I. INTRODUCTION

"From ancient times, physicians have recognized that the health and well-being of patients depends upon a collaborative effort between physician and patients.... Physicians can best contribute to this alliance by serving as their patients' advocate...."

> From "Fundamental Elements of the Patient-Physician Relationship",
> American Medical Association Code of Medical Ethics.

"I will strictly adhere to the spirit as well as the letter of my profession's code of ethics, to the extent that the law permits, and will at all times be guided by a fundamental sense of honor, integrity and fair play."

> From "Creed of Professionalism", adopted by the Board of Governors of The Florida
> Bar on May 16, 1990.

The Joint Committee of the Alachua County Medical Society and the Eighth Judicial Circuit Bar Association, Inc. ("Committee") serves to promote understanding between physicians and attorneys and to resolve conflicts that may arise between them.

Members of the medical and legal professions recognize that physicians and attorneys are drawn into steadily increasing associations with each other while serving the interests of their patients and clients. Knowledge and services of both professions are required so that the rights of individuals may be determined before various courts, administrative hearings and tribunals. This association sometimes leads to misunderstandings and conflict between physicians and attorneys, to the detriment of patients, clients and the public. In a continuing effort to promote interprofessional harmony and to provide a mechanism for the resolution of disputes that may arise, the Committee has established this Interprofessional Guide for Physicians and Attorneys ("Guide").

The provisions of this Guide constitute a series of explanations of procedures between physicians and attorneys that may arise when a physician acts as a fact or expert witness. The Guide is intended to assist both physicians and attorneys in their interrelated practices in the following ways:

1. To promote better communication and understanding between physician and attorney.
2. To promote the welfare and well-being of the patient/client.
3. To establish guidelines of conduct that conform to the highest codes of ethics and professionalism consistent with both professions.
4. To establish guidelines of conduct mutually acceptable to both professions practicing within the Eighth Judicial Circuit of Florida (counties of Alachua, Baker, Bradford, Gilchrist, Levy and Union).

This Guide is not legally binding on physicians or attorneys and it does not create a standard of professional care. Members of both professions are vested with high responsibilities and privileges for the purpose of serving the public with honor, dignity and effectiveness. Each profession has a duty to develop an enlightened and proper understanding of the other, as each profession is essential to the preservation of society. This Guide is established in furtherance of that duty.

It is important to keep in mind that the goal of this Guide is to instruct physicians and attorneys regarding their interprofessional conduct as it relates to the physician's role as a witness, either fact or expert, but not in the physician's role as a party-defendant in a medical malpractice case. When the physician is a party defendant in a medical malpractice case, the physician occupies an adversarial position that is governed by the rules of evidence, civil procedure, and ethical codes of behavior. Consequently, the focus of this Guide is limited to the attorney's conduct and the physician's role in the judicial system when the physician is serving as a fact or expert witness.

II. MEDICAL RECORDS

A. DISCUSSION
   1. The medical records of a patient who has suffered a personal injury and is involved in litigation are often relevant to issues raised in the litigation. Consequently, copies of medical records may be requested by the patient, the patient's attorney, and/or the opposing attorney.

B. WHEN MUST MEDICAL RECORDS BE PROVIDED?

1. Medical records are private and privileged. See Section 456.057, Florida Statutes. A physician may not provide medical records or discuss the contents of medical records except in certain circumstances. These circumstances include:

a. Upon request of the patient or the patient's legal representatives. Section 456.057(4), Florida Statutes.

b. Physician records may be discussed with other health care practitioners and providers involved in the care or treatment of the patient. Section 456.057(5), Florida Statutes.

c. Upon written authorization of the patient. Section 456.057(5), Florida Statutes.

d. Upon service of a subpoena from a court of competent jurisdiction, which must be preceded by proper notice to the patient or the patient's legal representative by the party subpoenaing such records. Section 456.057(5)(c), Florida Statutes.

However, in certain circumstances medical records may be released only pursuant to a court order. For a discussion of this issue, please refer to Section II(D) below on "Exceptions".

