Module 5:
Legal Issues For Physicians

Anthea Lafreniere
PMC participant
CMA member
Joule™ acknowledges the significant contributions of the author of this resource document, as well as the efforts of the team.

Joule and the author encourage readers to critically appraise this material and other resources in order to customize their personal action plans to best fit their personal and professional aspirations. You are advised to consult with professional advisors to ensure that all of your specific needs are met. The information contained in this document is intended to be used for discussion and educational purposes only. While every effort has been made to provide accurate and current information, Joule does not make any representations, warranties or conditions (either expressed or implied) with respect to the accuracy or reliability of the information provided.

Dr. Tom Faloon, MD, CCFP, FCFP
Assistant Professor, Family Medicine, University of Ottawa
Physician Presenter, Joule
Practice Management Curriculum

September 2012

Copyright © 2016 Joule Inc. or its licensors. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in a database or retrieval system, without prior written permission of the copyright holder except in accordance with the provisions of the Copyright Act or for your personal, non-commercial use.

Please send your permission request to:
permissions@cma.ca

Registered trademark of the Canadian Medical Association used under licence.
INTRODUCTION

During medical school and residency, some physicians develop an aversion to dealing with lawyers. The unfortunate reason may be that, in the isolated world of clinical training, most talk of medico-legal interaction involves the issue of malpractice. That first call or letter from a lawyer is likely to spark a sense of paranoia among medical students and residents!

The truth is that lawyers are much more than the agents of malpractice nightmares—they also play a very important role on your professional advisory team. Physicians are experts in medicine, not law. Just as a family physician seeks the expert advice of specialist colleagues to assist in patient care, all physicians should seek a lawyer’s expert legal advice on personal and professional issues in order to protect themselves and their families.

This module will provide an overview of the essential legal services required by all physicians, and make suggestions for an action plan to address the legal issues you may face now and in the future.

FINDING A GOOD LAWYER

As in any professional or business sector, the recommendation of a satisfied client is the best source of referral. Ask colleagues, peers and trusted teachers for the name of a lawyer that they use and would recommend.

Another great resource is the MD Financial Management professional referral list, which is available to all students, residents and practising physicians in Canada. A subsidiary of the Canadian Medical Association, MD Financial Management has financial consultants across the country who routinely ask their physician clients for the names of local lawyers and accountants they would recommend to others. Before adding anyone to the referral list, the MD regional manager interviews the recommended professionals to ensure that they are suitable for physician clients. If you are new to a community, the professional referral list gives you a place to start. It is still your responsibility, however, to make contact and interview the prospective lawyer or accountant. You should interview a few professionals to ensure that you are comfortable with their approach and style. Many will not charge for a preliminary interview, but it is wise to ask about fees in advance.

Your provincial medical association will also have resources available to assist you with professional legal issues.

What You Should Expect To Pay

Like many professionals, lawyers charge an hourly fee or per diem based on the type and scope of work that they perform. It is important to ask the lawyer for a breakdown of his/her fees. Lawyers are accustomed to being asked for such details, and are generally very good about explaining their fee schedules. Do not be surprised to see charges for telephone conversations, emails, faxes and photocopying. The price of some legal services, however, such as the preparation of a will, may be based on a completed document.

Proactive legal advice is much cheaper than reactive legal representation—in other words, lawyers are much less expensive than lawsuits. And, like physicians, lawyers should be fairly remunerated for their training and expertise.
Don’t be “penny conscious and dollar foolish”. Having legal advice before you sign any contract can save you time, money, stress and the mental anguish you will suffer if you must settle unanticipated conflicts. An experienced lawyer can foresee pitfalls and recommend solutions to be included in the contract before problems ever occur.

Can One Lawyer Advise Me On All Of My Legal Issues?
Just like medicine, law has its generalists and specialists. It is advisable to establish yourself with a lawyer you trust and who will refer you to expert colleagues for complementary legal services as needed. For example, you may have one lawyer to complete a house closing, and another who specializes in employment and contract law to help you evaluate a practice opportunity.

Interview Your Prospective Lawyer
It is important to interview your prospective lawyer. Verify in advance if you will be charged for this interview. Although many lawyers do not bill for this initial meeting, don’t let a professional fee keep you from finding the right lawyer. The objective of the interview is to discover how experienced the lawyer is with the personal and professional issues that physicians face. You also want to feel comfortable with your legal advisor, confident that he/she will act in your best interest.

