

Practice Management

An Urgent Care Operator's Guide to Hiring and Managing a Lawyer

Urgent message: This article is a broad overview of how lawyers work and charge and what to do to avoid some of the most common pitfalls inherent in the attorney-client relationship.

ALAN A. AYERS, MBA, MAcc

Success in business entails being prepared and there will be times when it's unavoidably necessary for you, the urgent care operator, to engage the services of an attorney. From structuring and starting up the business, to reviewing and negotiating leases, to employment agreements and other personnel issues, to disputes with vendors—at some point competent legal representation may be not only advisable but even vital to the continued health of your center.

The purpose of this article is not to tell you where to find a lawyer or a law firm—referrals can be obtained by word-of-mouth or through local medical societies, bar associations, your bank, the Chamber of Commerce, or other business organizations—but rather to suggest some of the important considerations in selecting and maintaining a good working relationship with your attorney.

Do I Need an Attorney?

"Do I need expert advice or representation?" is the first and most obvious question when faced with a problem or circumstance that smacks of legal implications. Some believe that if you feel the need to ask yourself this question, the answer should always be

.....
Alan A. Ayers is on the Board of Directors, Urgent Care Association of America, Associate Editor, *Journal of Urgent Care Medicine*, and Vice President, Concentra Urgent Care.



© gettyimages.com

“yes,” if only to ask an attorney the same question and hear his or her views on it. In the final analysis, you should trust your own judgment and recognize your own limitations as to knowledge and experience in the particular field. Keep in mind, particularly, that many states (and federal Medicare regulations) have very specific requirements and restrictions that apply to various types of health care entities.

If you are still not sure whether you need an attorney, it's best to err on the side of caution. It's never too soon to ask the question; later can sometimes be too late.

There are some circumstances in which the need for legal representation is without question. One is during the business startup phase, when the selection and formation of the business structure occurs and when ownership buyout or succession, management authority, future non-competition, and a whole host of other issues need to be considered.

Another decidedly “yes” situation is in the case of litigation: *any litigation*. No matter how small or seemingly insignificant, do not try to handle it yourself unless you are prepared for heartbreak. Of course, in those cases in which insurance coverage is in play—including malpractice and general liability claims—your insurance company will select a law firm and, depending on your coverage, may cover the costs of the litigation.

Choosing an Attorney

The ideal attorney-client relationship for an urgent care operator will be with someone who is competent in the applicable area of the law, ethical, accessible when you need access, and reasonably priced. So do you hire a large firm, small firm, or sole practitioner? The differences can matter a great deal.

A large firm will likely have lawyers on staff with expertise in a wide range of legal fields, so they can handle “in house” most if not all of your varying legal needs that might arise. The tradeoff may be higher legal fees because of overhead that covers impressive office space, lots of support staff, country club memberships, and political connections. Large firms also may rely heavily on associates and paralegals, so your “someone” will at times have many different faces.

A small firm, on the other hand, typically will be less expensive and more personal to deal with, but it may lack the range or level of expertise that you desire. The sole practitioner, particularly one sufficiently experienced in the practice of health care and health care business-related law, is somewhat of a rarity today. Expect any matter that strays too far from his or her field of concentration to be referred out to others; time availability may also be an issue for a sole practitioner who has to balance the needs of other clients.

Ultimately, the character and the expertise of the particular lawyer who will handle your legal matters outweighs the size of the firm. It really is a relationship, and it should be one with which you are comfortable. Only you can discern whether your lawyer

AFFORDABLE EMPLOYEE BENEFITS!

Available to those practicing in PA, NJ, NY and CT.

Clinic owners, directors, office managers and staff, with Health Care Reform around the corner, please contact us immediately so we can help you navigate through this change.

Now more than ever, our clients have been implementing the following voluntary employee benefits.

- Disability Insurance
- Hospital Insurance
- Cancer/Critical Illness Insurance
- Dental Insurance
- Vision Insurance
- Life Insurance

Don't hesitate to contact us to learn more about....

- Our voluntary employee benefits programs at NO COST to your business.
- How you can save your clinic money by implementing pretax, group benefits.
- Our 100% employee funded insurance plans.

**Don't delay...
contact us today and learn how you
can begin to offer your employees an
affordable benefits!**

Annual Return of Employer... under sections 104 and 4085 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6047(e), and 6058(a) of the Internal Revenue Code (the Code).

Complete all entries in accordance with the instructions to the Form 5500.



**Patricia Murphy
Insurance Consultant**

pmurphybenefits@gmail.com

732.996.3960 Phone • 732.856.9284 Fax

Table 1. Setting Expectations: Money- and Time-Saving Questions to Ask Your Lawyer

- Can you describe the overall scope of legal work necessary to be performed?
- What is the anticipated length of time to resolve this legal issue?
- What are the total anticipated expenses including both attorney fees and non-attorney costs?
- Who within your firm will be working on my matter, including associates and paralegals?
- Which actions will require my in-person appearance?
- What documents will I be required to produce, and when will they be due?
- Will any of my employees be involved, and what is the probable scope of their involvement?

will truly be representing “you.”