C. SUBPOENAS FOR MEDICAL RECORDS

1. In a litigation scenario, a physician is likely to receive a subpoena requesting medical records relating to a patient who is a party to the litigation.
2. Pursuant to Section 456.057(5)(c), Florida Statutes (discussed in Section B above), medical records should be provided upon the receipt of a subpoena by a physician. Subpoenas requesting medical records may be issued in two circumstances:

    a. A subpoena duces tecum for deposition. Such a subpoena sets the deposition for the medical records custodian or the physician and also requests that the medical records be brought to the deposition.

    b. A subpoena of documents. A party to a litigation may seek inspection and copying of medical records from a person who is not a party to the litigation by issuance of a subpoena directing the production of records without the necessity of a deposition. A party desiring production of medical records is required to give notice to every other party in the litigation of the intent to serve a subpoena pursuant to Rule 1.351, Florida Rules of Civil Procedure, and to allow at least 10 days before the subpoena is issued. The proposed subpoena should be attached to the notice and must state the time, place and method for production of the records, and the name and address of the person who will produce the records. The proposed subpoena should also include a designation of the items to be produced. If no objection is made by a party, a subpoena is issued for the production of the documents. Once received, the physician has the right to object to the subpoena if an objection is appropriate. Such a subpoena usually gives the recipient the option to deliver or mail legible copies of the documents to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable cost of preparing the copies (see Section E below). The subpoena shall require production of original medical records only in the county of residence of the custodian of the records or where the custodian usually conducts business, or the subpoena may provide the option of producing a copy of the medical records by mail to the attorney issuing the subpoena.

D. EXCEPTIONS

1. There are exceptions to the rules which require medical records to be produced pursuant to a subpoena. When in doubt, a physician should consult legal counsel. Some examples of records which require a court order are discussed below. There are exceptions to the providing of medical records which include, by way of example, HIV records, drug and alcohol treatment records, psychiatric records, etc.

a. Psychiatric records: Section 456.059, Florida Statutes, states that communications between a patient and a psychiatrist shall be held confidential and shall not be disclosed except upon request of the patient or the patient=s legal representatives.

   Section 90.503, Florida Statutes, recognizes a psychotherapist-patient privilege. The Florida Statutes defines a "psychotherapist" as including "any person authorized to practice medicine . . . who is engaged in the diagnosis or treatment of mental or emotional conditions." If the confidential communication is to a licensed medical practitioner and involves the diagnosis or treatment of mental and emotional problems, the records are privileged and may be provided only upon entry of a court order.

b. Substance abuse records: Section 397.5017, Florida Statutes, concerns the confidentiality of treatment for substance abuse. Such records may not be produced pursuant to a mere subpoena. Rather, a court order based on an application showing good cause for disclosure is required.

c. HIV records: Section 381.004(e)(9), Florida Statutes, concerns the confidentiality of HIV testing. The statute requires a court order, rather than a mere subpoena, to obtain either the identity of a person tested for HIV or the test results.

E. COST OF PROVIDING RECORDS

1. A physician who is required to release copies of patient medical records may condition such release upon the payment by the requesting party of the reasonable costs of producing the records.

2. The reasonable costs of producing copies of written or typed documents or reports shall not be more than the following:

   a. For the first 25 pages, the cost shall be $1.00 per page;
   b. For each page in excess of 25 pages, the cost shall be 25 cents.

3. Reasonable costs of reproducing x-rays and any other special kind of record shall be the actual costs. The phrase “actual cost” means the cost of the material and supplies used to duplicate the record as well as the labor costs and overhead costs associated with such duplication.

4. Rules and regulations regarding charges for reproducing medical records are set forth in Section 64B8-10.003, Florida Administrative Code.

F. FLORIDA MOTOR VEHICLE NO-FAULT LAW (PERSONAL INJURY PROTECTION BENEFITS)

1. Section 627.736(6), Florida Statutes, states that every physician providing services to a patient who suffered bodily injury and for which personal injury protection (PIP) benefits are provided, shall, if requested to do so by the PIP insurer, furnish a written report of the history, condition, treatment, dates and costs of such treatment of the injured person. The physician shall also produce and permit the inspection and copying of records regarding such history, condition, treatment and dates and costs of treatment. The PIP insurer requesting such records shall pay all reasonable costs.

