

3.2.3 Industry-Employed Physicians & Independent Medical Examiners

Physicians may obtain personal information about patients outside an ongoing patient-physician relationship. For example, physicians may assess an individual's health or disability on behalf of an employer, insurer, or other third party. Or they may obtain information in providing care specifically for a work-related illness or injury. In all these situations, physicians have a responsibility to protect the confidentiality of patient information.

When conducting third-party assessments or treating work-related medical conditions, physicians may disclose information to a third party:

- (a) With written or documented consent of the individual (or authorized surrogate).
- (b) As required by law, including workmen's compensation law where applicable.

When disclosing information to third parties, physicians should:

- (c) Restrict disclosure to the minimum necessary information for the intended purpose.
- (d) Ensure that individually identifying information is removed before releasing aggregate data or statistical health information about the pertinent population.

AMA Principles of Medical Ethics: IV

Opinion 3.2.3 Industry-Employed Physicians & Independent Medical Examiners was issued in 1983 and subsequently updated without associated background report except as follows:

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 5-A-99 Patient-physician relationship in the context of work-related and independent medical examinations

3.2.3 Industry-Employed Physicians & Independent Medical Examiners

Physicians may obtain personal information about patients outside an ongoing patient-physician relationship. For example, physicians may assess an individual's health or disability on behalf of an employer, insurer, or other third party. Or they may obtain information in providing care specifically for a work-related illness or injury. In all these situations, physicians have a responsibility to protect the confidentiality of patient information.

When conducting third-party assessments or treating work-related medical conditions, physicians may disclose information to a third party: [new content clarifies context of guidance]

- (a) With written or documented consent of the individual (or authorized surrogate).
- (b) As required by law, including workmen's compensation law where applicable.

When disclosing information to third parties, physicians should:

- (c) Restrict disclosure to the minimum necessary information for the intended purpose.
- (d) Ensure that individually identifying information is removed before releasing aggregate data or statistical health information about the pertinent population.

AMA Principles of Medical Ethics: IV

3. Physicians should use their best judgement when determining when to report impairments that could limit a patient's ability to drive safely. In situations where clear evidence of substantial driving impairment implies a strong threat to patient and public safety, and where the physician's advice to discontinue driving privileges is ignored, physicians have an ethical duty to notify the Department of Motor Vehicles.
4. The physician's role is to report medical conditions that would impair safe driving. The determination of the inability to drive safely should be made by the state's Department of Motor Vehicles.
5. Physicians should disclose and explain to their patients this obligation to report.
6. Considering pertinent law physicians should protect patient confidentiality by ensuring that only the minimal amount of information is reported and that reasonable security measures are used in handling that information.
7. Physicians should abide by a state's mandatory reporting laws. In addition, physicians should work with their state medical societies to create statutes that uphold the best interests of patients, community, and safeguard physicians from liability when reporting in good faith.

(References pertaining to Report 4 of the Council on Ethical and Judicial Affairs are available from the Ethical Standards Division Office.)

**5. PATIENT-PHYSICIAN RELATIONSHIP IN
THE CONTEXT OF WORK-RELATED AND
INDEPENDENT MEDICAL EXAMINATIONS
(RESOLUTION 2-I-97)**

**HOUSE ACTION: RECOMMENDATIONS ADOPTED AND
REMAINDER OF REPORT FILED**

INTRODUCTION

Resolution 2 (I-97), "Patient-Physician Relationship," asked the American Medical Association to recommend that patients be informed of the lack of a patient-physician relationship during pre-employment physical examinations or examinations to determine if an employee who has been ill or injured can return to work. This resolution was referred to the Council on Ethical and Judicial Affairs. This report addresses the scope of the patient-physician relationship in the context of work-related and independent medical examinations.

