

# Third Party Medical Reports

*Policies* of the College of Physicians and Surgeons of Ontario (the “College”) set out expectations for the professional conduct of physicians practising in Ontario. Together with the *Practice Guide* and relevant legislation and case law, they will be used by the College and its Committees when considering physician practice or conduct.

Within policies, the terms ‘must’ and ‘advised’ are used to articulate the College’s expectations. When ‘advised’ is used, it indicates that physicians can use reasonable discretion when applying this expectation to practice.

## Definitions

**Third party processes:** Processes that relate to insurance benefits, workplace issues, attendance in educational programs, legal proceedings, etc. Physicians participate in these processes by conducting independent medical examinations and providing third party medical reports and testimony.

**Independent medical examinations (IME):** Examinations which are conducted strictly for third party processes and *not* for the provision of health care. IMEs can include a file review<sup>1</sup> and/or examination<sup>2</sup> of the subject. IME findings are communicated by physicians in third party medical reports and/or testimony.

**Third party medical reports and testimony:** Information and/or opinions that are provided by physicians<sup>3</sup> in writing and/or orally for a third party process and *not* for the provision of health care.

**Subjects:** Patients or individuals<sup>4</sup> who are the subject of an IME, third party medical report and/or testimony.

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<sup>1</sup> The file review could include reviewing medical records, reports, etc.

<sup>2</sup> The examination could be physical, psychological, functional, etc.

<sup>3</sup> Both treating and non-treating physicians may provide third party medical reports and testimony. For example, treating physicians may complete forms on behalf of their patients, and non-treating physicians may report on the findings of the independent medical examinations they conduct on individuals.

<sup>4</sup> The College will consider individuals who are the subject of an IME, third party medical report or testimony to be patients for the purposes of the sexual abuse provisions set out in the *Health Professions Procedural Code (Regulated Health Professions Act, 1991, S.O. 1991, c.18., Sched. 2)*.

23 **Medical experts:**<sup>5</sup> Physicians who, by virtue of their medical education, training, skill  
24 and/or experience, have specialized knowledge and expertise on medical issues.

## 25 **Policy**

26 1. Physicians **must** act with the same high level of integrity and professionalism when  
27 participating in third party processes, as they would when delivering health care.

28  
29 2. Physicians **must** comply with the expectations set out in this policy and any other  
30 specific legal principles and requirements that may apply to the third party process.<sup>6</sup>

## 31 **Physician Participation in Third Party Processes**

32 3. When requested, treating physicians **must** provide third party medical reports about  
33 their current and former patients in accordance with the 'Consent' section of this  
34 policy, unless they no longer have an active certificate of registration.<sup>7</sup>

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36 4. When requested or ordered (e.g., by subpoena or summons), treating physicians  
37 **must** provide testimony about their current and former patients.<sup>8</sup>

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<sup>5</sup> 'Expert witnesses' and 'litigation experts' are other terms commonly used to describe physicians who are retained by a party in a legal proceeding to act as medical experts. This is different than treating physicians who may also be required to give evidence in a legal proceeding regarding the treatment they provided to their patients, symptoms their patients' reported etc., or regarding reports they prepared in their capacity as treating physicians (known as 'participant experts'). See the Advice to the Profession document for more information.

<sup>6</sup> For example, this can include, but is not limited to: the principles of solicitor-client and litigation privilege; requirements found in the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched A.(PHIPA), and the *Personal Information Protection and Electronic Documents Act, SC 2000*, c 5 (PIPEDA); requirements found in the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the *Insurance Act*, R.S.O. 1990, c. I.8, the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sched. A., and the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1; and the relevant regulations enacted under these Acts. Physicians may want to seek independent legal advice regarding the specific legal principles and requirements that apply to the third party process they are participating in.

<sup>7</sup> The College's [Closing a Medical Practice](#) policy states that "following a resignation, revocation, or suspension, physicians **must not**...prepare reports... Only administrative work required to finalize an outstanding report can be completed during the suspension period, or following resignation or revocation. Administrative work includes editing draft reports, summarizing conclusions or signing reports completed prior to resignation, revocation or suspension".

<sup>8</sup> A subpoena or summons does not grant physicians the authority to speak to anyone about the patient or disclose their medical records without the patient's (or their substitute decision-maker's) consent, unless permitted or required by law (e.g., court order). For more information, see: Canadian Medical Protective Association. (2009). [Subpoenas-What are a physician's responsibilities](#).

