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

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INTRODUCTION
At times, physicians may be asked to provide medical information, or to give a professional opinion for a third party process such as for applications for insurance benefits, or in respect of workplace issues, attendance in educational programs, or legal proceedings. Physicians may be asked to prepare a report, write a letter or complete a form. For the purposes of this policy, these are referred to collectively as ‘third party reports’. Third party reports may relate to a physician’s patient, or to individuals with whom physicians do not have a treating relationship. The request for the report may come from the physician’s patient directly, or from an external party, such as a representative from an insurance company or a lawyer. The College acknowledges that the third party reports process often gives rise to unique issues that can be difficult to navigate. The expectations articulated in this document are intended to assist physicians in navigating these issues effectively, so that they are able to participate in the third party reports process in a manner that is respectful, objective and that upholds the reputation of the profession. The policy does not, however, provide an exhaustive catalogue of the totality of requirements that may apply to specific third party reports requests. Consequently, physicians are encouraged to keep informed of any additional requirements that may be applicable in their particular circumstances including those set out in statute or regulation so they can ensure that they have complied with their obligations. Policy expectations specific to the role of medical experts are provided in a separate policy.

TERMINOLOGY
Third party reports:
Forms, letters or reports physicians are asked to complete or prepare in relation to a third party process that are not for the purpose of the provision of health care.

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

Independent medical examiner:
A physician who provides a third party 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.2

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; and
4. Fulfilling requests for reports in accordance with reasonable timelines.

1. These include, but are not limited to solicitor client and litigation privilege and requirements contained in the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, enacted under the Courts of Justice Act, R.S.O. 1990, c. C.43.
2. For the purposes of the provisions of the Health Professions Procedural Code (Regulated Health Professions Act, 1991, S.O. 1991, c.18., Sched. A.) concerning sexual abuse of a patient, the College will consider examinees or individuals to be patients.
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 about their patients, and reports or examinations prepared or conducted by independent medical examiners about individuals with whom they do not have a treating relationship.

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. 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.

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 party who has requested the report.

Physicians’ Role
To avoid misunderstanding, the College encourages physicians to communicate clearly the nature of their role in providing a third party report. This will be particularly important for treating physicians, as patients may be more apt to confuse the encounter with a typical appointment for health care.

In discussing their role, physicians should explain to patients that while the specifics of the information provided will depend on the circumstances of each case, they are obliged to disclose relevant and accurate information in the third party report. Where required, consent will be obtained and documented. Physicians are also encouraged to convey that the final outcome (for instance, decisions regarding eligibility for benefits) are not made by the physician but rather by the relevant decision makers in the third party process.

Fees
Physicians should discuss any requirements or arrangements with respect to fees (including cancellation fees for missed appointments) with the requesting party before proceeding.

In some instances, details regarding fees for third party reports will be prescribed by law. Physicians are expected to comply with any legal obligations they may have in this regard. Where there are no legal requirements with respect to fees, the College expects that any fees charged for third party reports will be consistent with the Ontario Medical Association’s Physician’s Guide to Uninsured Services.

While it is generally permissible for physicians to request

3. 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., s.37(1), 37(3).
4. For instance, see Workplace Safety and Insurance Act, 1997, S.O. 1997 c. 16, Sched. A., s.37(5). The Professional Misconduct regulation (Section 1(1), paragraph 21 of O.Reg. 856/93 Professional Misconduct, enacted under the Medicine Act, 1991 S.O. 1991. C.30.) also specifies that it is an act of professional misconduct to charge a fee that is excessive in relation to the services performed.
5. https://www.oma.org/M em ber/Program s/Billing/Pages/default.aspx.
Third Party Reports

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 party and for conducting a medical examination. The College strongly advises physicians to document that consent has been obtained.

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:

• Patients or examinees can withdraw consent 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; and

• Physicians have obligations to be truthful and accurate when detailing information in the report, and when forming a professional opinion about the patient’s or the examinee’s condition or functional abilities.

If physicians are uncertain about the specific information that should be conveyed through the consent process, the College encourages them to seek independent legal advice.

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.

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.

If the matter is not related to a legal proceeding, the College advises that although physicians are not obligated to conduct an examination in the presence of an observer or to record an examination, they are permitted to do so if they wish.

In these instances, any arrangements with respect to observers or recording must be mutually agreeable to the parties involved. 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 and a resolution reached.