G. RETENTION AND DISPOSITION OF MEDICAL RECORDS OF DECEASED PRACTITIONERS, OR PRACTITIONERS RELOCATING OR TERMINATING PRACTICE

1. Florida Statutes and the Florida Administrative Code provide rules that govern issues relating to the retention and disposition of patient medical records that are in existence at the time a physician dies, or terminates or relocates his or her practice. See Florida Statutes, Sections 456.057 (subsections (11), (12) and (13)) and Section 456.058, and also Chapter 64B8-10 of the Florida Administrative Code. When in doubt about these legal requirements, physicians should consult legal counsel or the Alachua County Medical Society.

III. PHYSICIAN/ATTORNEY CONFERENCES AND DISCUSSIONS

A. INTRODUCTION

1. As a result of the respective professional services that they render to patients/clients, physicians and attorneys often need to speak to each other. Conferences cannot and should not be avoided. Conferences aid the physician by clarifying what is expected of the physician when a patient is involved in some manner in the legal system. Conferences aid the patient by allowing the attorney to understand medical issues and frequently enable the patient to understand medical issues. Conferences benefit the physician and the attorney by shortening the time required of the physician giving testimony and enhancing the clarity of the testimony for the trier of fact.

B. SCHEDULING CONFERENCES AND PHYSICIAN FEES

1. The physician should expect to be paid for the time devoted to a conference with an attorney including preparation time, and the attorney should expect to pay the physician a reasonable fee for that time. The physician's fee and time requirements for a conference should be resolved either by a published standard rate or by agreement between the attorney and the staff of the physician at the time the conference is scheduled. Consistent with their care of patients, physicians should accommodate reasonable time requests from the attorney. Attorneys understand that physicians work long hours and physicians should understand that attorneys also work long hours. Conferences scheduled at the end of a long busy day of patient care are frequently unproductive because of fatigue and a desire to end the day.

2. The physician has a right to expect the attorney to arrive on time and be well prepared for the conference. The attorney has the right to have the same expectation of the physician. At the time the conference is scheduled, an agreement should be reached with regard to the physician's charge for cancellation of the conference, if any, and the time when that charge would be imposed. If reasonable notice of cancellation is given and results in no loss of income to the physician, then no cancellation fee should be charged. If the physician, due to unforeseen circumstances, finds it necessary to cancel the conference, the physician should be prepared when notifying the attorney to reschedule the conference. Notification of cancellation by physician or attorney should occur as early as possible before the conference to avoid unnecessary expense and inconvenience.

C. PHYSICIAN PREPARATION AND CONTENT OF CONFERENCE

1. The focus of the conference should generally be dictated by the attorney because it is the attorney who is seeking information. The physician should be prepared to answer questions about the physician's qualifications and provide a current curriculum vitae. The physician also should be prepared to answer factual inquiries about the care and treatment of the patient, the probable causation of the need for care and treatment, the probability of the need for future treatment, the probability of any condition of the patient being permanent, and the probability of any physical impairment of the patient. If the physician holds the opinion that there is a probable permanent physical impairment, the physician should be prepared to quantify the impairment, not just in a percentage based on AMA guidelines or similar publication, but also in terms of what activities the patient cannot or should not do based on the impairment.

2. If the physician has not seen the patient for a period of time before the conference and the physician believes seeing the patient would aid in meeting with the attorney, the physician and attorney should arrange for the patient to be examined prior to the conference.

D. PATIENT AUTHORIZATION

1. Because of confidentiality issues, the physician cannot have a conference with an attorney, even the attorney for the patient, without patient authorization. Physicians should not have conferences with attorneys who do not represent the patient without a specific authorization signed by the patient allowing the conference. If the physician has any doubt about the identity or role of the person to whom the physician is speaking, the physician should request that the telephone conference be

rescheduled until the physician has had an opportunity to see an authorization with the patient's signature on it verifying that the patient has authorized the physician to speak to the person. The only other way an attorney may speak with a physician about a patient is through testimony given by the physician in deposition or trial, following service of a subpoena. The topic of subpoenas served for giving testimony in deposition or trial is covered below in Chapters IV and VII of this Guide.

E. CONCLUSION

1. Physicians and attorneys are not adversaries except where there is a direct claim against the physician. Both the physician and the attorney have the same goal: assisting the patient. If both the physician and the attorney approach conferences with the common goal, conferences will be productive and beneficial for the patient and not present an undue burden on the physician or the attorney.

