



Third Party Reports: Reports by Treating Physicians and Independent Medical Examiners

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REFERENCE MATERIALS:	<i>Medical-Legal Report, 2010</i> , Medico-Legal Society of Toronto; <i>Guide to Third Party and other Uninsured Services</i> , Ontario Medical Association
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Third Party Reports

INTRODUCTION

At times, physicians may be asked to provide medical information, or to give a professional opinion unrelated to the provision of health care. Such requests may relate to applications for insurance benefits, legal proceedings or workplace arrangements. Information or opinions of this nature are generally referred to as ‘third party reports’.

For the purposes of this policy, ‘third party reports’ refers to all reports requested for the purposes of an external process. This includes reports provided by treating physicians about their own patients and reports provided by independent medical examiners about individuals with whom they do not have a treating relationship.

The College acknowledges that the third party reports process often gives rise to unique issues that can be difficult to navigate. The policy guidance contained in this document is intended to assist physicians in navigating these issues effectively, so that they are able to participate in the reports process in a manner that is respectful, objective and that upholds the reputation of the profession.

The guidance articulated in this document represents the professional expectations for physicians who provide third party reports; it is not an exhaustive catalogue of the industry-specific requirements that will govern individual reports requests. These include, but are not limited to requirements contained in the *Rules of Civil Procedure*, applicable to medico-legal reports.¹ The College encourages physicians to keep informed of any such industry-specific requirements so they can ensure that they have complied with their obligations.

Terminology

Third party reports:

Forms, letters or reports physicians are asked to prepare or complete in relation to an external process, such as insurance benefits, legal proceedings or workplace arrangements.

Treating physician:

A physician who provides a report about his or her own patient, with whom the physician has a treating relationship.

Independent medical examiner:

A physician who provides a report about an individual with whom the physician does not have a treating relationship.

Examinee:

An individual who is the subject of a report, but who is not in a treating relationship with the reporting physician.

Unless otherwise noted, any references in this policy to a physician or physicians apply to both treating physicians, and independent medical examiners.

PRINCIPLES

Trustworthiness, compassion, altruism and service are values which guide the medical profession.

When providing reports, physicians embody these values and uphold the reputation of the profession by:

1. Treating patients or examinees with respect;
2. Communicating effectively and clearly about all elements related to the reports process;
3. Providing a professional opinion in an accurate and objective manner that is substantiated by fact and sound clinical judgment;
4. Fulfilling requests for reports in accordance with reasonable timelines.

1. R.R.O. 1990, Reg. 194, enacted under the *Courts of Justice Act*, R.S.O. 1990, c.C.43. Physicians are advised that the *Rules of Civil Procedure* have recently been amended to include specific obligations relating to the duty of experts, and expert reports. These amendments come into force January 2010.



SCOPE

This policy applies to all physicians who prepare third party reports, or conduct medical examinations for a third party report. This includes reports prepared by treating physicians, and reports prepared by independent medical examiners.

POLICY

The College expects that when preparing a third party report, or conducting an examination for a third party report, physicians will act with the same high level of integrity and professionalism as they would when delivering health-care.

Highlighted below are issues and professional expectations for each stage of the reports process.

1. Before a Third Party Report is Prepared

Obligation to Provide a Report

The obligation to provide a report will depend on whether the physician has a treating relationship with the subject of the report. Treating physicians are obligated to provide reports about their own patients when proper consent is provided.² Independent medical examiners are not obligated to provide reports about examinees or about former patients.

When independent medical examiners are asked to provide a report about a former patient, the College advises them to disclose the existence of the previous treating relationship before accepting the request. The previous treating relationship may cause the objectivity of the report to be subsequently challenged; an open discussion will allow all parties to consider whether objectivity will be a concern in the specific circumstances, and to evaluate whether the report should be provided by another independent medical examiner.

Physicians are reminded that the foregoing guidance does not limit applicable mandatory reporting obliga-

tions. Mandatory reporting obligations continue to apply, irrespective of whether physicians are required to provide third party reports. A description of these reporting obligations can be found in the College's Mandatory Reporting policy.