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7. Physicians can rely on a pre-signed consent form provided they are satisfied of the following: first, the form meets the criteria of a valid, informed consent; and second, the consent form applies to, and authorizes the full spectrum of acts they will conduct in order to prepare the third party report (for instance, if physicians will need to conduct a medical examination, the signed form must contain consent for an examination). If physicians have any doubts about the validity of the consent provided, or if the patient or examinee has imposed limits on the consent that will prevent physicians from completing the report, they should discuss the matter with the requesting party before proceeding.
8. This can be documented in the notes or records physicians keep in relation to the examination and/or report.
9. 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.”
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.\(^\text{10}\) 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 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 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, and should be free from personal bias.

Comments unrelated to the physician’s professional opinion, or that are extraneous to the requesting 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 the requesting party 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.

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 necessary and relevant.

Timeliness
In some instances, timelines for providing reports will be set out in legislation.\(^\text{11}\) 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 requesting party and reach an agreement for a reasonable extension.\(^\text{12}\)

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.

\(^{10}\) 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).

\(^{11}\) 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.

\(^{12}\) Physicians are reminded that under the Professional Misconduct regulations (section 1(1), paragraph 17 of O.Reg. 856/93, Professional Misconduct, enacted under the Medicine Act, 1991, S.O. 1991, c.30) it is an act of professional misconduct to fail, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member to the patient or his or her authorized representative within a reasonable time after the patient or his or her authorized representative has requested such a report or certificate.
Should this occur, the College advises physicians to discuss the matter with the requesting party, and explain that they may not be able to answer every question asked, or provide the opinion sought. If the party will not amend their request, or is otherwise unresponsive to the concerns expressed, physicians should restrict their statements to matters that are within their area(s) of expertise and about which they have sufficient information. Physicians should also indicate clearly the reasons for which they are unable to fulfill all the elements of the third party’s request.

iv) Independent Medical Examinations: Suspicious Findings

An independent medical examination is one which is conducted strictly for the purpose of a third party report. It is distinct from a regular physician-patient encounter and, as such, it does not obligate the independent medical examiner to treat, or to provide health care to the examinee.

If, however, in the context of an examination, the independent medical examiner discovers a suspicious finding, such as an unexpected significant clinical finding, a condition which raises serious concern or a symptom or condition which requires essential intervention, he or she should advise the examinee of this fact. The goal in doing so is to enable examinees to obtain timely medical attention. The College recommends that independent medical examiners seek the examinee’s consent to share the results with his or her treating physician. It is recommended that the findings be conveyed in written form as soon as possible to that treating physician.

If the independent medical examiner is conducting the examination in the context of a legal proceeding, he or she should seek independent legal advice before disclosing the findings to the examinee. Doing so will ensure that physicians can obtain fulsome guidance about the particular obligations that may be applicable in the circumstances.

3. After the Report is Prepared

i) Retention of Reports, Notes and Documents

Requirements relating to the retention of reports, notes and documents will vary depending on the context in which a physician has provided a third party report and may be specified in legislation.

Physicians are expected to retain third party reports and related documents in accordance with their legal obligations. The College recommends that physicians familiarize themselves with the specific obligations that are applicable to their circumstances and seek independent legal advice where necessary.

In circumstances where there are no applicable legal obligations which govern the type of information physicians should retain, the College advises physicians 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;
- Documents, or information not created by the physician, which the physician relied upon when preparing the report; and
- A list of sources of ancillary information, and any audio or visual information recorded by another person.

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13. This includes but is not limited to undiagnosed conditions and conditions for which immediate diagnostic intervention is required.
14. 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.
15. For instance, requirements with respect to the length of retention periods are contained in O.Reg.114/94 General, enacted under the Medicine Act, 1991, S.O. 1990, c. 30., Part V, Records ss.18, 19, and the regulations under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1 also 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)). Requirements with respect to the type of information that must be retained are included in O.Reg. 114/94, General, enacted under the Medicine Act, 1991, S.O. 1991, c.30., Part V, Records, s.18 which requires that the information retained include a record of assessments, including notes of examinations and investigations, and written reports provided by other physicians or other health-care professionals.
16. Taken from College of Physicians and Surgeons of Alberta, Standards of Practice, Standard #14, 2010.
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 the requesting party, 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.

**ii) Access to Reports**

Physicians should be aware that after the report has been submitted, patients or examinees may contact physicians directly to request copies of the report, notes or 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 independent legal advice.