

MEDICAL-LEGAL MATTERS

These fees cannot be correctly interpreted without reference to Preamble Section C, Clause 2, which includes information about how fees are set.

Non-MSP-Insured Services Generally

Fees listed in this fee guide for medical services that are not paid by or through MSP are referred to as “Non-MSP-Insured fees”. Recommended Non-MSP-Insured fees are determined by the Doctors of BC Tariff Committee in conjunction with Section representatives and in accordance with general policy established by the Board of Directors. They are not negotiated with or set by the Government, WorkSafeBC or ICBC.

The recommended Non-MSP-Insured fees are not to be construed as maximum or minimum charges, but are intended as a general guide for services of average complexity by which the individual physician dealing with the patient can set a proper and responsible value on the individual services provided. You are in no way obligated, ethically or otherwise, to use these recommended Non-MSP-Insured fees and you may charge either a higher or lower fee according to your own judgement. The Association will not enforce these fees on your behalf (however, there is a dispute resolution mechanism further described below).

Non-MSP-Insured Fees – Medical Legal Services

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.
- Criminal defence matters are compensated by the accused, his/her counsel or the Legal Services Society (LSS). LSS invariably pays the representative counsel for services provided to qualified person in civil, criminal and administrative matters, who then pays the physician.

Physicians should 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; and
- when payment will be due.

It is prudent to also arrange a fee at the same time for potential court appearance in relation to the report or opinion.

a) Reports

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 (*Independent Medical Exam or IME*).

Physicians giving an *expert opinion report* are generally qualified as an expert as per the Supreme Court Rules. The Rules specify what must be included in the report, such as qualifications, instructions provided to them, nature of the opinion and reasons for the opinion.

Physicians giving an *expert factual report* or letter will focus only on their observations and actions taken.

In settling on fees, physicians should consider the time actually spent on such matters as:

- examination of the patient, where applicable;
- review of medical records;
- preparation, dictation and revision of report;
- discussions with counsel.

b) Giving testimony in court/hearings for civil, criminal and administrative matters

i) Civil matters

Civil matters are non-criminal cases, for example those involving motor vehicle accidents, medical malpractice, family disputes, and disability or life insurance claims.

Compensation for giving oral testimony should include your appearance, plus preparation time and expenses.

Although physicians bring special training and experience to bear at trial, that is not determinative as to whether they are giving testimony as a fact witness or an opinion witness.

Physicians providing expert fact evidence will testify to their observations and actions taken. An opinion beyond what the evidence reveals is not necessary.

If a physician is appearing as an expert fact witness, counsel will normally contract with the physician for costs associated with attendance to give oral testimony. Some counsel may opt to only pay a \$20 witness fee for court attendance, plus reasonable preparation time and expenses (travel, meals and overnight accommodation if required). The witness fee is accompanied by the service of a subpoena.

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.

ii) Criminal and Government Administrative Cases

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 can make a claim for both hearing attendance and preparation. Scale "B" below reflects the fees and billing guidelines recommended by the Doctors of BC for these services.

LSS pre-approves the retainer and specifics, such as the fees, number of hours being funded, etc. for physicians who are testifying on behalf of the defence for an accused in a criminal matter which is being funded by LSS. Physicians may wish to refer to Scale "B" as a reference. Physicians should obtain a copy of the LSS approval and have agreement on the specifics with the accused's counsel prior to accepting the case.

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 choose to charge either the rates at Scale "A" or "B" or whatever rates they can agree to with the accused or his/her counsel.

c) Disputes

The Medical Legal Dispute Resolution Program is a joint initiative of the Doctors of BC, the Law Society of British Columbia and the College of Physicians and Surgeons of British Columbia. The Program's mandate is to attempt resolution of disputes regarding medical legal matters between the legal and medical professions. The process is confidential to the parties to the dispute, and referrals to the facilitator may be made by the Doctors of BC, the LSBC, the CPSBC, or by individual members of the respective professions. Contact the [Doctors of BC Fee Guide Advisor](#) for more information.