- 39 5. Physicians are not obligated to conduct IMEs or act as medical experts, and **must**  
40 only accept a request to conduct an IME or act as a medical expert if they:  
41 a. currently have an active certificate of registration;  
42 b. have the requisite scope of practice and area of expertise and have actively  
43 practiced within that scope and area of expertise within the past two years;<sup>9</sup>  
44 and  
45 c. have disclosed to the requesting party any perceived or potential conflicts of  
46 interest<sup>10</sup> and the physician and requesting party determined no conflict  
47 exists.<sup>11</sup>  
48
- 49 6. In discharging provision 5c, physicians **must not** disclose any personal health  
50 information<sup>12</sup> about a patient without their consent, unless permitted or required by  
51 law.<sup>13</sup>  
52
- 53 7. Before participating in a third party process, physicians **must**:  
54 a. know who the requesting party is (i.e., the third party that requested the IME,<sup>14</sup>  
55 third party medical report, and/or testimony);  
56 b. understand what they are being asked to do,<sup>15</sup> and specifically, what  
57 questions they are being asked to answer; and

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<sup>9</sup> Conducting IMEs and acting as medical experts reasonably require current or recent experience practicing in the requisite scope of practice and area of expertise.

<sup>10</sup> An example of where a conflict of interest may arise is when physicians have a personal or professional relationship with one of the parties involved in the third party process. For more information on conflicts of interest, see the Advice to the Profession document.

<sup>11</sup> It may be possible to proceed notwithstanding a conflict if the following conditions are met:

- the conflict has been disclosed to all parties;
- all parties expressly waive the conflict; and
- the physician has determined the conflict would not affect their objectivity or impartiality.

<sup>12</sup> Even the fact that the physician has or had a treating relationship with a patient is considered personal health information.

<sup>13</sup> See the College's [Protecting Personal Health Information](#) policy and [Mandatory and Permissive Reporting](#) policy for circumstances in which disclosures of personal health information are permitted or required by law.

<sup>14</sup> Some examinations may be ordered. For example, see Rule 33 of the *Rules of Civil Procedure*, O. Reg. 194, enacted under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 for information regarding court-ordered examinations.

<sup>15</sup> For example, this could include understanding the scope of the physician's role and responsibilities, such as whether the requesting party expects the physician will:

- conduct an IME;
- provide a third party medical report;

58 c. ensure any contracts with the requesting party (e.g., outlining scope, purpose,  
59 timelines, fee arrangements, etc.) comply with the expectations set out in this  
60 policy.

## 61 **Physician Role in Third Party Processes**

- 62 8. Physicians **must** understand and communicate the nature of their role in the third  
63 party process to subjects<sup>16,17</sup> they interact directly with, which includes that their  
64 role:
- 65 a. is to *provide* information and/or opinions to the third party involved in the  
66 process and not to *decide* the outcome<sup>18</sup> of the third party process or provide  
67 health care;
  - 68 b. may involve collecting, using, and disclosing personal information (which may  
69 include personal health information)<sup>19</sup> for a third party process; and
  - 70 c. if applicable, may involve conducting an examination for a third party process.

## 71 **Consent**

- 72 9. Physicians **must** ensure express<sup>20</sup> consent to collect, use or disclose the subject's  
73 personal information for a third party process has been obtained from the subject,  
74 unless physicians are permitted or required by law to collect, use and disclose that  
75 information.<sup>21</sup>
- 76
- 77 10. Physicians **must** ensure express consent for conducting an examination for a third  
78 party process has been obtained from the subject, which includes explaining the  
79 purpose, scope, and rationale of the examination.

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- clarify or expand on the information and/or opinions in the third party medical report after the report is submitted, if necessary; and/or
  - provide testimony.

<sup>16</sup> Throughout this policy, where "subject" is referred to, it should be interpreted as "subject or substitute decision-maker" where applicable.

<sup>17</sup> Patients may be confused about the nature of the physician's role in the third party process when it is their own treating physician that is involved in the process.

<sup>18</sup> The final outcome (for instance, decisions regarding eligibility for benefits) is not determined by the physician but rather by the relevant decision makers in the third party process.

<sup>19</sup> In most cases, physicians who participate in the third party processes will be subject to *PIPEDA*, the legislation which establishes requirements for the collection, use and disclosure of "personal information" about individuals in the course of commercial activities. "Personal information" is defined broadly as "information about an identifiable individual" and includes "personal health information".

<sup>20</sup> Express consent is direct, explicit, and unequivocal, and can be given in writing or orally.

<sup>21</sup> Depending on the circumstances, consent requirements for collection, use and disclosure are contained in *PIPEDA* and/or *PHIPA*.

80  
81 11. The consent process will vary depending on the circumstances of each case;  
82 however, at minimum, physicians **must** ensure the following points are conveyed:  
83 a. consent can be withdrawn at any time; however, this may prevent the  
84 physician from completing the IME and/or third party medical report and  
85 providing testimony;  
86 b. limits may be placed on the information that physicians can disclose in  
87 writing and/or orally; however, such limitations may prevent the physician  
88 from participating in the third party process; and  
89 c. if consent is withdrawn or limited by the subject, physicians may still be  
90 permitted or required by law to collect, use and disclose the subject's  
91 personal information or personal health information.<sup>22</sup>

## 92 **Fees for Physician Participation in Third Party Processes**

93 12. Physicians **must** discuss any requirements or arrangements with respect to fees  
94 (including cancellation fees for missed appointments) with the requesting party  
95 before participating in third party processes.  
96  
97 13. Physicians **must** comply with any specific legal requirements in relation to fees for  
98 their participation in third party processes.<sup>23</sup>  
99  
100 14. In the absence of any specific legal requirements, physicians **must** ensure their fees  
101 are reasonable in accordance with the College's [Uninsured Services: Billing and](#)  
102 [Block Fees](#) policy and regulation.<sup>24</sup>  
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<sup>22</sup> See Division 1, Section 7 of *PIPEDA* for circumstances in which physicians are permitted or required by law to collect, use and disclose personal information, and the College's [Protecting Personal Health Information](#) policy and [Mandatory and Permissive Reporting](#) policy for circumstances in which disclosures of personal health information are permitted or required by law.

