



COLLEGE OF
PHYSICAL
THERAPISTS
OF ALBERTA

position statement

MEDICAL-LEGAL REPORTS

On occasion, physical therapists¹ may be asked to provide a medical report for a patient who is pursuing some form of legal action. These reports are known as medical-legal reports. Generally medical-legal reports serve two purposes:

- i) the provision of information; and
- ii) the provision of an opinion.

On the written request of a lawyer and authorization from the patient, a physical therapist is ethically bound to provide a written report (medical-legal report) as requested. Failure to provide such a report within a reasonable period of time, or by the date specified in the request, may constitute unprofessional conduct. If a report cannot be provided within a specified or reasonable period of time, the physical therapist will contact the party requesting the report to advise them the report will be delayed and when a response may be expected.

Physical therapists must ensure they have a clear understanding of what is required in the medical-legal report. A request may be for dates and treatment provided or a request for a full report on the physical therapist's opinions on the cause, severity of the condition, the functional implications on lifestyle and likely prognosis for recovery.

Physical therapists may charge a fee for a report but may not demand payment prior to releasing the report.

- The following are some key factors to keep in mind upon receiving a request for a report:
 - i) all requests from the lawyer should be made in writing;
 - ii) the physical therapist must have an original signed consent in which the patient has authorized the release of information to the lawyer;
 - iii) questions and expectations of the lawyer should be clearly outlined; if the intent of the request is not clear, the physical therapist should seek further clarification in writing;
 - iv) the physical therapist should not provide an opinion over the phone; and
 - v) if the physical therapist is aware the report is likely to be in opposition to the stance taken by the lawyer requesting the report, tell the lawyer what information will be provided. Determine if the lawyer wishes to proceed with a report before preparing the report.
- When preparing a medical legal-report, the physical therapist will:
 - i) answer only the questions set out in the request;
 - ii) use plain language (if a technical term must be used, provide an explanation);
 - iii) keep the sentences short, straightforward and avoid the use of ambiguous language; and
 - iv) keep statements objective, based on observations and avoid making inferences that would be difficult to support.
- Physical therapists are qualified to comment on the degree of physical impairment, functional limitations and disability based on a careful history, neuro-musculoskeletal exam and functional testing of the patient. Observations will relate to the clinical and functional status of the patient.

¹ Physical therapist, physiotherapist, physical therapy, physiotherapy, physiotherapie, physiotherapeute, PT and pht are official marks used with permission. The terms physical therapist and physical therapy are synonyms for physiotherapist and physiotherapy respectively.



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- ▶ Physical therapists do not comment on issues outside the information of which they are aware and avoid giving an opinion on matters outside the scope of physical therapy practice.
- ▶ Physical therapists avoid making inferences on causality based on the presumed biomechanics of the injury.
- ▶ If asked to provide an opinion, physical therapists state “in my opinion” or “in my experience.”
- ▶ Physical therapists are prepared to support the argument with clinical observations and scientific evidence.
- ▶ If asked to make a judgment on prognosis or causation, physical therapists use the basis of probability to back up statements made.
- ▶ If asked to comment on the level of an individual’s functioning, physical therapists report only on what has been observed or tested and qualify the statement.
- ▶ Physical therapists use caution when offering an opinion on prognosis, for example whether the patient will develop arthritis or a chronic pain syndrome.
- ▶ Physical therapists avoid making statements as to the character or personality of the patient.
- ▶ If asked to report on any pre-existing physical/functional problems, the physical therapist should indicate if they had any knowledge of such a condition prior to the accident.
 - i) Identify and report any known pre-existing condition or injury, indicating if the patient had any physical therapy treatment for the condition and if the patient’s functional abilities were affected prior to the accident.
 - ii) Stick to the facts. If the patient’s complaints after the accident are similar to the pre-existing complaints, document if the complaints have been exacerbated by the accident.
 - iii) Report only what is known or has been observed. If asked for an opinion, justify it based on the patient’s condition and the prognosis for similar conditions.
 - iv) If the accident had not occurred, how would the pre-existing condition have progressed? Assumptions should not be based on “I think” but on the evidence regarding a specific condition.
 - v) The report should cover a general overview of all the patient’s reported complaints during their course of treatment. Specify that these complaints are not from a single day’s assessment. This part of the report covers anything that the patient reports to the physical therapist.
- ▶ Agree in writing to the fee the lawyer will pay for the report².

² The Rules of Professional Conduct of the Law Society of Alberta provide that a lawyer is personally responsible for any expenses incurred on behalf of patient unless the lawyer has expressly disclaimed responsibility to the relevant party beforehand.



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APPENDIX

LITIGATION

Personal injury litigation typically arises from motor vehicle accidents or “slip-and-fall” type accidents. When a personal injury occurs, the defendant may file a claim with their insurance company. The insurance adjudicator will then investigate the accident, the extent of the injuries and the potential impact on work and lifestyle. In some cases, the insurance company will make a settlement offer and, if accepted, the action is closed.

In cases where the injuries are more serious or where there are questions surrounding the extent of the injuries, loss or damages, the case may be turned over to a lawyer for litigation.

One of the initial steps in the litigation process is called the “examination for discovery”. Lawyers from both sides are allowed to examine the opponent’s position by reviewing the evidence from both parties involved in the action³. The evidence reviewed may include any written documentation or oral examination of both parties. Of particular relevance to physical therapists is that the rules of court compel third parties who have documentation relevant to both parties to produce this evidence. Even before the examination for discovery, lawyers may request the physical therapist’s case notes so they can become fully informed of the plaintiff’s condition.

In many cases, the action is settled without having to proceed beyond the examination for discovery as the discovery process allows the parties to accurately assess the strength and merits of their case. Up to this point the legal process is no more than a formal exchange of information. If the process is settled at this stage, the physical therapist will most likely not have to testify in court. However, if nothing can be settled the case will proceed to the next step, the trial.

PHYSICAL THERAPIST’S ROLE

The physical therapist can be involved at any stage during the action. This may include providing reports to the insurance company all the way through to testifying at trial. Typically, the physical therapist will be asked to provide information through any number of ways including:

- ▶ a request from an insurance adjuster;
- ▶ a request from the plaintiff’s lawyer for treatment dates or treatment notes;
- ▶ a request from the plaintiff’s lawyer for specific information; this may include the treatment provided and the response to treatment. The lawyer may request the physical therapist not provide specific information such as an opinion on the extent of damage or prognosis; or
- ▶ a request from the plaintiff’s lawyer for a full medical legal-report which may include the provision of an opinion on the extent of the injury or prognosis for future functional recovery.

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³ Alberta Medical Association. A Physician’s Guide to the Medical Legal Report. The Alberta Doctor’s Digest. 1992. 17 (3): 19-24.