As a final note, take a moment to check with the attorney-regulating authority in your state (usually the office of the State Supreme Court) for any past or pending disciplinary action against the attorney you are considering hiring.

Hiring an Attorney

After you have chosen a particular lawyer or law firm to consider hiring, invest some additional time in the process: Make an appointment and go to their office. It will be time well spent. You are (or will be) in charge of an efficient, complex urgent care facility, so use the same powers of observation you employ every day at your own center to get a feel for how this law office operates. It may speak volumes to you. Some firms charge for an initial consultation, others don't. Find out in advance. If they do charge, when making the appointment, tell them that the reason you are coming there is that you are considering hiring the attorney, either for ongoing, continuing representation or to handle a particular legal matter. Let them know that you do not expect to be charged for the lawyer's time during the interview unless and until you agree to hire him. In effect, you place the burden on the lawyer to tell you specifically when the clock gets turned on.

During the appointment, besides learning more about the person sitting across from you, a primary objective for you is to learn about the firm's expertise in the particular areas of the law that are of concern

to you. Be prepared to ask specific questions. Has the attorney or the firm handled similar matters? What were the costs and the time involved in those cases, and what were the results? Keep in mind that to the extent expertise is lacking, you may end up paying for the acquisition of knowledge that another firm may already possess. On the other hand, every legal problem is unique, so a good general knowledge coupled with a short learning curve on the specifics may be acceptable to you.

The lawyer is obliged to reveal to you any anticipated conflicts of interest. Ask if any exist. Large firms, particularly those that specialize in health care, may represent or have represented your competitors. A firm may have had a past attorney-client relationship with your counter-party. Although you may be given assurances that all client information is kept confidential or that conflicting matters will be handled by different teams of attorneys within the firm (called “firewalling”), you will have to be the judge of whether you are comfortable with that.

If a lawyer does not have malpractice insurance, in most states, he or she is required to inform a potential client without being asked. Ask anyway and don't feel uncomfortable about it. You are well advised not to hire a firm that does not have such coverage.

The Fee Agreement

The final step in the process of hiring an attorney is the agreement as to how much you will pay for the legal representation to be provided to you. Most firms will (and in some states they must) provide you with a written Fee Agreement. Read it thoroughly and carefully and understand its terms before your sign and request a copy of the executed document. The lawyer should be happy to explain to you any provisions that are not clear to you. If no written agreement is provided (which may be permissible in some cases, such as a minor matter being handled for a flat fee amount) you should at least insist that the fee arrangement be memorialized in writing in some form, typically in a letter.

The two main components of the fee agreement are the attorney's fees and what are referred to as costs. As to fees (other than in the minor, flat-rate situation described above), look for an hourly rate; in multiple lawyer firms, different rates will apply for different levels of experience and expertise. Some firms may charge fees for paralegals' time as well. Secretarial time may not be charged to you. Hourly rates vary widely, but keep in mind that a lower rate from a less experienced

lawyer may not necessarily end up being bottom-line less expensive for you on a particular case. Sadly, too, some lawyers and law firms routinely reap the benefits of a “48 hour day.” Contingent fee cases, in which the fee is a percentage of any money recovered (and which also require a specific written Contingent Fee Agreement), are typically only utilized in plaintiff personal injury claims and routine collection cases.

A lawyer may ask you at the outset of your relationship to pay fees and costs up front, as a retainer. This practice is quite common. By law this advance payment is not earned by the lawyer unless and until services in that amount have actually been provided to you. As long as the retainer is reasonably related to the overall anticipated cost and scope of the work you are asking be performed, it should not be viewed as anything other than a sensible business practice when dealing with a new client.

You will also be charged for costs, the definition of which also varies widely. Court filing fees, the cost of obtaining public records, investigators' fees, and anything else that is paid to others for services outside the firm will always be considered costs. Some firms also include such things as in-house copying costs, travel expenses, long distance phone calls, and the like, so, again, read the agreement carefully before signing it.

Questions to Ask About Legal Billing

When you bring a particular matter to your attorney for handling, ask for a “road map” of expected or anticipated action to be taken on your behalf including those listed in **Table 1**.

Litigation cases can be extremely time-consuming and expensive. Discovery—the pre-trial phase in which each party to a lawsuit requests evidence from the other party—can be particularly burdensome. What discovery costs are anticipated, who will be involved, the necessity of depositions and whether they will be transcribed, videotaped or both should be fully discussed and understood. The expense and time involved in a trial can be even worse, with an ultimate outcome that is fraught with unpredictability and risk. **Table 2** lists areas of inquiry when you bring your lawyer a litigation case.

To determine a settlement position, you must understand the strengths and weaknesses of your position, the law, the evidence on each side, and the arguments and counter-arguments to be made. A settlement or a trial outcome may be for money or for some type of injunctive action required of a party.