Questions To Ask Your Prospective Lawyer:
- How many years have you been in practice?
- What areas of law do you specialize in?
- Do you have ready access to partners/colleagues who can complement your expertise to meet my requirements, such as a lawyer specializing in contract law?
- Do you have several physician clients? Are you familiar with the issues they face?
- What are key points to look for in contracts that physicians commonly need, such as group practice contracts, contracts with institutions and employment contracts?
- How quickly can I see you if an urgent matter arises?
- Can I consult you by email or telephone?
- Would I work with your partner if you are not available?

CONTRACTS

What Is A Contract?
A contract outlines, in writing, the terms and conditions of a contractual relationship between two or more parties. It should clarify what each party will give and receive from the contractual relationship. If there were never any conflicts, if all parties honoured their obligations and if new variables never occurred, then a detailed contract would be unnecessary—but this is rare! A comprehensive contract anticipates and addresses all of the “what ifs” of a contractual relationship. For example:

- What if my associate uses 50% of the medical supplies and staff resources but pays only 33% of the costs?
- What if I am not happy with sharing staff? Will my associates agree to allow for “dedicated” staff?
- What if a group member fails to honour his or her obligations? What are our options to resolve this issue?

Key Message
- Seek the expertise of a lawyer for all of your professional and personal legal affairs. Proactive legal advice is less expensive than reactive legal representation.
• What if I decide to move in three years but our lease is for five years? What will my obligations be to the remaining group members?

• What if I want to upgrade our electronic medical records in one year? Will the group agree now regarding how we will proceed in the future?

Like a great physician, a great lawyer will have learned from past experience and will be better able to anticipate the “what ifs” that may arise in the contractual relationship. If the “what ifs” are anticipated, alternatives and solutions can be determined in advance, saving valuable time, money and stress. Experience and contingency planning will also reduce animosity if conflicts do materialize.

SCENARIOS

Personal Legal Scenario: Rick And Ann
Medical residents Rick and Ann plan to be married in two months and will complete their residencies in one year. Rick, a general surgeon, expects to join a four-member associated group practice. The practice is located in an office building two blocks from the community hospital in the small city where Rick and Ann want to live. Ann, a family medicine resident, plans to do locums and sessional work initially, because the couple plans to start a family soon. A group practice in the same city hopes that Ann will join them as an associate.

Personal Legal Scenario: Beth
Beth, a PGY-5 in obstetrics and gynecology, is single and plans to do locums and maternity leave coverage for two to three years until she finds the right location for her long-term practice.

What personal and professional legal issues should Rick, Ann and Beth address? Are Beth’s requirements different from Rick’s and Ann’s? If so, how are they different?

In any situation involving a signed contract, one should consider obtaining professional legal advice. Why? Because physicians are notorious for not reading their contracts. You might not call your lawyer for small issues, but a contract is different: When you sign a contract, you are responsible to meet the obligations and accept the benefits as detailed in the document.

Every individual will potentially be dealing with the same personal legal issues:

• Wills, financial powers of attorney, and healthcare directives
• Cohabitation or marriage contracts and other family law issues
• Real estate transactions

WILLS, POWERS OF ATTORNEY AND HEALTHCARE DIRECTIVES

During our Practice Management Seminars, which we’ve conducted since 1997, we have informally surveyed more than 10,000 medical residents and have found that:

• The vast majority of single medical residents do not have a will, financial power of attorney or healthcare directive (sometimes called living wills, and, in various provinces, called powers of attorney for personal care; directives; representation agreements; or mandates).
• Of greater concern, 50% of married residents with children did not have an updated will.

Sadly, surveys as recent as the spring of 2012 indicate that this scenario has not changed.

Ask yourself this question: How many times has your care of a critically ill patient been compromised or complicated because the patient had not assigned a healthcare directive?

Rick and Ann definitely should update their wills, financial powers of attorney and healthcare directives. The cost is minimal. They should then cue themselves to review and update their wills upon any significant personal or financial change of circumstances—having children, for instance—or at least every five years afterwards.

Does Beth need a will if she has no dependants? Many residents who were polled in our seminars believed a will is unnecessary for single individuals with no dependants. Although there may be an argument for this view, it is shortsighted—there is a difference between need and should have. Everyone should consider the purpose of a will.

**Why You Should Have A Will**

The purpose of a will is to appoint an executor to administer one’s estate, to direct the payment of debts and taxes, and to bequeath one’s estate to loved ones. You may not think you have an estate today, but that will not always be true. Are you taking into consideration any life insurance or inheritance you might receive before you die?

A will acts as a directive to assist loved ones and dependants in carrying out one’s wishes after death. A will can also protect loved ones and dependants from unnecessary financial liability or loss. If you die without a will, the province will appoint someone as your executor, and he/she will distribute your assets in accordance with a plan set out in provincial legislation—which may or may not reflect your wishes.