SCALE “A”

MEDICAL-LEGAL FEES

CIVIL MATTERS (NOT CRIMINAL PROSECUTION OR CRIMINAL DEFENCE)

	Non-MSP- Insured Fee (\$)
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.....	177.00
A00071 A Medical-Legal letter is defined as a short factual written communication given to any lay person (e.g.: lawyer, insurance representative) in relation to a patient’s medical condition for some purpose primarily unconnected with treatment	374.00
A00072 A simple Medical-Legal factual 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.....	1117.00
A00073 A Medical-Legal opinion report will usually include the information contained in the medical-legal factual report and will differ from it primarily in the area of 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 the physician’s expert knowledge and judgement with respect to those facts with a detailed prognosis Required to meet specific criteria to qualify for court admission as an expert report	1869.00
A00095 Review of paper or EMR records by physician (<i>for medical/legal purposes or transfer of patient records</i>) - per 15 minutes or portion thereof.....	105.00
NOTES:	
i) The fee for this service can be adjusted at the physician’s discretion based on the time and extent of physician involvement and secretarial and other direct or indirect costs such as cost of supplies to produce an electronic copy.	
ii) This fee is for review of the paper or EMR file only.	
iii) Photocopying paper records may be charged in addition.	
iv) At the physician’s discretion, an additional \$1.45 per page for paper copies is billable for large and/or complex charts.	
A00096 Photocopying per page (paper copies) (first 10 pages)	1.85
– subsequent pages - per page30

(see notes on next page)

**Non-MSP-
Insured
Fee (\$)**

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.

ORAL TESTIMONY

The following fees may be billed for court attendance, participation in depositions, witness discoveries, in-person meetings and telephone consultations with lawyers.

A00074	Testimony per day.....	2985.00
A00075	Testimony per half-day or less	1869.00
A00091	Preparation to give testimony, per hour	444.00
	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 hearing, scheduled consultation meeting, discovery, depositions, or trial adjournment or out-of-court settlement.....	2241.00
	NOTE: Fee item A00092 applies where the patient or legal counsel fails to give 5 working days' notice of cancellation of court or other legal appearance or meeting.	
A00009	Mileage:	
	– per mile	N/A
	– per kilometer	0.55

CROWN COUNSEL

SCALE “B”

MEDICAL EXPERT WITNESS FEES

CRIMINAL AND OTHER GOVERNMENT MATTERS

**Non-MSP-
Insured
Fee (\$)**

The following fees and billing guidelines are recommended when a physician provides expert testimony in a criminal or Government of British Columbia ministry, board or agency matter.

Preparation and Court Time (Per Hour):

A94525	– General Practitioner	253.00
A94526	– Specialist.....	296.00

Travel Time (Per Hour):

A94527	– General Practitioner	145.00
A94528	– Specialist.....	167.00

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

1. Travel to Site

- a) Time starts when the physician leaves home, office or hospital to go to the hearing location or Crown counsel office.
- b) Time ends when the physician arrives at the hearing location 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) Return time starts at the end of the 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.

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- 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 hearing 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. **Hearing Time**

- a) Hearing time includes all relevant professional activities, including preparation, interviews, discussions, testimony, listening to other testimony and associated waiting time.
- b) Hearing time starts when the physician arrives at the hearing location or Crown Counsel office or at 0900 hours if he/she had already traveled away from home on a prior day.
- c) Hearing time ends when the hearing ends or no other services are required, but continues to 1800 hours if further services are required next day and 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 hearing/preparation and travel are less than 8 billing hours, the balance up to 8 hours shall be billed as hearing/preparation time.
- g) Where physicians are testifying in their home community, hearing 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**

For the purposes of this section:

“Fees otherwise payable” includes travel time and hearing time and is in addition to preparation time already incurred.

“Working days” does not include Saturday, Sunday or Statutory holidays

- a) A cancellation is defined as a situation where the physician is informed that a previously arranged hearing appearance is no longer required or is to be rescheduled for any reason including testimony not needed, the hearing scheduling changes and adjournments.
- b) Where the physician is given more than 10 working days’ notice of cancellation of a hearing appearance, no compensation is payable.

Where the cancellation notice is received 10 full working days or less prior to scheduled commencement of travel (as defined in 1.a), the physician will be paid 100% of fees otherwise payable if the physician had attended the hearing, for each day or half day scheduled.

Fees otherwise payable includes travel time and court time and is in addition to preparation time already incurred. ***Working days*** does not include Saturday, Sunday or Statutory holidays.

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 a hearing location more than 32 km from his/her residence or where unusual road conditions exist which, for example, requires travel by ferry.