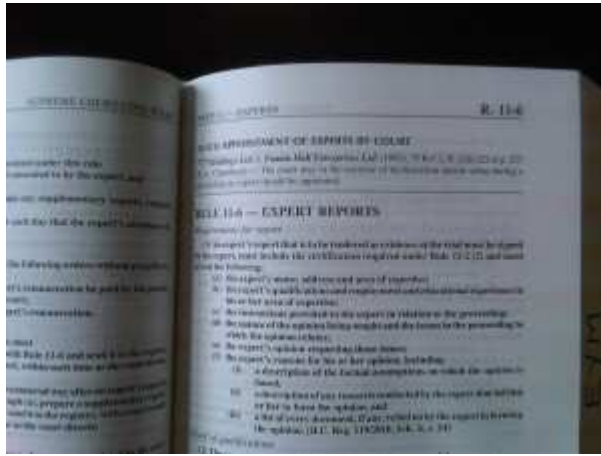


Conflicting Duties? Treating Doctors Duties To Their Patients And To The Court

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As previously discussed, one of the biggest changes in the New BC Supreme Court Civil Rules is an overhaul to the requirements for admissibility of expert opinions. These changes have created some tension in personal injury claims.

In no area of law are expert opinions used more frequently than in personal injury lawsuits. The opinions of treating physicians are often crucial in the success of a personal injury claim. In fact, if a plaintiff fails to call their own doctor in support of their case the Court could draw an 'adverse inference' and assume the doctor will say something negative.

One of the changes imposed by the New Rules is a requirement that experts certify that their duty is to "assist the court and not to be an advocate for any party". In reality, this requirement always existed although it was not specifically spelled out in the former rules. Despite this, some treating physicians have been concerned with this new explicit requirement and refuse to provide expert opinions on the basis that they feel they are ethically required to be advocates for their patients.

Fortunately, the BC College of Physicians and Surgeons has squarely addressed this concern and informed their members that the New Rules of Court are not inconsistent with doctors duties to their patients. Specifically, in the September 2010 issue of the College's quarterly publication physicians were advised as follows:

The College does not view the New BC Supreme Court Civil Rules to be in conflict with the Canadian Medical Association Code of Ethics, including the fundamental responsibility to consider first the well being of the patient. With respect to the duty imposed under Rule 11-2 the College has always expected physicians providing expert reports to be fair, objective, and provide opinions that are supported by available information.

This expectation applies equally to physicians whether they are appointed by the plaintiff, defence, jointly or by the Court. Additionally, whether physicians are acting as experts in the capacity of treating physicians or independent medical experts, they still must provide balanced and objective reports. The College does recommend that, when asked to provide an expert opinion, treating physicians discuss with their patients the physician's duty to assist the court and not be an advocate for any party.

The truth of the matter is that treating doctors should be advocates for their patients health. They should not be advocates for their patients personal injury claims or other legal matters. The above clarification will hopefully assist physicians who have felt conflicted from providing opinions under the New Rules of Court.