Being single with no dependants doesn’t mean Beth is not concerned about how her affairs would be handled in the event of her death. It is advisable for her to get a will, financial power of attorney and healthcare directive now—but, should Beth defer this, she should reconsider the matter at least once each year.

When writing a will, you will need to appoint trusted executors to carry out your directives. Most people name a family member (typically a spouse) or close friend. You should also appoint alternates in the event that your first executor dies or is not competent at the time of your death.

In deciding on the terms of disposition of your estate, consider alternative gifts in case your primary beneficiary dies. If you have minor children, you may create trusts in your will to hold their assets until they reach the age of majority or older. As your estate grows, your lawyer can advise you about the benefits of “spousal trusts”, other estate-planning vehicles and creditor protection mechanisms.

Also ensure that you purchase life insurance to provide for your spouse and children in the event of your untimely death. Your lawyer can review with you the best way to designate a beneficiary for the insurance.
Powers Of Attorney
If one has an up-to-date will, death is a somewhat straightforward scenario to address. One’s burial wishes are honoured and the estate is managed by trusted executors in accordance with the will’s provisions. But what would happen if you became mentally incompetent? A power of attorney for financial affairs and a power of attorney for personal care will provide for this scenario. In these documents, you can appoint someone to act on your behalf for management of your finances and property, as well as personal care. Although there is little likelihood that illness or injury will render a young physician temporarily or permanently mentally incompetent, it is wise to prepare for every contingency.

You should assign powers of attorney for property and personal care to your trustees when you prepare your will. Always verify that the trustees you choose are comfortable with this responsibility. To complement your power of attorney for personal care, you should also prepare a living will to express your healthcare directives in the event that you are terminally ill and not mentally competent to speak for yourself.

Ethicists at the University of Toronto have produced an excellent guide, titled *The University of Toronto Joint Centre for Bioethics Living Will*. This guide is available online; go to www.utoronto.ca/jcb and click on the living will link.

What About Your Parents?
Have your parents updated their wills, powers of attorney and healthcare directive? If not, encourage them to do so. It will be in everyone’s best interest.

Do-It-Yourself Will Kits
We recommend that you seek a lawyer’s advice to properly prepare and customize your will and power of attorney. The peace of mind is well worth the money.

OTHER PERSONAL LEGAL ISSUES

Cohabitation And/Or Marriage Contracts
Should Rick and Ann consider a marriage contract? What if there is a significant discrepancy in their individual net worth or debt load? What if one partner has a large inheritance, or will come into a lot of money after they are married? Will there be potential problems if they subsequently separate?

Once thought to be appropriate only for the rich and famous, cohabitation/marriage contracts are a good idea for most couples to consider today. Statistics show that at least one in three marriages ends in divorce, and the negotiations for equitable separation can be extremely costly for both parties, financially and emotionally. Legal advice, mediation counselling and duplication of households are among the many expenses that will be incurred.

It may not be romantic to discuss the “what if we separate?” scenario with one’s significant other, but both parties are best served if they at least make an informed decision about a cohabitation/marriage contract.

Real Estate Transactions
Rick and Ann, and possibly Beth, will probably consider purchasing a home within the year. This is a big financial and lifestyle decision. They will be dealing with a real estate agent who will broker their offer. They should also involve a lawyer, however, as soon as they are interested in making an offer, and not rely
solely on the real estate agent to represent their interests. A real estate lawyer should review any offer to purchase, then complete the transaction to ensure that the title is free and clear of any liens, easements or restrictions in use. A lawyer will also advise the best way to hold title to the real estate—in your name only, or with another as tenant-in-common or joint tenant.

**Apartment Leases**
An apartment lease is also a complicated legal contract that typically favours the landlord, not the tenant. There is rarely little room for negotiation for a domestic lease, but read the contract and seek legal advice if you have any questions or concerns.

**Professional Contracts**
The intent of this module is to provide an overview of the many situations in which a physician should obtain legal advice. The various contracts listed below are addressed in more detail in other modules, including: Module 9. Principles Of Negotiation; Module 10. Evaluating Practice Opportunities: Family Medicine; Module 13. Evaluating Practice Opportunities: Specialists; and Module 1. Getting Started As A Professional.

