

---

## **Ethical Guidelines on Independent Medical Assessments 2010. Revised 2015**

These Guidelines apply to doctors conducting independent medical assessments on behalf of third parties where there is no pre-existing doctor-patient relationship. They do not apply to treating doctors performing medical assessments on behalf of third parties.

### **1. Introduction**

1.1 At times, doctors (medical practitioners) are requested to conduct independent medical assessments to assess persons on behalf of third parties such as insurance companies or employers as well as courts or tribunals. The doctor will prepare a report for the third party based on the assessment.

1.2 On occasion, the doctor may be requested to attend court or a tribunal to provide further information on that assessment. In such a case, the doctor's duty is to the court or tribunal and not to the party that engages them.

1.3 These guidelines have been prepared to assist doctors in conducting, reporting on and giving evidence in relation to independent medical assessments.

### **2. The Role of the Doctor in Conducting an Independent Medical Assessment**

2.1 Where the doctor is conducting an independent medical assessment, a therapeutic relationship does not exist. The role of this doctor is to provide an impartial medical opinion to a third party, not to treat the person (the examinee). The result of the assessment is a report to the third party, not to the examinee or their treating doctor.

2.2 Even though a therapeutic relationship does not exist when conducting an independent medical assessment, the doctor has a duty to conduct themselves in an ethical and professional manner, treating the examinee with respect and dignity at all times.

2.3 Doctors should be aware that people presenting for an independent medical assessment may be nervous, anxious or defensive. Compensation, insurance cover and even employment may depend on the outcome of the assessment.

2.4 The doctor should not allow their assessment, opinion or recommendation to be influenced by the (financial or other) interests of the examinee, the third party or the doctor's own interests. The doctor should have no interest in the outcome of the assessment.

### **3. Prior to Conducting the Independent Medical Assessment**

3.1 Prior to conducting the independent medical assessment, the doctor should ensure that the party requesting the report provides a written explanation of the medico-legal issues to be addressed. If in doubt about what to address, the doctor should contact the party. Generally, the issues will include a history given by the examinee, results of examinations, investigations or testing, comments on clinical material provided, diagnosis, prognosis and future management of any condition.

3.2 The doctor should ask the party requesting the report to provide information relevant to the medico-legal issue. Most jurisdictions have specific court rules applying to expert evidence. The party requesting the report should provide the doctor with a copy of the relevant rules or court-issued expert witness guidelines.

3.3 If an impairment rating of the examinee is required, this should be indicated in the briefing material provided to the doctor. This may include which impairment guides (including which edition) are to be used.

3.4 The doctor should clearly indicate the usual time frame within which a report will be provided and ask the party requesting the report to provide notification of any urgent time constraints for the provision of the report. The report provision time will vary depending on the complexity of the matters to be considered. If the doctor is not in a position to address the complexity of the matter, given the time constraints, the doctor should not embark upon an assessment of the person concerned.

3.5 The doctor should expect a written communication from the requesting party prior to the assessment, confirm who is responsible for the payment of fees and when they are to be paid. The doctor may request pre-payment of the fees as well as payment in the event that the examinee fails to attend for the scheduled assessment.

#### **4. Obtaining the Examinee's Consent to the Independent Medical Assessment**

4.1 Prior to conducting the assessment, the doctor should obtain the examinee's consent to participate in the assessment and to provide the report to the requesting party. Where the examinee is unable to provide consent due to limited decision-making capacity, consent should be sought from the examinee's substitute decision-maker.

4.2 In order to facilitate the consent process, the doctor should provide the examinee with the following information:

- Their name and area of medical practice;
- Their role as an assessor, which is to provide an impartial medical opinion, not to treat the person or offer opinions to the person on his or her condition;
- The purpose, nature and extent of the assessment including if physical examination or additional tests or investigations is required;
- That the result of the assessment is a report to the third party, not to the examinee or their treating doctor;
- The issues that are likely to be considered as part of the history. This is particularly important where a psychiatric history is to be taken;
- The arrangements made for the examinee's privacy and the limits of confidentiality (if any) which will apply to the examination, subsequent preparation of the report and any court testimony;
- Requirements regarding chaperones, same gender assessors, interpreters and support persons, if relevant, noting that neither the chaperone nor the interpreter should be a family member (the support person can be a family member) <sup>1</sup>;

---

<sup>1</sup> For further guidance on the use of chaperones and support persons, refer to the *AMA Patient Examination Guidelines 2012*.

- That they understand that once they have provided information to the doctor, they cannot later ask for that information not to be provided to the party requesting the examination;
- Payment of fees.

4.3 Where chaperones or support persons are present, they should be informed that they are not to take an active part in the assessment. Interpreters or other persons accompanying the examinee to assist in communication should be informed that they are not to offer opinions or subjective interpretations. The doctor should record if any additional persons are present during the assessment including chaperones, support persons, interpreters or others (including their name and relationship, if any, to the examinee).