IV. DEPOSITIONS

A. INTRODUCTION

"As a citizen and as a professional with special training and experience, the physician has an ethical obligation to assist in the administration of justice. If a patient who has a legal claim requests a physician's assistance, the physician should furnish medical evidence, with the patient's consent, in order to secure the patient's legal rights.

The medical witness must not become an advocate or a partisan in the legal proceeding. The medical witness should be adequately prepared and should testify honestly and truthfully. The attorney for the party who calls the physician as a witness should be informed of all favorable and unfavorable information developed by the physicians' evaluation of the case. It is unethical for a physician to accept compensation that is contingent upon the outcome of litigation."

Section 9.07, American Medical Association Code of Medical Ethics

1. Deposition testimony of physicians is sometimes necessary and is preferably arranged at a scheduled time in the physician's office. Depositions are necessary for one or more reasons: for discovery, to perpetuate testimony, or to be used in lieu of the physician's appearance at trial. The physician's appearance in court usually is the most effective way to present testimony. However, it also is recognized that physicians cannot always be present in court, or that their testimony in person may not always be required. Therefore, both professions are encouraged to consider the use of depositions as an alternative to live testimony by the physician at trial, when practical. Physicians should not object to videotaped depositions, when requested. Physicians must remember that the rules of evidence or other factors may prohibit the attorney from using the deposition in court, thus requiring the physician to appear in court to testify. In criminal cases, court rules generally do not allow for the use of a deposition at trial, requiring instead the personal appearance of all witnesses, including physicians.

B. DEPOSITION DEFINED

1. A deposition is an official proceeding authorized by law, whereby a person, such as a physician, patient or others, may be required to give testimony and be cross-examined under oath outside of court. The deposition takes place before an official court reporter and in the presence of attorneys representing the parties. The person being deposed may be required to produce pertinent medical records or other documents at the deposition. This person may also be requested to release the records to the court reporter for duplication and immediate return. A physician who does not wish to part with original records when brought to the deposition should bring a complete, legible photocopy of those records for submission to the court reporter.

C. SUBPOENA DEFINED

1. A subpoena is a legal document issued under the authority of the court by the attorney preparing and issuing the subpoena, who is delegated this authority by the court. A subpoena commands the presence of a witness and cannot be ignored without risk of being held in contempt of court. A physician must abide by this subpoena if the subpoena is served on him personally or through his authorized representative such as a nurse or other employee. If the physician feels that the subpoena is improper for any reason, he should seek the advice of legal counsel.

D. TIME AND PLACE

1. The time and place of the deposition should be set by the attorney through mutual agreement with the physician and other attorneys who may attend the deposition. Unless there is a compelling reason to the contrary, the deposition should be taken at the physician's office for the physician's convenience. However, a physician is required to appear wherever the notice of deposition specifies as to place and time, unless excused by the court. Failure to attend a deposition or failure to be at the designated place and time will subject the physician to contempt of court and possibly financial sanctions. When an appointed time is arranged for a deposition or a conference, the attorney and doctor shall adjust their schedules to be available at the agreed time and place. The physician shall promptly notify all counsel if he is unable to be present or will be late, and the attorneys are to advise the physician and each other, of similar problems.

E. SUBPOENAS

1. If the deposition of a physician cannot be set by the attorney through mutual agreement, the physician's attendance can be required by subpoena. A subpoena is not an irrevocable order to appear regardless of the hardship. A subpoena should not require the cancellation of surgery or of critical medical appointments, some of which may be for persons coming from great distances. Attorneys should make every reasonable effort to schedule a physician's deposition long enough in advance to avoid creating undue hardship for the physician. Absent extraordinary circumstances, no physician should be subpoenaed for deposition with less than two weeks' notice. In the event that the subpoena creates an undue hardship, the physician may do any of the following:

    a. The physician may call the attorney who subpoenaed the physician and explain the difficulties that the subpoena creates, and request that the deposition be rescheduled.

    b. The physician may contact his/her own legal counsel to file a motion with the court to nullify the subpoena as burdensome or oppressive, or to set an alternative time.

    c. A physician must follow the procedure in "a" or "b", or the physician will not be excused from appearing as directed by the subpoena, or excused from the court sanctions which may follow should the physician fail to appear as subpoenaed.

