Providing medical reports in personal injuries cases

GPs have a responsibility to supply medical reports to patients’ solicitors, but should avoid using quasi-legal language, Susan Moriarty reports

GPs ARE OFTEN asked to provide medical reports by solicitors acting on behalf of patients who are taking personal injuries cases against third parties, eg. where a patient has been injured in a road traffic accident and is suing another driver.

Is a GP obliged to provide such a report?

GPs have a responsibility to supply medical reports for solicitors (or insurance companies) on behalf of patients they have seen or treated professionally or for whom they have been responsible.¹

The patient must consent in writing prior to a GP providing such a report.

Is a GP obliged to be supportive of the patient’s version of events?

Reports must be factual and true. The report should set out the GP’s independent professional opinion on the relevant medical condition and on the prognosis for the patient.

A GP should not be influenced by the fee or by pressure from any party, including the patient, in preparing the report.

Is there a time limit in which to provide these reports?

The report should be supplied within two months of the examination or receipt of a written request, whichever occurred later.²

How should the report be laid out?

The report should set out the date of birth of the patient, the occupation of the patient, a brief history of the accident including the date of the accident, details of the doctor’s findings on examination (where appropriate) and the nature of the treatment received by the patient for those injuries.

It should also include the results of any x-rays, blood tests or other relevant examinations or investigations. Also included should be details of the patient’s complaints on the date of the examination, details of all relevant pre and post-accident history, details of other doctors to whom the patient has been referred and finally, an opinion as to the condition of the patient and the prognosis.

GPs should avoid using quasi-legal language in the report or commenting on ‘negligence’, ‘fault’ or ‘responsibility’.

Fees for providing the report:

There used to be a scale for fees for medico-legal reports, agreed between the IMO, the IHCA, the Law Society and the insurance industry. This scale no longer exists.

The fee for the medical report should reasonably reflect its importance, length, complexity and any other relevant factors.³ It is accepted practice for doctors to ask for fees to be paid prior to releasing medical reports.

Who is responsible for the fee?

In law, if a solicitor requests a medical report on behalf of a client, then the client and not the solicitor is the person responsible for the fee. In practice, the solicitor will pay the GP and recoup the costs from the client later.

Can the GP be compelled to attend court?

In practice, solicitors do not subpoena doctors to attend court to give evidence on behalf of patients. Solicitors will arrange with a doctor, who has prepared a report on behalf of a patient, to attend court, or to be on stand-by, on the date of the hearing. If absolutely necessary, a solicitor can issue a subpoena to compel a doctor to attend court.

Court attendance fees

A GP can charge a daily fee for attending court to give evidence on behalf of a patient. The amount of such fees is a matter of negotiation between the solicitor and GP in each case. A GP can also charge a fee for agreeing to be on stand-by for a case, even where he/she is not called to court to give evidence. This fee is usually a proportion of the full court attendance fee. In addition a GP can charge his/her reasonable travelling expenses.

Whatever the outcome of a case, the patient’s solicitors, should, at the conclusion of it, write to the GP to advise that the case has concluded and to arrange to settle any outstanding fees.⁴

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References

2. Section 8.3 of A Guide to Ethical Conduct and Behaviour, March 2004 (Sixth Edition) – The Medical Council