Accepting a Request: Pre-Report Issues & Considerations

i) Communication

It is imperative that physicians discuss their role in the reports process and their practices with respect to fees with the third party and the patient or examinee.

Physicians' role

While the specifics of the information provided will depend on the circumstances of each case, physicians should convey that in preparing the report, they are complying with the request or requirements of the third party. Physicians should also indicate that through the report, they may have to release information that may not be in the patient's or examinee's best interests, or that may prove disadvantageous; for instance, it may negatively affect an application for insurance benefits or lead to an unfavourable outcome in a legal proceeding. In discussing these points, the physician should state clearly that decisions regarding eligibility for benefits, or entitlement to legal remedies are not made by the physician.

Effective communication regarding the physician's role will be particularly important for treating physicians, as patients may be more apt to confuse the encounter with a typical appointment for medical care.

Fees

In some instances, financial arrangements for third party reports will be set out in law.³ Absent specific legal requirements, the College acknowledges that physicians will adopt their own practices with respect to fees.

Physicians should discuss any such requirements or arrangements (including cancellation fees for missed

2. Physicians should note that the obligation to provide reports about patients may also be contained in statute. See the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sched. A., ss.37(1), 37(3).

3. For instance, see *Workplace Safety and Insurance Act, 1997*, S.O. 1997 c. 16, Sched. A., s.37(5).

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appointments) with the third party and with the patient or examinee as required before proceeding.

Any fees charged should comply with the Ontario Medical Association's *Guide to Third Party and Other Uninsured Services*.⁴

While it is generally permissible for physicians to request receipt of payment in advance for reports and examinations, the College encourages physicians to refrain from doing so on compassionate grounds, when the patient or examinee is responsible for payment directly, and the report relates to basic income and health benefits.

ii) Consent

Physicians must obtain the patient's or examinee's consent for disclosing personal health information to the third party⁵ and for conducting a medical examination.⁶ The College strongly advises physicians to document that consent has been obtained.⁷

Consent for Disclosure of Information

The consent process will vary depending on the circumstances of each case, however at minimum, physicians should ensure the following points are conveyed:

- The report will include personal health information which will be disclosed to the third party;
- Personal health information will otherwise be kept confidential unless physicians are permitted or required by law to disclose the information;
- Consent can be withdrawn at any time, however this will prevent the physician from completing and submitting the report;
- Patients or examinees are entitled to place limits on the information that physicians can disclose in a report, however such limitations may prevent physicians from proceeding with the reports process;
- Physicians have an obligation to be truthful when detailing information in the report, and when forming

a professional opinion about the patient's or examinee's condition or functional abilities.

Consent for Medical Examination

Through the consent process, physicians should ensure patients and examinees understand that the examination is being conducted to prepare the report and should outline what the examination will entail.

This includes an indication of what areas of the body will be examined, what functional capabilities the physician will be testing, and what types of questions the physician may have to ask.

iii) Presence of Observers & Audio/Video Recording

The College is aware that parties may wish to have an observer present during an examination, or may request that the examination be recorded by audio or video equipment. Physicians should discuss these issues with patients or examinees before the examination takes place.

Any arrangements with respect to observers or recording must be mutually agreeable to the parties involved.

Physicians are not obligated to conduct an examination in the presence of an observer or to record an examination, however to do so is permissible.

Should the parties disagree over whether the examination will be recorded, or will be conducted in the presence of an observer, the College recommends that the examination be postponed until these matters can be discussed with the third party and a resolution reached.

If physicians are conducting an examination for the purposes of a legal proceeding and one or more parties wish to have an observer present, they should discuss the matter with the lawyer involved, as specific rules may apply. For example, for court-ordered examinations, the *Rules of Civil Procedure* indicate that observers shall not be present during examinations unless the court orders otherwise.⁸

4. <https://www.oma.org/Economics/billing/ThirdPartyGuide.pdf>

5. *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A., *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5.

6. Obtaining consent for a medical examination is a requirement. In rare circumstances where medical examinations are required by law, patient consent is not required. For example, section 36 of the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sched. A., grants the Workplace Safety and Insurance Board the authority to compel a worker to have an examination, despite the worker's objections.