F. SUBPOENA OF MEDICAL RECORDS

1. A subpoena duces tecum for deposition also may command the physician to bring the patient's medical records to the deposition. For a discussion of the rules relating to requests and subpoenas for a patient's medical records, please refer above to Chapter II of this Guide.

G. PREPARATION AND DEPORTMENT

1. Since the testimony given at a deposition may be read at the trial, it is important that the physician, prior to deposition, prepare by familiarizing himself with the patient's medical records. His attitude, deportment, and preparation at the deposition must be appropriate for presentation of his testimony to a judge and jury.

H. DEPOSITION FEES

1. When a physician gives testimony in a deposition that pertains to the physician's care and treatment of a patient, the physician may be called upon to give expert testimony. The physician is entitled to charge a reasonable fee for giving testimony as a medical expert. To avoid conflict, it is urged that the physician and attorney discuss this fee before the deposition is taken. The physician may request payment in advance from attorneys, but advance payment is not a legal prerequisite to appearing for the deposition, and failure to receive advance payment will not excuse the physician from legal sanctions, if the physician fails to appear and testify.

2. When an attorney requests the services of a physician for a deposition, the attorney is responsible for the physician's fees. It is best if the physician and attorney have an agreement regarding those fees, in writing, prior to the physician's testimony. In order to facilitate billing and avoid disputes regarding fees, physicians should keep a contemporaneous written record of the amount of time they spend performing the services requested by the attorney.

3. Any dispute regarding the fees may be brought before the court in which the lawsuit is pending for final resolution.

I. THE PHYSICIAN AS A WITNESS IN COURT OR AT DEPOSITION

1. The physician and attorneys should conduct themselves in a dignified, forthright manner whether in court or at the deposition.

2. The physician should use non-technical language whenever possible. The physician should bear in mind that his testimony is addressed to laypersons of the jury. If the testimony does not help explain and clarify, it has not achieved its purpose. Technical expressions, when necessary, should be followed with simplified explanations.

3. It is proper for opposing counsel to cross-examine the physician with respect to his qualifications, fees, accuracy of memory, records, the diagnosis, prognosis and other opinions, as well as any other facts bearing on the weight and credibility of his testimony. Both the witness and the cross-examiner should be respectful and courteous to each other.

V. WRITTEN MEDICAL REPORTS

A. INTRODUCTION

1. A well written medical report or narrative which satisfies the request of the attorneys or the court and which focuses on the issues of diagnosis, prognosis, and causation plays an important role in any legal claim asserted by the patient/client. It assists attorneys in evaluating the merits of the claim and defense and, thus, promotes settlement of the claim. It assists the court and jury in understanding and deciding the medical and legal issues. And, it may eliminate, or substantially reduce the time required for, deposition or court testimony by physicians.

2. Because the written report serves such an important function in litigation, examining physicians should cooperate with attorneys or the court so that (1) prior medical reports for the relevant period are evaluated, (2) the written report is in the requested format, and (3) all time constraints are met. Physicians should communicate with attorneys if delays are encountered or questions arise as to the nature and scope of the requested examination and report.

B. THE ATTORNEY

1. When a report is requested on a physician=s patient, the attorney must provide a physician with a signed authorization form from the patient, or a properly executed subpoena. Under no circumstances should a physician furnish an attorney with records, copies or reports without proper authorization or a properly executed subpoena.

2. Attorney requests for reports from a physician should be made in writing:

    a. It is the direct responsibility of the attorney to pay promptly, upon presentation, the reasonable professional charges of the physician for reports and for all other services requested by the attorney. The physician is not a party to any special arrangements or understanding between the attorney and the client with reference to such payments, and looks to the attorney as the person who has requested the service and assumed the responsibility. Therefore, under no circumstances should the physician be required to await the outcome of the case before payment of his reasonable charge for the report.

    b. Where possible, the attorney should advise the physician of the particular areas of concentration that are desired in the medical report. It is seldom wise to suggest to the physician any particular desired result, but it is helpful to the physician to know whether the examination and report may be limited to a particular area or particular series of signs and symptoms.