4.4 If the examinee declines to undergo the assessment, the doctor must not proceed and the requesting party should be informed as soon as possible. The doctor should ensure the examinee understands the reasons for any investigations required for diagnostic purposes. If the examinee declines to have the recommended testing or investigations, then this decision should be respected and recorded by the doctor. In that case, the doctor should state in the report to the third party that the examinee has declined to undertake the requested tests or investigations and the implications of that for the comprehensiveness of the doctor's opinion (including diagnostic considerations, if any). Except under the specific order of a Court, a doctor should not otherwise require the examinee to have tests or investigations. If the doctor is not able to form an opinion as a result of the examinee declining to have recommended tests or investigations, then this should be clearly stated in the doctor's report.

## **5. Use of Audio or Video Recordings During the Assessment**

5.1 Some examinees may wish to record the assessment (by audio or video). It is the doctor's decision as to whether or not the assessment is recorded.

5.2 If the doctor wishes to record the assessment (by audio or video), they must first obtain consent from the examinee.

## **6. Duty of Care in Relation to Patient Management or Incidental Clinical Findings**

6.1 The doctor should not provide routine treatment for the examinee. Emergency treatment should only be provided where no reasonable alternative exists and immediate referral is then made to a treating agency or treating doctor for ongoing care.

6.2 The doctor should not offer the examinee an opinion nor offer advice on the examinee's claim, medical or surgical management. If the doctor identifies a potentially life threatening matter regarding the management of the examinee, they should inform the examinee and contact the person's treating doctor unless immediate treatment is required.

6.3 Incidental clinical findings identified during the assessment may be communicated to the examinee. There may be some situations where it is appropriate to notify their treating doctor. The examinee's consent to notify their treating doctor should be obtained first.

## **7. Preparing the Report of the Independent Medical Assessment**

7.1 When preparing a report in relation to an independent medical assessment, the doctor should clearly state the source of the referral leading to the consultation. If specific conditions apply to the preparation of a report, these should be detailed in the briefing letter.

7.2 The doctor should disclose all sources of information provided by the requesting party and any other parties providing information (unless there is a court order to the contrary).

7.3 The doctor should refer to relevant medical college guidelines to prepare the report.

7.4 Reports should explain the meaning of any technical/medical terms used. Factual and clinical data in general should be provided in the past tense. Opinion should be written in the present tense and should demonstrate clearly the factual basis for the report and the clinical reasoning.

7.5 The doctor should not offer opinion outside their area of expertise or specialty.

7.6 The report should list all information considered by the doctor in undertaking the assessment. The doctor must state what further information, if any, would be useful to enhance the validity of the opinion provided.

7.7 The doctor should clearly state when the symptoms and examination findings are not consistent with any diagnosable medical disorder. The results of diagnostic tests or investigations should be detailed in the report or copies of same attached to the report. The significance of test results should be explained in clear language, which can be understood by non-medically trained persons, including legally qualified practitioners.

7.8 The doctor should be prepared to change or qualify their view if they have been provided with further information subsequent to the preparation of the report including supplementary documents or another expert's report that changes their opinion. In this case the doctor must clearly state the reasons (including the further information sources) causing the change of opinion.

7.9 Once issued, an opinion in an independent medical report prepared by a doctor must never be amended. A supplementary or updated report may be prepared, including when additional information is subsequently provided and/or if the additional material causes the doctor to qualify or change their opinion.

7.10 Any comment concerning a difference of opinion with a medical colleague should be confined to matters of substance and expressed in professional terms.

## **8. Attending Court in Relation to an Independent Medical Assessment**

8.1 Where requested to attend court in relation to an independent medical assessment, the doctor is entitled to be kept informed by the lawyer when the case is likely to be heard. Most courts will accommodate reasonable requests about the timing of a witness's evidence but meeting a doctor's convenience cannot be guaranteed. The court may decide to take the doctor's evidence by telephone or video link or may request personal attendance at the court. Any

application to give evidence by telephone or video link should be made by the party calling the witness, in good time before the proposed hearing date.

8.2 Increasingly, courts and tribunals are making orders for doctors who provide expert opinions to confer prior to trial so as to provide a joint report on both matters agreed and matters in dispute, and to give evidence concurrently at hearings. Lawyers involved in the case should provide detailed information to doctors about this process and, if in any doubt, the doctor should contact the lawyer who commissioned the report for further information.

8.3 When giving evidence, as far as possible, the doctor should avoid technical or jargon terms. Simple terms are preferable.

8.4 The doctor should not testify on any matters outside or beyond the doctor's area of expertise. If the doctor is asked questions outside the doctor's area of expertise, the doctor should make it clear to the court that this question does not fall into his or her area of expertise.

8.5 The doctor should distinguish statements of opinion from statements of fact.

8.6 The doctor should pay careful attention to his or her demeanour as this is an important component in providing the evidence to a court or tribunal. The doctor should resist attempts designed to provoke and should not argue with the legal questioner. Sarcasm has no place in a court. Caution should be exercised with respect to the use of humour and satire. If the doctor experiences difficulties in providing evidence, due to the attitude of the examining lawyer, the doctor may ask the judge for assistance. The doctor is required to answer all questions honestly.