Beth, Rick and Ann will deal with several different contracts during their professional careers. One way to look at professional contracts is to consider the four spheres in which physicians are active, because contractual issues will arise in each area:

- People you work with and for
- Physical plants in which you work
- Equipment and service providers
- Patients you serve

**Contractual Relationships With The People You Work With And For May Include:**

- Locum contracts
- Professional service contracts
- Group practice contracts (i.e., association or partnership contracts)
- Employment (salary) contracts
- University teaching contracts
- Institutional service contracts
- Contractual agreements for research grants
- Contractual agreements with provincial governments for fee-forservice remuneration
- Alternative payment plans with the government, institution or university
  - Family health networks (FHNs) or family practice groups (FPGs)
  - Alternative funding plans for academic teachers to complement or replace fee-for-service remuneration
- Professional incorporation (see Module 4. Personal And Professional Accounting And Taxation)

**Key Message**
- Every adult needs to have an up-to-date will, power of attorney and healthcare directive.
Contractual Relationships With The People Who Work For You Include:

• Staff employment contracts
• Services provided by contractors

Contractual Relationships For The Physical Plant May Include:

• Commercial lease for the office or clinic
• Purchase agreement for a medical building or condominium arrangement
• Access and utilization of hospital, institution, office and/or clinic space
• Admitting privileges and access to operating room time

Contractual Relationships With Service And Equipment Providers May Include:

• Leasing and service agreements for computer systems, communication systems and major equipment (e.g., for radiology or ophthalmology practices)

Contractual Relationships With Your Patients May Include:

• Patient contracts, which are now recommended, so patients acknowledge and accept the terms of the office policies, services and procedures

Individual practice profiles, location and specialty will determine which of the above contractual relationships apply.

Rick will require legal advice when he is negotiating an association agreement with the established surgeons to address his obligations for overhead costs and services. His lawyer should review the existing lease to ensure that his name is included. Rick should verify that there is an option to renew the lease. He should also interview the existing staff and negotiate for additional or replacement staff, if required. If he plans to hire his own staff, he will be negotiating an employment contract with prospective employees. If Rick decides to terminate the employment of one or more staff members, his lawyer should verify that Rick satisfies all of the requirements of his province’s Employment Standards Act. Rick also will be negotiating for hospital privileges and operating room time. If he is responsible for providing his own equipment, his lawyer and accountant should review the purchasing or leasing contracts. Finally, Rick should have his lawyer review any existing leases of the association’s group, as he will be assuming some responsibility when he becomes an associate of the practice.

You Do The Negotiation, Not Your Lawyer

It would be too expensive to pay a lawyer to negotiate all of your contracts. In some instances, the lawyer’s role is merely to advise you and review the contract to ensure that all of the “what ifs” have been addressed. In other circumstances, your lawyer may actually draft the contract, based on your instructions, and negotiate with the other party and his/her lawyer.

Contractual Complexity Of Salaried And Academic Practice

A common misconception of physicians—family doctors and specialists alike—who plan to work in a university setting is that they will have less onerous contractual obligations and responsibilities than their colleagues who work in fee-for-service settings. In fact, a physician who plans to work in an academic environment is well served by enlisting the services of a lawyer who specializes in contract and employment law. The academic may be negotiating simultane-
Key Messages

- Proactive legal advice that addresses the “what ifs” in advance will save you money and protect your interests. Always have your lawyer review a contract before you sign it.

Action Plan

- Establish yourself with a lawyer.
- Obtain or update your will, powers of attorney and healthcare directive.
- Have your lawyer review any contracts you may have signed without legal advice. Ask your teachers about contracts they have signed. What mistakes have they made? What did they fail to anticipate? What would they add, delete or change if they could?
- Review all of your legal affairs annually.
- Consult cmpa-acpm.ca for all medico-legal issues.

RESOURCES

Examples of personal and professional contracts can be found on cma.ca/pmcresources.

Medico-Legal Issues

Canadian physicians have access to medical malpractice insurance via the Canadian Medical Protection Association (CMPA). Legal advice and representation is provided for issues that arise from the treatment of Canadian patients. The CMPA does not cover issues arising from the treatment of patients who are not Canadian, however. The mechanism to address this scenario is explained in Module 3. Personal And Professional Insurance.

All contracts should be signed at the same time to avoid any loose ends. See Module 9. Principles Of Negotiation; Module 10. Evaluating Practice Opportunities: Family Medicine; Module 11. Locums: Negotiating A Mutually Beneficial Locum Contract; and Module 13. Evaluating Practice Opportunities: Specialists, which address and elaborate on the evaluation of short- and long-term practice opportunities.

ously with the university, the hospital and the chief of the department. There will be complex remuneration formulas, based on individual “shadow fee-for-service” billings for clinical services, as well as the stipend for teaching, research and administrative work. All of this may need to be budgeted within the global funding given to the university in an alternative payment plan (see Module 8. Physician Remuneration Options).

There