

Medical Legal Radiology Consulting - Is it for you?

- 10 year review of more than 400 cases and lessons learned
- Perry W. Cooper MD, FRCPC (Neuroradiologist)
Medical Legal Neuroradiology Consulting
- Sunnybrook Health Sciences Centre
Department of Medical Imaging
(Courtesy Staff)

Topics covered

- What do **you** understand when you hear “medical legal radiology”?
- Scope of medical legal work in one practise of
- medical legal neuroradiology consulting
- Pros and cons of medical legal consulting
- The medical legal report
- What is involved in going to court?
- Practical advice: starting out, referrals, contacts

“Medical legal radiology”

- When I asked a group of neuroradiology fellows what they understood by the term, the majority immediately thought of being sued, perhaps for some procedural complication or a missed diagnosis.
- The term encompasses much more as you see in the variety of case material in my practice (next slide).

>10 years – 409 neuroradiology cases

<u>Type of case</u>	<u>case numbers</u>	<u>% cases</u>
• Plaintiff	333	81
• Defence	34	8
• CMPA	12	3
• Med. malpractice	24	6
• Other	6	1.5
• Court appearance	12	3

What is involved in medical legal radiology consulting?

- Review of imaging studies
- Review of reports and possibly multivolume medical briefs.
- Writing a medical legal report – in a timely manner
- Possible conversations, meetings with lawyer
- Possibly testifying in court and being cross-examined
- Business details e.g., maintaining records, storing files, obtaining GST #, billing

Considerations

Time:

- Do you have the time if you are working full-time and have a family or will this add another stress? Can you take time for court if required? e.g., my vacation planning takes into account trial dates and possible court appearance. A good number of cases are scheduled for trial. Although most cases settle before trial the settlement may occur as late as the day before the trial is to begin. I would suggest that you don't commit if you are unwilling to compromise. Some cases may go on for years, e.g. I have had at least 2 cases that have gone on for more than 10 years.

Anxiety:

- Do you fear court and cross-examination?
- Can you easily write reports or will you agonize over your opinion and wording?

The expert radiology report

- Indicate all documents on which the opinions in your report are based.
- Use clear language, check spelling, separate paragraphs.
- Keep to your area of expertise.
- Prior to finalizing the report review it as if you were on the opposing side. Remember that the other side may also recruit experts to review the imaging and your report.

Expert radiology report cont.

- In the “conclusion” or “summary” section summarize succinctly pertinent findings and address any specific questions posed by your lawyer, if you can.
- I dictate my reports on tape and I employ a typist who sends me the transcribed report as an e-mail attachment. I revise and edit it. I have an assistant read the report checking for ambiguous language and typos.

A day in court

- In preparation for court your lawyer will usually meet with you beforehand and review with you what he/she will ask you in court (examination-in-chief). After you are sworn in he/she will usually start by asking you a number of questions and refer to your CV in order to establish you as an expert. He/she will then take you through the case. After the examination-in-chief you can be cross-examined by the other side.
- Know that your obligation is to the court, not to the firm that hired you. You must sign and send a Form 53 which is an acknowledgment of expert's duty to assist the court, be fair, objective and non-partisan and provide evidence related to matters only in your area of expertise.
- If asked a question not within your expertise, say that it is not your area of expertise. Your lawyer will usually support you.
- Stick to what you stated in your report – e.g. if you haven't mentioned diffusion tensor imaging (DTI) or functional MRI (fMRI) in your report and raise it in court the opposing lawyer may object.

Court cont.

- Leave your ego outside the courtroom.
- Use layman's language, avoid jargon, speak clearly, answer "yes" or "no" to questions, not yah or shake your head. A court clerk records the proceedings.
- Keep your cool - you are the expert. Jurors, judges may not know what a CT or MRI scan is. Be prepared to explain how they work and what the images show using simple language.
- Use eye contact with jury, judge and speak with confidence.
- In court I may use medical illustrations produced by medical artists hired by the law firm. I often work with the artists in the selection and labelling of the images. I have at times brought a skull, a brain model and a spine to court so that the jurors and/or judge can better understand the injuries.

How does one get started in medical legal consulting?

- It would be a rare new radiologist who starts out wishing to do medical legal work. It may be a call from the CMPA with a request to assist in the defence of another physician that is your first introduction to medical legal matters. You may be called upon as an expert in a subspecialty, e.g. neuroradiology, or as a general radiologist working in the community setting in determining whether the standard of care was met with the interpretation of an imaging study or management of a patient.
It could be a call from a plaintiff lawyer seeking compensation for someone injured in a motor vehicle accident, or a defense lawyer defending a hospital, or a lawyer suing a physician and representing a client who has had complications following a medical procedure.

How does one get started? cont.

- You have the choice to accept the case or not. If called by the CMPA you may feel you would like to help a colleague. You may feel this type of work is a new challenge or that you have a duty to assist and agree to accept. However there is no obligation and if you are uncomfortable you are best to decline.
- It is important that there is no conflict when you accept a case, e.g., I personally would not undertake a medical malpractice case where the involved physician is an acquaintance or colleague although I might act for his/her defence if he/she is at another hospital and if requested by the CMPA. Since I believe that every person deserves a fair assessment I will review the circumstances for possible malpractice in the case of a physician(s) that I don't know.

How do you get referrals, make contacts?

- I have chosen not to advertise in legal journals nor have I tried to network on social or business media sites but these are options . I enjoy doing medical legal consulting but I do not wish to be swamped with work at the expense of my family time and other interests.
- Many of my colleagues know that I do consulting in neuroradiology and I have had some referrals through them.
- I have been a member of the Medical Legal Society of Toronto for many years and served on Council.
- I have accepted invitations to speak at numerous conferences organized by legal and medical legal associations. I also was asked to write articles in legal journals which I did.
- Many referrals stem from people I met at these events or through colleagues of theirs. I recently was contacted by a lawyer who saw my name in the program of an upcoming conference. I was also recently engaged by the firm of a defence lawyer who cross-examined me in court when I represented the plaintiff side.

Lessons learned, personal thoughts, suggestions

- The medical legal field introduces a new group of people: e.g., lawyers, law clerks, other physicians, medical illustrators, psychologists.
- Good management, organizational and business skills facilitate a successful practice with minimal added stress. Keep accurate , up-to-date records of reports, e-mails, conversations, billing etc.
- Follow up with law firm re the status of your cases. Eventually all cases will settle but you are not necessarily informed. I try to contact firms once or twice a year re status. A settled case means you can destroy the file papers and imaging and free up space.
- Reliability is a quality which I look for in others and try to provide. If you feel you cannot complete your report for the date requested then say so and if necessary decline that case.

Lessons learned, personal thoughts, suggestions cont.

- I feel very fortunate to have been able to easily transition from a hospital-based neuroradiologist in a group practice setting to a career-changing individual medical legal consulting practice where I decide when and how much I work. I attribute this to my clinical experience and knowledge gained over many years along with the willingness to learn new skills and undertake new challenges.
- Since I no longer work as a conventional neuroradiologist I try to maintain and update my knowledge by attending academic hospital rounds related to the neurosciences, neuro MRI and spinal trauma and I am a member of the Sunnybrook Research Ethics Board. I keep my Royal College CME up-to-date.
- Medical legal radiology consulting offers an opportunity for a partial change in your radiology career and perhaps at some stage a new career. The purpose of this presentation was to offer some insight into what is involved and perhaps interest a few of you enough to take the challenge.