7. This can be documented in the notes or records physicians keep in relation to the examination and/or report.

8. *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, enacted under the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Rule 33.05 states: "No person other than the person being examined, the examining health practitioner and such assistants as the practitioners requires for the purpose of the examination shall be present at the examination unless the court orders otherwise." Rule 33.08 states that Rule 33.05 also applies to examinations conducted with the consent of both parties, unless one party elects to waive the Rule.



2. Proceeding with the Request for a Third Party Report

i) Objectivity & Impartiality

The distinct nature of third party reports can, in some instances, give rise to claims that the report is biased.⁹

To avoid such claims, the College expects physicians to ensure that reports are comprehensive, contain accurate information, and are written in an objective manner.

Comprehensiveness

Physicians should take reasonable steps to ensure that they have obtained and reviewed all available clinical notes, records and opinions relating to the patient or examinee that could impact the findings of the report, including the physician's final opinion and/or recommendations.

If despite reasonable requests physicians have not been provided with all available information, they should explicitly note this fact in the report, and clearly indicate that the findings made were based on the information available to them.

Accuracy

Physicians should ensure to the best of their abilities that the information contained in the third party report is accurate.

If physicians rely on information which they cannot substantiate independently, such as employment history or previous medical history, physicians should note in the report the source of the information and the fact that it has not been independently confirmed.

Objectivity

Any findings or opinions contained in a report should be stated objectively, using neutral language, free from personal bias.

Personal comments that are unrelated to the physician's

professional opinion, or that are extraneous to the third party's stated objectives are inappropriate and should not be included in the report.

ii) Clarity, Relevance & Timeliness

Reports should be drafted in a clear manner, contain relevant information, and be provided to third parties within a reasonable timeframe.

Clarity

To allow for optimal clarity, the College advises physicians to outline the basis for their professional opinion, and the information or observations on which they have relied in forming that opinion.¹⁰

Reports should be written in language that is appropriate for the intended audience. This may require physicians to avoid using medical short forms, or jargon. Where this is not possible, physicians should include, in addition to technical medical terminology, more colloquial terms or explanations to ensure the reader understands the report's contents.

Relevance

Third party reports should include only that information which the physician deems relevant to the third party's questions or that which is necessary to complete the third party's form.

Timeliness

In some instances, timelines for providing reports will be set out in legislation.¹¹ Absent a specific legal requirement, the College expects that physicians will complete and submit third party reports within 60 days.

If, in rare circumstances, physicians are not able to comply with this timeframe, either due to the complexity of the report, or for another appropriate reason, physicians should discuss the matter with the third party and reach an agreement for a reasonable extension.

9. Claims of this sort typically arise as a result of two key factors: the third party has paid for the report, and the report is used to support a decision that affects the patient or examinee directly (e.g., denial or suspension of insurance benefits).

10. Where the third party request involves the completion of a form, the information provided may be less detailed.

11. For example, see sections 32 and 42 of the *Statutory Accident Benefits Schedule-Accidents on or after November 1, 1996*, O.Reg. 403/96, enacted under the *Insurance Act*, R.S.O. 1990, c. I.8.

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iii) Scope of Expertise & Knowledge

The College is aware that in providing a third party report, physicians may be asked to answer questions, or provide an opinion that is beyond their expertise or experience, or which requires access to information they do not have.

Should this occur, the College advises physicians to discuss the matter with the third party, and explain that they may not be able to answer every question asked, or provide the opinion sought. If the third party will not amend their request, or is otherwise unresponsive to the concerns expressed, physicians should only complete those portions of the report for which they have adequate information and expertise and should indicate clearly the reasons for which a complete report cannot be provided.

iv) Suspicious Findings: Independent Medical Examiners' Duty to Inform

A treating relationship is not created when an independent medical examiner examines an examinee for the purposes of a third party report. As such, independent medical examiners do not have an obligation to provide an examinee with health care. Independent medical examiners do, however, have a duty to inform examinees of suspicious findings detected during the examination. This includes unexpected significant clinical findings, and conditions which raise serious concerns, or which the physician perceives will require essential intervention.¹²