DEFINITIONS AND SCOPE

In this report, the term "industry employed physician" (IEP) refers to physicians who are employed by businesses or insurance companies for the purpose of conducting medical examinations. "Independent medical examiners" (IMEs) differ in that they are not employees, but instead, independent contractors who provide medical examinations for employees or others within the realm of their specialty. Intuitively, one might believe that the conflict of interest experienced by the IEP is greater than that of the IME since the former answers directly to his or her employer. However, both types of physicians have contractual obligations to the business or insurer and depend on these parties for payment.

Both IEPs and IMEs can perform employment, pre-employment, and work-related examinations, which include those aimed at determining whether an individual is suitable for a particular occupation or if an employee who has been ill or injured can return to work. They may perform a variety of other types of examinations as well.

This report does not address IEPs or IMEs who continually monitor the health of patients or treat a company's employees. Instead, this report will address the scope of the patient-physician relationship when a physician is responsible for performing an isolated assessment of an individual's health or disability for an employer, business, or insurer.

UNALTERED RESPONSIBILITIES AND OBLIGATIONS

Despite their ties to a third party, the responsibilities of IEPs and IMEs are in some basic respects very similar to those of other physicians. Physicians in this context have the same obligations to conduct an objective medical examination, maintain patient confidentiality, and disclose potential or perceived conflicts of interest.

A. Objectivity

One of the foremost responsibilities of physicians, regardless of the circumstances, is to evaluate the health of patients in an objective manner. Initially, IEPs and IMEs may be thought to have conflicting obligations because they do not consider patient preferences when making a diagnosis. Although physicians are expected to involve patients in decision making to the greatest extent possible, limitations exist on all physicians' obligations to consider patients' desires or preferences when making a diagnosis.

Considering the preferences of the patient when making a diagnosis during a work-related examination could affect the objective nature of the exam. For example, even though a patient may not want to return to work, an exam could reveal that he or she is able to resume employment duties. On the other hand, reporting to an insurance company or employer that an employee is not ready to return to work may not coincide with what the employer wants, but it may be what is revealed by an objective examination. IEPs and IMEs have the same obligations as physicians in other contexts to evaluate objectively the patient's health or disability. In order to preserve the objective nature of the exam, physicians should not be influenced by the preferences of the patient-employee, employer, or insurance company when making a diagnosis.

B. Confidentiality

In addition to a general requirement of objectivity, IEPs and IMEs have an obligation to maintain confidentiality. The Council has stated in Opinion 5.09, "Confidentiality: Physicians in Industry," that:

...the information obtained by the physician as a result of such examinations is confidential and should not be communicated to a third party without the individual's prior written consent, unless it is required by law.

This responsibility of IEPs and IMEs is the same as it is for other physicians. As always, the information obtained by the physician is confidential and should not be communicated to an outside party without the individual's consent, unless required by law. Opinion 5.09 also states that if an individual authorizes the release of medical information to an employer or a potential employer, the physician should release only that information which is relevant to the employer's decision regarding that individual's ability to perform the work required by the job.

C. Disclosure of Potential or Perceived Conflicts of Interest

Besides the aforementioned obligations of the physician during and after the examination, the physician has an obligation to the patient before the work-related or independent medical exam. In Opinion 8.03, "Conflicts of Interest: Guidelines," the Council stated that "conflict[s] must be resolved to the patient's benefit." This entails not only conducting the examination as objectively as possible, but also disclosing to the patient that conflicting obligations might exist.

The Council has previously addressed the importance of disclosing conflicts of interest. For example, in Opinion 8.032, "Conflicts of Interest: Health Facility Ownership by a Physician," the Council stated that "physicians should disclose their investment interest to their patients when making referrals." The Council expressed similar regard for the disclosure of conflicts of interest in Opinion 8.031, "Conflicts of Interest: Biomedical Research," Opinion 8.051, "Conflict of Interest Under Capitation," Opinion 8.09, "Laboratory Services," Opinion 8.13, "Managed Care," and Opinion 8.132, "Referral of Patients: Disclosure of Limitations." The Council explained the utility in disclosing conflicts of interest in the report "Conflicts of Interest in Biomedical Research:"

Even when ethically permissible...arrangements exist, safeguards are needed to protect against the appearance of impropriety. Perhaps the best mechanism available to assuage public (and professional) doubts about the propriety of a[n]...arrangement is full disclosure.