C. THE PHYSICIAN

1. Medical Records

    a. Medical records often are relevant to issues raised in legal proceedings and are relied upon by the parties, their attorneys, and the trier of fact. Therefore, it is desirable that the physician's medical records be sufficiently detailed to permit third parties to understand the findings and conclusions reached by the physician and the treatment the physician has provided to the patient. In addition, having sufficiently detailed medical records aids the physician in testifying, should the physician subsequently be called to testify as a witness in deposition or at trial.

2. X-Rays, EKGs, EEGs, etc.

    a. The physician has control of the patient's X-Rays, EKG's, EEG's, etc., but this does not preclude delivery of the original or a copy to others, provided the permission of the patient is obtained and arrangements satisfactory to the physician are made by the attorney for the prompt return of original records to the physician=s office, or for payment of copies. If the physician is served with a subpoena that compels production of original records for examination, then the originals must be produced. However, copies then may be substituted for the originals, which are returned to the physician for the patient's file.

3. Patient's Authorization

    a. An attorney requesting an original or copy of a patient's medical records or diagnostic studies must provide the physician with a medical authorization signed by the patient, or the records must be subpoenaed. The physician is advised, in the course of the preparation of the patient's chart, to have the patient sign a document that would permit a comparison of the signature on the chart with that on the patient's written medical authorizations. The patient's authorization is not required for independent or compulsory medical examinations. The patient=s authorization also is not required if the patient=s records are subpoenaed. For a discussion of the rules relating to requests and subpoenas for a patient's medical records, please refer above to Chapter II of this Guide.

D. CONTENT OF THE REPORT

1. The attorney requesting the medical report should inform the physician in writing of the topics or matters that the attorney would like the physician to address in the report. Following are examples of topics that may be requested by an attorney for inclusion in the report:

    a. Date, time and place of first visit.

    b. Name of referring party.

c. The history and named informant of the injury or medical conditions including preexisting disease or prior injury.

d. Nature of examination and findings.

e. Results of laboratory work, x-rays, and consultations.

f. Dates, places and results of subsequent consultations.

g. Treatment and effects of treatment

h. Opinions, including where information and the examination permit, diagnosis and prognosis. The opinion should evaluate future disability, the necessity for future treatment or surgery, if any, and the effect or aggravation of any pre-existing disease or prior injury.

i. Information received from other sources.

j. Extent of past, present and probable future disability or impairment. In addition, where the report is made by a treating or consulting physician with respect to a patient=s condition.

k. The patient=s condition and whether patient has been discharged.

l. On subsequent examinations, include complaints and evaluation of condition, nature of treatment, confinement to hospital or home, referrals to other physicians, patient= s progress, results of X-rays, EKG=s EEG=s, laboratory procedures and consultation, and a concluding diagnosis and prognosis (see Ah@ above). Enclose separately an itemized statement of charges for actual medical services rendered to date. Omit charges for medical reports or attorney consultations, which should be billed separately.

m. Include estimate of probable cost of future medical care.

n. Omit reference to insurance, patient payments or their compensation, except in the billing records.

E. PHOTOCOPIES OF REPORTS

1. From time to time, the physician will receive a request from the attorney for copies of the physician=s billing and office records. When the attorney gives the physician reasonable notice and a medical authorization signed by the patient, and the attorney specifies the medical information requested to be photocopied, the requested records should be supplied by the physician to the attorney. Photocopies of records are subject to a reasonable copying charge, as required by law. A physician reviewing fee may be imposed when agreed upon in advance between the parties. For a discussion of the rules relating to requests and subpoenas for a patient's medical records, please refer above to Chapter II of this Guide.

2. Please note that the information contained in such reports may be subject to privileges of an evidentiary nature and may be subject to various statutes which require patient confidentiality. Issues arising out of such matters may be resolved either by court order or in some instances by written authorization of the patient.

VI. MEDICAL EXAMINATION

A. GENERAL

1. The law provides that a party to a lawsuit may be required to undergo a medical examination by agreement of the opposing attorneys or as directed by a court order.

