patient may request the presence of his/her attorney or representative at the examination and the physician shall be so advised when the examination is scheduled. The examining physician can request that such a request be put in writing for his/her file. It is proper for the patient to have his/her attorney or other representative present at the examination. However, if the examining physician objects to the presence of the attorney/representative, the physician may refuse to conduct the examination or the patient or attorney/representative may refuse to permit such examination to proceed.

If the attorney or other representative is present at the examination, he/she should not question the physician or discuss the case with the physician, except to respond to the physician's questions about health issues. His/her presence is for the purpose of observation only. However, the attorney/representative may instruct the patient not to answer improper questions.

The non-treating physician should promptly send the report of the examination and/or evaluation to the requesting attorney. The report should be clear and concise.

The physician may request and receive payment before preparing the report. The physician, if not paid in advance, should attach a bill to the report. Report should be promptly completed and forwarded to the requesting attorney. Prompt payment of the bill is the responsibility of the requesting attorney.

VIII. CONFERENCES BETWEEN PHYSICIAN AND ATTORNEY

The attorney and physician should confer with each other before the physician testifies at any proceeding. At the conference, the common problems involved in the case should be candidly discussed.

The attorney has the responsibility of acquainting the physician with any particular problems that might enter into the case or involve the physician and, with the assistance of the physician, determine the areas in which the physician will be called upon to testify. The attorney should familiarize the physician with applicable evidentiary standards and contents of any proposed hypothetical questions.

The physician in such a conference should familiarize the attorney with the medical problems in those areas of testimony in which the physician is qualified to cover.

Each should be mindful of the demands put on the other's time in making appointments for conferences and time spent in conferences. If for any reason either is unable to attend the appointed conference, the individual unable to keep the scheduled appointment shall notify the other promptly of such cancellation. Since delays, postponements and cancellations frequently occur, the physician should be compensated for the professional time lost for such conference cancellations unless notified 24 hours in advance, and such compensation should be agreed upon at the time the conference is scheduled.

IX. SCHEDULING TESTIMONY

The attorney should make every effort to be economical in the use of the physician's time. The attorney should give the physician reasonable advance notice of when and how long the physician will be needed in court or at depositions, advise the physician promptly of any changes in the time of needed appearance, and should call the physician as a witness upon arrival at court with as little delay as possible.

Video testimony is an alternative to a live court room appearance permitted by law. Such testimony should be scheduled in accordance with this code. If the physician has any time limits on availability for a scheduled video testimony, these time limitations should be discussed with the attorney well in advance of the scheduled date.

Physicians recognize that they must make their best efforts to be in court at the time requested; attorneys recognize that emergencies arise in the provision of medical care. In the event that such an emergency does arise, the physician should notify the attorney who requested his/her appearance in court as soon as possible of his/her inability to be present and also advise as to the earliest time that he/she will be available to testify.

X. SUBPOENAS ON PHYSICIANS

The attorney should determine whether the physician should be served with a subpoena. If the physician is to be served with a subpoena, the attorney should advise the physician of the reason therefore; for example, that service of a subpoena is necessary to lay the foundation for a continuance if the physician is unable to attend the trial. If service of a subpoena is to be made, the attorney should advise the physician in advance and, if possible, arrange for the service of the subpoena at the time and place satisfactory to the physician. The physician should be paid promptly by the attorney who served the subpoena at an agreed upon fee for time spent in responding to such subpoena.

XI. CONDUCT OF PHYSICIANS AS WITNESSES

The physician's testimony should be unbiased and given in terms understandable to the jury. The physician should be prepared to testify in detail as to qualifications, the medical facts of the case and to give a frank and honest medical opinion in regard to the case. Technical or medical terms, if used, should be carefully and fully explained.

XII. CONDUCT OF ATTORNEYS TO PHYSICIANS AS WITNESSES

The physician and attorney, as professionals, should treat each other with the utmost respect and courtesy in the courtroom. Established rules of evidence give ample opportunity for testing the competency or credibility of a medical witness in a professional manner.