In discussing suspicious findings with the examinee, independent medical examiners should emphasize the importance of obtaining timely medical attention and should seek the examinee's consent to share these findings with his or her treating physician. When consent is obtained, the College recommends that independent

medical examiners convey the findings in written form to the treating physician.¹³

3. After the Report is Prepared

i) Retention of Reports, Notes and Documents

Physicians must retain third party reports, and related documents in accordance with their legal obligations. Both the length of retention periods and the information required to be retained may be specified in legislation. Physicians should familiarize themselves with the specific obligations that are applicable to their circumstances.

With respect to the length of the retention period, the regulations under the *Medicine Act, 1991* require that records (which will include reports) must be retained for a 10-year period, or longer in some instances.¹⁴ Other legislation may contain different retention periods.¹⁵

Where physicians are subject to more than one statutory retention period, they must meet the requirements of the longest statutory retention requirement.

The information that must be retained may be specified in legislation. The regulations under the *Medicine Act, 1991* require that the information retained include a record of assessments including notes of examinations and investigations, and written reports provided by other physicians or health care professionals.¹⁶

In addition to information that physicians are required to retain by law, the College advises physicians providing third party reports to retain the following:

- Consent obtained;
- Contract with the third party, outlining scope, purpose, timelines and fee arrangements;
- Audio or video recording of the examination, where applicable, if the recording was made by the physician;

12. This includes but is not limited to undiagnosed conditions and conditions for which immediate diagnostic intervention is required.

13. Sending a letter will enable both the treating physician and the independent medical examiner to have a record of the finding and its disclosure. The College does not advise independent medical examiners to merely send the treating physician a copy of the third party report. This is for two reasons: first, the examinee's consent may not extend to disclosure of the entire report, and second, provision of the entire report will not give the treating physician specific information about the unexpected finding, and therefore the treating physician may not obtain the information necessary to intervene or follow up in the requisite manner.

14. O.Reg.114/94 *General*, enacted under the *Medicine Act, 1991*, S.O. 1990, c. 30., Part V, Records ss.18, 19. These provisions require that records must be kept at least 10 years after the date of the last entry of the record, or where it relates to a minor from the date on which the individual reached (or would have reached) 18 years of age.

15. For example, Regulations under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 contain requirements for retention of records. These include *Designated Substance: Benzene*, R.R.O. 1990, Reg. 839, (ss.15(1), 15(2)); *Designated Substance: Coke Oven Emissions*, R.R.O. 1990, Reg. 840, (ss.15(1),15(2)).

16. O.Reg. 114/94, *General*, enacted under the *Medicine Act, 1991*, S.O. 1991, c.30., Part V., Records, s.18.



- Documents, or information not created by the physician, which the physician relied upon when preparing the report;
- A list of sources of ancillary information, and any surveillance conducted by others.¹⁷

With respect to ancillary information, the College is aware that in the absence of a specific statutory retention requirement, physicians may be inclined to return this information to third parties, or to destroy their own copies for practical reasons such as storage issues. The College advises physicians to take these steps only if they are satisfied that this information will be retained by others, and will be available for their own review should they be required to discuss the third party report in the future. As an alternative, the College encourages physicians to consider options to address storage concerns such as retaining information electronically or on a compact disc.

ii) Access to Reports

Physicians should be aware that after the report has been submitted to the third party, patients or examinees may contact physicians directly to request a copy of the report or a copy of documents relied upon when preparing the report.

Physicians must comply with any statutory obligations they may have to provide access to reports, documents or notes. This includes but is not limited to applicable obligations under Ontario and Canadian privacy legislation.

Should physicians be uncertain how to respond to a request for access, or what obligations they may have, the College advises them to seek the guidance of the Canadian Medical Protective Association (CMPA), or their legal counsel.

17. Taken From *Medical Examinations by Non-Treating Physicians (NTMEs)* – College of Physicians and Surgeons of Alberta Guideline – June 2000

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