2. When an appointment is made for the medical examination of a party, the physician sets aside a part of the physician's day for that purpose. It is the duty of the attorney of the party being examined to ensure that the appointment is kept. The attorney should give explicit instructions to the party that the physician must be notified in ample time (at least 48 hours prior to the examination), should it become impossible for the party to keep the appointment. Otherwise, the physician is justified in making a charge for such cancelled time to the party to be examined.

B. SCOPE OF EXAMINATION

1. The scope of an examination may be limited by agreement of the attorneys or by court order. The scheduling attorney has the responsibility to notify the physician of any such limitation sufficiently in advance of the examination in order to permit the physician to refuse to conduct such limited examination if, in the exercise of the physician's professional judgment, such limitations are unreasonable or inappropriate.

2. Subject to the above limitation, the physician may take a history and perform such examination as may be advisable in the physician=s judgment to formulate an informed opinion regarding the nature and extent of the party=s medical condition.

3. If, in the course of the examination, the physician determines that additional diagnostic procedures are necessary or preferable in order to determine the patient=s medical condition, the physician should so advise the scheduling attorney as soon as practicable after the conclusion of the examination.

4. If there is no limitation, it is suggested that the physician provide the information requested on Exhibit "A."

C. PRESENCE OF ATTORNEY AND COURT REPORTER

1. The law also provides that a party being examined may have the party's attorney and a court reporter and/or videographer present during the examination. This practice has become increasingly common. If an attorney desires to be present, the attorney shall advise the physician in writing, either at the time the appointment is made or within a reasonable time thereafter, of the attorney's desire to be present. "Reasonable time" shall be a time sufficiently in advance of the date of the proposed examination to allow the physician to refuse to conduct the examination under the conditions requested. The physician shall at all times have the option to refuse to conduct the requested examination. The physician also shall have the right to determine the manner in which the examination process shall be conducted, subject to limitations agreed upon in advance by the parties, or imposed by the court, and agreed to by the physician.

2. If a court reporter and/or videographer is present, every effort should be made to assure that their presence is as unobtrusive as possible.

3. The attorney should not interfere with the conduct of the examination, address any questions to the examining physician, or make comments during the course of the examination, unless invited to do so by the examining physician. It is recognized that for the physician, the presence of the attorney is an unusual and perhaps uncomfortable circumstance in the course of a medical examination. The attorney therefore should be especially mindful of the courtesy owed a fellow professional and should do nothing to influence the examination or its results.

4. The attorney shall not attempt to make inquiries of, or examine, other personnel in the physician=s office during the process of a medical examination.

VII. TRIAL PROCEDURES

A. DUTY TO TESTIFY

1. It is recognized that the duty of the physician includes not only treating the patient, but also making available the physician's findings and conclusions regarding the patient, to the end that justice may be served. Accordingly, when properly requested or subpoenaed to do so, the physician shall provide reports, appear in court, and testify with full, fair, and candid answers to the questions propounded to the physician regarding the patient's physical and mental condition.

B. PRETRIAL CONFERENCES

1. It is the duty of each profession to present fairly and fully the medical issues involved in lawsuits. To that end, physicians and attorneys are encouraged to discuss the medical issues involved prior to trial. In all instances, a frank discussion between the patient's physician and attorney shall be encouraged so that a complete understanding on the part of each as to the medical and legal issues involved. An exchange of facts and opinions in advance of trial testimony minimizes confusion and time demands, and enhances the understanding of the roles of the two professions at trial.

C. SCHEDULING CONFERENCES AND TRIAL TESTIMONY

1. In scheduling pretrial conferences or trial testimony, both attorneys and physicians need to be mindful of the other=s obligations and responsibilities. Physicians should understand that an attorney has little or no control in scheduling a case for trial. Under present court calendaring procedures, only the week for trial is designated. There can be no assurances when, if at all, the case will be tried during that particular week.

2. Attorneys must understand and recognize that a court appearance interrupts a physician=s professional schedule. Time set aside by a physician for pretrial conferences or court appearances takes away time the physician could be practicing medicine and results in loss of revenue.

3. It is recommended that attorneys notify physicians of the date of trial as soon as a trial date is set. If a physician is going to be unavailable during that period, the physician should alert the attorney immediately so that appropriate arrangements can be made, including filing a motion to continue the trial, or taking a videotaped deposition of the physician for use at trial.