In other words, full disclosure is an effective mechanism for minimizing the adverse effects of conflicts of interest that may arise. Therefore, the physician should disclose fully the terms of the agreement between himself or herself and the third party as well as the fact that he or she is acting as an agent of that entity. This should be done at the outset of the examination, before health information is gathered from the patient. Before the physician proceeds with the exam, he or she should ensure to the extent possible that the patient understands the physician's unaltered ethical obligations, as well as the distinct differences that exist between the physician's role in this context and the physician's traditional role (see below).

ALTERED RESPONSIBILITIES AND OBLIGATIONS

The narrowly defined role of IEPs and IMEs places limits on the patient-physician relationship during work-related or independent medical examinations. Because physicians during these types of examinations do not have all of the duties held by other physicians, a limited patient-physician relationship should be considered to exist. For example, primary care physicians are responsible for monitoring a patient's health over time, promoting wellness, advocating healthy lifestyles, anticipating medical problems, and serving the patient's overall, long-term health needs. While the traditional duties of a physician normally extend well beyond the administration of an objective medical examination, the IEP or IME is charged only with assessing objectively an individual's health or disability at that one point in time.

IEPs and IMEs are obliged, however, to inform patients about abnormalities discovered during the course of the examination. The Council has stated in Opinion 5.09, "Confidentiality: Physicians in Industry," that:

A physician is obligated to divulge important health information to the patient which the physician discovers as a result of the examination.

The physician conducting a work-related or independent medical exam clearly has a duty to inform the patient about abnormalities discovered during the course of an examination. However, recognizing that the patient-physician relationship is limited to that encounter, the IME or IEP should not be held to the same standards as other physicians who are expected to serve patients' long-term health needs. For example, after discovering important health information or abnormalities through an objective evaluation, a primary care physician would be expected to provide sound advice, discuss treatment options, and perhaps treat the patient. However, it would be beyond the scope of the limited patient-physician relationship to require IEPs and IMEs to do the same. In the context of this limited relationship, IEPs and IMEs are required, like other physicians, to inform the patient about abnormalities discovered during the course of the examination. In addition, they should ensure to the extent possible that the patient understands the problem or diagnosis. Finally, when appropriate, they should suggest that the patient seek care from a qualified physician and provide reasonable assistance in securing a mechanism to receive follow-up care if requested. However, IEPs and IMEs are not required to discuss treatment options or to provide treatment.

CONCLUSION

Industry employed physicians (IEPs) and independent medical examiners (IMEs) are responsible for administering an objective medical evaluation but not for monitoring patients' health over time, treating patients, or fulfilling many other duties traditionally held by physicians. Consequently, a limited patient-physician relationship should be considered to exist. IEPs and IMEs still are expected to evaluate objectively patients' health or disability, maintain confidentiality, and disclose potential or perceived conflicts of interest. In addition, upon discovering important health information or abnormalities during the course of the examination, IEPs and IMEs are expected to inform the patient about the condition, ensure that they understand fully the diagnosis, and suggest that they seek care from a qualified physician. IEP's and IME's also should provide reasonable assistance in securing a mechanism to receive follow-up care if requested.

RECOMMENDATIONS

For the foregoing reasons, the Council recommends the following be adopted and that the remainder of this report be filed:

For purposes of these guidelines, the term "industry employed physicians" (IEPs) refers to physicians who are employed by businesses or insurance companies for the purpose of conducting medical examinations. "Independent medical examiners" (IMEs) differ in that they are not employees, but instead, independent contractors who provide medical examinations within the realm of their specialty. Both IEPs and IMEs can perform employment, pre-employment, work-related, and other types of medical examinations. This report does not address IEPs or IMEs who continually monitor the health of patients or treat a company's employees. Instead, this report will address the scope of the patient-physician relationship when a physician is responsible for performing an isolated assessment of an individual's health or disability for an employer, business, or insurer.

