

Medico – Legal Report Writing

Thank you for your enquiry. Please find below responses to questions SPA members frequently ask about writing medico-legal report writing.

This information is to be used as a guide only and is not a substitute for legal advice. If you require specific advice, you should speak to a lawyer.

If you hold Professional Indemnity insurance with Guild you can contact them for additional information.

If you have further questions please do not hesitate to contact the National Advisor – Private Practice (Christine Lyons) by emailing privatepractice@speechpathologyaustralia.org.au or Senior Advisor Professional Issues (Christina Wilson) by emailing sapi@speechpathologyaustralia.org.au

Do I need to gain permission from my client?

As a general principle it is necessary to obtain client consent prior to disclosing any client information, including information contained in a report. There are exceptions to this rule – for example, if the report was being prepared for the coroner or is provided to a court pursuant to a subpoena. In many cases, the report will be requested by your client’s solicitor and the solicitor will provide the client’s written authority to provide the report to that solicitor.

What do I do if I have been requested to write a report?

Once you have been asked to write a medico-legal report, it is strongly recommended that you contact the person making the request, asking for written clarification on the nature of report they are requesting and the specific issues they want you to cover in the report if they haven’t done so already.

There are various reasons you may be asked to write a report in relation to a client – for example, for the purpose of the client receiving certain benefits or to provide an expert opinion for legal proceedings.

The next step is for you to review the written clarification provided and to estimate what it will cost to prepare the report.

Once a decision has been reached regarding the cost of preparing the report, you should negotiate when the invoice (inclusive of GST) is to be paid and by whom.

What should I include in the report?

It is important to keep to issues relevant to your qualification and level of training and expertise. If the report is being written for the purpose of providing an expert opinion for legal proceedings, you will need to ensure it complies with any rules the relevant court may have in relation to expert opinion reports. Usually, the lawyer requesting the report is required to provide a copy of any relevant court rules to you.

The type of information which you should include in the report will depend on the nature of the report, the purpose for which it has been requested and the issues you have been asked to address. A report will usually include the following information:

- the expert’s qualifications and experience;
- if the report is being prepared for the purpose of legal proceedings, an acknowledgment that the expert has read any relevant court rules and agrees to be bound by them;
- the expert’s relationship to the claimant (e.g. prior association, treatment or assessment)
- all the material facts, matters and assumptions on which the report is based;

- references to any literature or other material relied on by the expert to prepare the report;
- a description of what was done;
- whether the assessment was done by the expert or under the expert's supervision;
- the name and qualifications of any other person involved; if applicable, the clinical findings;
- if there is a range of options on matters contained within the report, a summary of the range of options and the reasons why the expert adopted a particular option or opinion;
- a summary of the conclusions reached by the expert and whether conclusions drawn are based on scientific evidence, clinical experience or accepted practice (may include references);
- a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion;
- if applicable, that a particular question or issue falls outside of the expertise of the expert;
- that the expert has made all enquiries the expert considers appropriate; and
- that the report contains reference to all matters the expert considers significant.

Keep to the facts, stating accurate information that can be viewed by all parties, and what you can defend if you are asked to present as a witness in court.

Again, seeking early and direct clarification will assist you to know what questions you can reasonably answer and what questions you are not qualified to answer.

How much do I charge for the report?

Unless specified in a particular compensable body's fee schedule (e.g. WorkCover), the costs of preparing a medico-legal report should be linked to the length of time it takes to research and prepare the medico-legal report.

Being clear on what areas to cover, and in what depth, should enable you to provide an estimate to the solicitor or insurance claims manager requesting the report. It will help if they know, up front, the amount likely to be charged. This is particularly important where the patient pays for the medico-legal report in the first instance.

These reports are generally charged out at an hourly rate based on 1.0 - 1.5 multiples of our hourly consulting fees.

When do I release the report?

Sending the report ahead of payment may lead to months or even years before the payment is received, as the payment will be linked to the settlement which is rarely a short period of time after the report is written. You should negotiate when the payment is to be made and by whom before releasing the report.

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