4. Since civil trial dates usually are set several months prior to trial, it is important that the attorney=s secretary periodically keep the physician advised as to the progress of the case. When a case has been concluded, the attorney should notify the physician that the physician's attendance at trial will no longer be needed. If a scheduling conflict arises after the physician has been notified of the trial date, the physician should immediately notify the patient's attorney of the conflict. Communication between the offices of the plaintiff’s attorney and physician is absolutely essential to maintain and promote good will between the professions.

5. Criminal trial dates seldom are scheduled more than one or two weeks in advance. While it may be possible in some cases for attorneys to anticipate a probable trial date and to provide more notice to a physician, that usually is not possible. Attorneys should notify physicians immediately when a criminal trial date is set, so that the maximum possible notice is provided to the physician.

D. SUBPOENAS FOR TRIAL

1. The attendance of physicians or the production of medical records at trial may be directed by subpoenas. Subpoenas specify the time and place of the trial, the name of the person whose attendance is required, and the records to be produced. Physicians have the same legal obligation to respond to a subpoena as any other citizen.

2. Some attorneys will not subpoena a physician that they expect to call as a witness, preferring to make personal arrangements with the physician or to rely upon the physician’s promise to appear at trial. Other attorneys may choose to issue a subpoena. One important reason attorneys may choose to subpoena a physician is that in the event of a physician’s unavailability to appear at trial due to an

emergency, a continuance may be granted only if the attorney has sought to secure the physician's attendance at trial by a subpoena.

E. RECOMMENDED POLICY REGARDING SUBPOENAS

1. The attorney should notify the physician in advance that the attorney intends to subpoena the physician for trial. Prior to the issuance of a subpoena, the attorney should confer with the physician's office to determine the physician=s availability for trial. Attorneys should act responsibly when issuing subpoenas and maintain awareness that compliance with trial subpoenas disrupts physicians' medical practices. Although every reasonable effort should be made to minimize the inconvenience to physician witnesses, physicians must understand that the business of the courts cannot be governed by the convenience of witnesses, whomever they may be.

2. Recognizing that a court appearance interrupts a physician=s professional schedule, attorneys should make every reasonable effort to minimize that disruption. Since most subpoenas will require appearance during the entire trial term, a statement should be attached to the subpoena advising the physician that the physician should be on standby for the trial period and that the attorney=s office will contact the physician as soon as a definite date and time for the physician's appearance is known. The attorney=s secretary periodically should keep the physician advised as to the progress of the case. If the trial date is changed or the lawsuit is dismissed, the attorney who subpoenaed the physician promptly should notify the physician of the change. Attorneys should make every reasonable effort to avoid physicians having to wait for long periods of time prior to testifying, including taking the physician out of order as a witness, calling the physician as the first witness at the beginning of the day or after a scheduled break, or requesting that the court make reasonable accommodations to allow the physician to complete his/her testimony once the physician has been called as a witness.

F. TRIAL

1. The function of physician in the legal system is to educate the court and the jury as to the patient's medical condition. A physician should be fully familiar with the patient=s case and records before the physician's court appearance. The physician should be prepared to respond to questions with all relevant facts and opinions regarding the patient.

2. The function of the attorney is to place before the court all proper evidence favorable to the client=s case. The civil justice system is an adversarial system. At trial, the attorney serves as a zealous advocate on behalf of the client's case in questioning witnesses, including physicians. Furthermore, the physician may be subject to cross examination by one or more of the attorneys. Cross examination is intended to test the qualifications, competence, credibility, and opinions of medical witnesses within the framework of proper legal procedure.

3. The touchstones for both professions must be a sense of service to the patient who relies on both, mutual respect for each other=s profession, mutual consideration, and mutual courtesy.

Exhibit A
Medical Report

Patient's Name_____
Address_____
_____

History: Brief Facts of Injury/Illness
_____
_____
_____

Related Medical History
_____
_____
_____

Date of FirstTreatment_____

Date of Last Treatment_____

XRAYS: Date\Place Taken _____

Findings:_____
_____

Diagnosis:_____

Prognosis:_____

Estimated Date Patient Can Return to Usual Employment_____

What future hospitalization or treatment will the patient require?_____