1. Despite their ties to a third party, the responsibilities of IEPs and IMEs are in some basic respects very similar to those of other physicians. IEPs and IMEs have the same obligations as physicians in other contexts to:
 - a. evaluate objectively the patient's health or disability. In order to maintain objectivity, IEPs and IMEs should not be influenced by the preferences of the patient-employee, employer, or insurance company when making a diagnosis during a work-related or independent medical examination.
 - b. maintain patient confidentiality as outlined by Opinion 5.09, "Confidentiality: Physicians in Industry."
 - c. disclose fully potential or perceived conflicts of interest. The physician should inform the patient about the terms of the agreement between himself or herself and the third party as well as the fact that that he or she is acting as an agent of that entity. This should be done at the outset of the examination, before health information is gathered from the patient-employee. Before the physician proceeds with the exam, he or she should ensure to the extent possible that the patient understands the physician's unaltered ethical obligations, as well as the differences that exist between the physician's role in this context and the physician's traditional fiduciary role.
2. IEPs and IMEs are responsible for administering an objective medical evaluation but not for monitoring patients' health over time, treating patients, or fulfilling many other duties traditionally held by physicians. Consequently, a limited patient-physician relationship should be considered to exist when performing work-related and independent medical examinations.

3. As stated in Opinion 5.09, the physician has a responsibility to inform the patient about important health information or abnormalities that he or she discovers during the course of the examination. In addition, the physician should ensure to the extent possible that the patient understands the problem or diagnosis. Furthermore, when appropriate, the physician should suggest that the patient seek care from a qualified physician and provide reasonable assistance in securing a mechanism to receive follow-up care if requested.

(References pertaining to Report 5 of the Council on Ethical and Judicial Affairs are available from the Ethical Standards Division Office.)

6. ACCESS TO MEDICAL RECORDS BY NON-TREATING MEDICAL STAFF

HOUSE ACTION: RECOMMENDATIONS ADOPTED AND REMAINDER OF REPORT FILED

INTRODUCTION

Health care institutions are generally expected to have comprehensive policies in place to protect patients' confidential medical information. For the most part, these safeguards aim to prevent the disclosure of confidential medical information to external third parties such as insurance companies and employers. However, safeguards also are needed to prevent individuals within the health care setting from misusing their privileges to access medical records. Even in institutions where guidelines exist to limit medical personnel's access to medical records, health care professionals may be unfamiliar with the mandates of their institutional policy. For example, a study of three family medicine teaching units at a university in Canada found that only approximately 25% of hospital staff knew that physicians and nurses were not permitted free access to any medical record within the center.

In this report, the Council will focus on the issue of access to medical records by medical staff not involved in the treatment or diagnosis of patients. This report does not address the need to access medical records for clinical research, epidemiological research, quality assurance, or administrative purposes. While these issues raise important concerns, they will be addressed separately either by the AMA Task Force on Privacy and Confidentiality or the Council in later reports.

CONFIDENTIALITY AND MEDICAL RECORDS

Maintaining patients' confidentiality is an essential element of the patient-physician relationship. The Council has addressed the importance of patient confidentiality, especially with regard to medical records, in several opinions. Opinion 5.05, "Confidentiality," states, in part:

The information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree. The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services...

Sensitive information that patients have disclosed to their physician, as well as details of their medical care, are often documented in patients' medical records. In addressing the confidentiality of information contained in patient medical records, the Council stated in Opinion 7.02, entitled "Records of Physicians: Information and Patients," that:

the [medical] record is a confidential document involving the patient-physician relationship and should not be communicated to a third party without the patient's prior written consent, unless required by law to protect the welfare of the individual or the community.