

Acceptable Charges for Record Duplication and Doctor's Litigation Fees

Chiropractors offices often have questions on the appropriate charges for the duplication of patient healthcare records and the involvement of the chiropractor as an expert witness in litigation proceedings. There are specific statutory and case law provisions controlling charges for the duplication of healthcare records; while charges for the doctor's time as an expert witness remains a subjective determination by each individual doctor. It should be noted that a chiropractor or office staff person who is called as an "lay witness" to give general testimony, rather than as an "expert witness" to give testimony as a qualified expert, is only entitled to a specified fee and reimbursement for mileage as described in the statutes. This article addresses key considerations for both the duplication of records and appearance as an expert witness in litigation.

A. Duplication of Patient Treatment Records

The fees for duplication of patient records are presently defined in Wisconsin Statutes §146.83(3f)(b) which was updated in 2013. This Chapter of the Wisconsin Statutes is frequently updated and was influenced in 2017 by a Supreme Court decision: Moya v. Aurora Healthcare, Inc. 217 WI 45 (decided May 4, 2017). According to that decision, patient's legal representative cannot be charged a "certification of records fee" or a "retrieval fee" if a valid written authorization is submitted on behalf of the patient.

Under this Section of the Statutes, a chiropractor may charge the following rates for duplication of records, together with the actual costs of postage/mailing:

1. For paper copies: \$1 per page for the first 25 pages; 75 cents per page for 26-50; 50 cents per page for 51-100; and 30 cents per page for pages 101 and above.
2. For microfiche or microfilm copies: \$1.50 per page.
3. For a print of an X-ray: \$10 per image.
4. If the requester is not the patient or a person authorized by the patient, for certification of copies, a single \$8 charge.
5. If the requester is not the patient or a person authorized by the patient, a single retrieval fee of \$20 for all copies requested.
6. Actual shipping costs and any applicable taxes.

Under this 2017 Supreme Court decision an office would not be able to charge the legal representative for items four (4) and five (5), above.

Lawyers will often request that the records be "certified" since the certification is necessary to guarantee the authenticity records under Wisconsin Statutes §908.03. Typically, the requesting party will provide a sample "certification page" which can be attached with the requested records. Such a sample form is available at this website.

It should also be noted that there is an exception for the charges referenced above, if the party requesting the patient records is (1) a party appealing a party of social security disability insurance; (2) a party appealing a denial of supplemental security income; (3) or a governmental department. In these circumstances, a different Statute of the Wisconsin Statutes controls the amount a provider can charge for duplicating the records. Generally, the charges cannot exceed twenty-five percent (25%) of the fees referenced above.

It should be noted that the subpoena provisions of Wisconsin Statutes §908.03 allows the requesting party to subpoena any records which are not produced within two (2) business days after receipt of payment. Many doctor's offices will have a

"prepayment policy" which itemizes the charges and requires payment from the requesting party before the record are duplicated.

Finally, it should be noted that duplication charges in workers compensation proceedings are different from those charges described above. Presently, Chapter 102 of the Wisconsin Statutes addresses the law of workers compensation in Wisconsin. The duplication fees in relation to workers compensation proceedings are occasionally modified pursuant to an applicable section from this chapter of the statutes. At the present time, Wisconsin Statutes §102.13(2)(B) lists the current charges for duplication in workers compensation proceedings.

B. Expert Witness Fee

Generally, the chiropractor is entitled to request an expert witness fee whenever the doctor is asked to provide opinions as a qualified expert witness. The doctor's opinions can be required in various situations, including: (1) trial or deposition preparation meetings, (2) depositions, (3) worker's compensation hearings, and (4) trial testimony. In addition to these situations where the doctor may be required to be physically present while rendering opinions, the doctor can also charge for time associated in completing written, narrative reports. Reports are often requested in connection with worker's compensation proceedings, unemployment compensation proceedings, and civil litigation. Many doctors often choose to charge a separate rate for the time related to these activities in preparing, reviewing or otherwise traveling to requested events.

The fees billed for these range of activities vary considerably between different doctors. Since there is no established fee standard, it is usually recommended that the

doctor establish a fee which takes into consideration the complexity of the requested task; as well as, an objective comparison of the income which the doctor would have otherwise earned if not performing the requested task. In all situations, the fees charged by the doctor must be reasonable and appropriate since a reviewing court has the authority of limiting the charges.

Many doctors will have a pre-established fee structure which is used depending upon the nature of the case. It is also common for the doctor to use different hourly rates depending upon the nature of the service provided. It is recommended that the doctor require prepayment from the requesting party and that the billing rate be established under defined increments of time, such as "tenths" of an hour. It should be kept in mind that the Wisconsin Statutes currently permit a party who retained an expert witness for actual testimony in the proceeding to recover Three Hundred Dollars (\$300) per hour for that testimony.

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