The physician should understand that there may be cross-examination with respect to qualifications, fees, any financial interests the physician may have in the case, the accuracy of the physician's records and/or memory, the soundness of the diagnosis, prognosis or other facts properly bearing upon the credibility of a medical witness or the weight to be accorded to that testimony.

XIII. PHYSICIAN'S FEES

Under no circumstances should a physician's compensation be contingent upon the outcome of litigation. An attorney should obtain from the client authorization to pay all reasonable expense arising out of the injury or condition giving rise to the lawsuit.

It is expected that the physician may charge a fee for time spent. Such fees should be agreed upon in advance. A physician may request that the agreed upon fee be paid in advance, and the attorney should honor such a request.

Basis for fees for testimony. The fee to be charged by the physician for testimony, whether or not subpoenaed, in any legal proceeding shall include but not limited to:

- (1) reviewing pertinent records;
- (2) rescheduling office appointments;
- (3) traveling to and from the designated place of hearing;
- (4) waiting for the scheduled appearance; and
- (5) presenting the testimony.

Conferences. The physician who spends time in conference, by telephone or otherwise, with the attorney to prepare the case shall be entitled to make a charge for the services so rendered.

The physician may request and receive payment before preparing the report. The physician, if not paid in advance, should attach a bill to the report. Report should be promptly completed and forwarded to the requesting attorney. Prompt payment of the bill is the responsibility of the requesting attorney.

Examination by treating physician. The physician who makes an examination at the request of the attorney shall charge reasonable value for the service so rendered, and the attorney shall insure payment of the physician's bill for services.

Examination and testimony by non-treating physician. Whenever an examination is requested by the attorney of a non-treating physician or whenever the attorney requests the physician to testify as an expert at the time of trial, the fee shall be such as is agreed upon between the attorney and physician.

The attorney and physician shall agree upon the means of payment of the fee for conference and examinations, and such payment shall be made promptly without any relationship to the outcome of the litigation.

Medical services fee. The attorney has the responsibility to encourage the patient to pay the physician's service charges in accordance with the law and to make every effort to obtain and submit to the physician the proper forms to secure such payment.

Medical information, by way of report or copies of records, should not be withheld because of an unpaid bill for medical services.

XIV. COMPLAINT OF VIOLATIONS

The failure to provide the courtesies suggested in this Code and any express violation of the provisions contained herein shall be referred to the Medical/Legal Committee for the complainant's Association or Society which will, in turn, meet with and hear the matter with the Medical/Legal Committee of the other Association or Society.

The complaint shall be submitted in writing, signed, and shall contain all pertinent information necessary to fully consider the matter.

After consideration by the committees of the Association and Society, the Association and/or Society shall attempt to have the matter amicably resolved in accordance with their recommendations. If the matter cannot be amicably resolved, the recommendations of the Association and/or Society shall be referred to the appropriate disciplinary body of the Montgomery County Medical Society, District 10 of the Pennsylvania Osteopathic Medical Association and/or the Montgomery Bar Association, with the understanding that such complaint may then be forwarded to the appropriate court or state agency.

Approved and adopted by:

Montgomery County Medical Society

Pennsylvania Osteopathic Medical Association
District 10- Montgomery County

Montgomery Bar Association

Medical/Legal Joint Professional Committee

Andre Blanzaco, M.D.
Bill Lander, M.D.
Alice Zal, D.O.
Ellen Casey, Esquire
Peter Villari, Esquire
Lee Cowperthwait, Jr., Esquire

Medical/Legal Committee
Montgomery County Medical Society

Walter I. Hofman, M.D.
Chair – 1999 through 2003

Medical/Legal Committee
Pennsylvania Osteopathic Medical Association
District 10– Montgomery County

Harold Schreiber, D.O.
Alice Zal, D.O.

Montgomery Bar Association
Medical/Legal Committee

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Lee Cowperthwait, Jr., Esquire
(2002-2003)

Vice Chair:

Peter Villari, Esquire
(2002-2003)