Table 2. Avoiding Surprises: Questions to Ask Your Lawyer When Litigation Arises

- What is your knowledge of, and experience with, the judge to whom the case is assigned?
- What are the possible and probable trial procedures and their potential schedules and timelines?
- How many lawyers will appear on my behalf at trial and what role will each play?
- What witnesses will be required, including any of my current or former employees?
- What are the anticipated non-attorney costs such as investigations, expert testimony, transcriptions, filing fees, and others?
- Will the non-prevailing party will have to pay any of the prevailing party's litigation expenses?
- What is the most likely outcome of the case and is settlement the best alternative?

Additional Ways to Control Legal Expenses

There are a number of ways to control or limit the legal expenses you incur at all points during the attorney-client relationship.

First, when bringing a matter to your lawyer for handling, always ask for an estimate of the total anticipated expense. When practical, set a budgeted high-end limit, one that is not to be exceeded without further consent from you. And memorialize it in writing.

Second, every bill you receive should detail all charges. Carefully review them, and do not be afraid to question or challenge something when warranted. Mistakes have been known to be made. Keep your own diary of time you spend with your attorney, and compare it to your attorney's invoice.

Associates and paralegals assigned to your case may not add much to the outcome, and can greatly escalate your expense. Insist that associate and paralegal work on your case be held to a minimum and be used only where cost effective and in a way that does not sacrifice experience. Be wary of large blocks of time being charged for “research.” Research is a necessary component of proper representation, but it's also easy to justify and nearly impossible to disprove. A strong protest now and then may help minimize its abuse.

Phone call billing is handled by most firms on a set minimum cost-per-call basis, except where calls run long enough to bill for the actual time involved.

Some firms charge a minimum of 10 to 15 minutes per call and bill in time increments ranging from 6 to 30 minutes. Keep this in mind when you call your attorney for some innocuous reason, or you decide during the call to spend 6 minutes discussing last night's basketball game. When calling your attorney, know beforehand what answers you seek, and be direct and to the point. Get off the line when you have your answer. If the attorney has to return your call after you leave a message, be prepared for that call by having your notes with you. If you leave a long, drawn-out message concerning your questions, you may see a bill that you did not expect for the answers. You can keep the lawyer on set deadlines by calling for updates. The old adage that the "squeaking wheel gets the first oil" is as true in a law office as it is in any other business.

Another fee that can become burdensome is travel by the attorney or on your part. You should know how travel and expenses are calculated including time involved. If you're paying for the attorney's time to drive to your location, in addition to the time spent meeting with you, you can reduce costs by meeting at the law office instead. You should also determine whether any travel is necessary, who on the attorney's team is needed to appear, and to meet telephonically when possible. When meeting at the law office, ask about the office hours, flexibility after hours, and whether the firm has a parking facility or covers your parking.

Always remember that you are paying for a lawyer's time. That is his or her "stock in trade." You may personally like your attorney (and ideally you do), but social banter when he's on the clock can be a waste of your money. If you meet for a drink after hours and discuss your case, expect a bill—it may even include the price of the cocktails! When working for you, your lawyer is not your friend, he is your representative and confidant.

Firing Your Lawyer

Even the best of relationships can come to an end at some time. This is true for friends, spouses, employees, doctors, and, yes, even lawyers. You may lose confidence in your attorney for any number of reasons, such as tardiness, demeanor, unreasonable fees, or apparent impairment, or you may simply want to switch to someone else, for reasons difficult to articulate. Whatever the case, when the existing attorney-client relationship no longer works adequately for you (and when repairing it is not a viable option for

you), it's time to move on. Keep in mind that the relationship is at-will: either party can end it at any time, for any reason, or for no reason at all. Expect a degree of disruption, particularly if your current lawyer is in the middle of handling one or more matters for you. You may have to pay for your new or prospective lawyer to review the work of your original lawyer in order to get up to speed—such services are both necessary and valuable.

But consider the other side of the coin. Your lawyer may have been doing all that he or she can, and may in fact have been doing an excellent job of representing you, but was not able to communicate with you in a way that you understood, perhaps giving you honest assessment of your position but in the process telling you things that you'd rather not hear. You may simply have been displeased with an adverse outcome that was beyond your lawyer's control. If you do go elsewhere, you start all over and you incur additional expenses, and you may end up in the same rut. Firing your lawyer is a decision to be made not hastily, but rather with reflection.

Once the decision to discharge your lawyer has been made and conveyed to him or her, no lawyer, according to the rules of their profession, has a right to hold you to representation. The lawyer is entitled to be paid for all time expended and all services provided to you up to the time of discharge. The lawyer may not, however, hold your records or files hostage. They belong to you (with some exceptions, your new lawyer can advise you on this), and you are entitled to have them delivered to you. If litigation is pending, your lawyer must have court approval to withdraw from it, and you will be required to obtain substitute counsel or be prepared to represent yourself in the matter.

Conclusion

As an urgent care operator, you rely on others for many of the goods and services required of a healthy business operation. Each of them contributes to your success. Your lawyer is simply one more. The purpose of this article is to introduce you to some of what takes place in the realm of lawyers; how they perform their services and how they charge for them; how you can avoid some of the pitfalls inherent in the attorney-client relationship. It is intended to raise your awareness. After all, awareness is essential to good business decision-making and performance. ■