<sup>23</sup> For example, the regulations under the *Coroner's Act*, R.S.O. 1990, c. C.37, set out the fee payable for each day of attendance of an expert witness who has been summoned to provide evidence at an inquest, as well as the fees payable for conducting a *post mortem* examination. Depending on the context, different proceedings may have rules in place governing how the fees payable to witnesses for attendance at a hearing or to medical experts for the preparation of reports will be determined (e.g., in the regulations under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and regulations under the *Administration of Justice Act*, R.S.O. 1990, c. A.6.).

<sup>24</sup> Section 1(1), paragraphs 21 and 22 of *Professional Misconduct*, O. Reg., 856/93, enacted under the *Medicine Act, 1991*, S.O. 1991, c. 30.

104 **Requirements for Independent Medical Examinations, Third Party Medical**  
105 **Reports and Testimony**

106 15. Physicians **must** conduct IMEs and provide third party medical reports and  
107 testimony that are:

- 108 a. within their scope of practice and area of expertise;
- 109 b. comprehensive and relevant;
- 110 c. fair, objective and non-partisan;
- 111 d. transparent;
- 112 e. accurate;<sup>25</sup>
- 113 f. clear; and
- 114 g. timely.

115 Additional information relating to each requirement is set out below.

116 ***Within Scope of Practice & Area of Expertise***

117 16. Physicians **must**:

- 118 a. accurately represent their scope of practice and area of expertise, including  
119 their qualifications in accordance with relevant College policy and  
120 regulation;<sup>26</sup> and
- 121 b. restrict their IMEs, statements and/or opinions to matters that are within their  
122 scope of practice and area of expertise.

123 ***Comprehensive & Relevant***

124 17. Physicians **must** take reasonable steps to obtain<sup>27</sup> and review all relevant clinical  
125 information and opinions relating to the subject that could impact their statements  
126 and/or opinions.

127  
128 18. Physicians **must** clearly identify any limitations on the comprehensiveness of the  
129 IMEs they conduct and the third party medical reports and testimony they provide,  
130 including:

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<sup>25</sup> Section 1(1), paragraph 18 of *Professional Misconduct*, O. Reg., 856/93, enacted under the *Medicine Act, 1991*, S.O. 1991, c. 30. states that signing or issuing, in the member's professional capacity, a document that the member knows or ought to know is false or misleading is an act of professional misconduct.

<sup>26</sup> College's registration policy on [Specialist Recognition Criteria in Ontario](#) (also see the [Cosmetic Surgery FAQ](#) and [Advertising FAQ](#)); and section 9(1) of *General*, O. Reg 114/94, enacted under the *Medicine Act, 1991*, S.O. 1991, c. 30.

<sup>27</sup> Indirectly via medical records or reports and/or directly via examination of the subject.

- 131 a. if they are unable to fulfil an element of the third party's request because the  
132 information and/or opinion requested is beyond their scope of practice and  
133 area of expertise;  
134 b. if they are unable to obtain all relevant clinical information and opinions after  
135 taking reasonable steps;  
136 c. if they do not have enough information to arrive at a recommendation or  
137 conclusion on a particular point;  
138 d. if consent has been withdrawn; and  
139 e. if limits have been placed by the subject on the information that can be  
140 disclosed to the third party.

141  
142 19. In discharging provision 18, physicians **must** clearly indicate what impact the  
143 limitations have on the statements and/or opinions they provide in third party  
144 medical reports and testimony.<sup>28</sup>

145  
146 20. Physicians **must not** deliberately leave out relevant information and/or opinions in  
147 any third party medical reports and testimony they provide.

148  
149 21. Physicians **must** only provide the third party with the information and/or opinions  
150 that are relevant to the request and necessary for answering the questions asked.

151  
152 22. Physicians **must not** make any unrelated or unnecessary comments during IMEs and  
153 in third party medical reports and testimony.

#### 154 ***Fair, Objective & Non-Partisan***

155 23. Physicians **must**:

- 156 a. provide statements and/or opinions that are reasonable, balanced, and  
157 substantiated by fact, scientific knowledge and evidence, and sound clinical  
158 judgment;  
159 b. ensure the statements and/or opinions they provide are not influenced by  
160 prejudice and bias<sup>29</sup>, the party who requests or pays for their services, or the  
161 potential outcome of the third party process; and  
162 c. provide any additional assistance that a court or tribunal may reasonably  
163 require.

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<sup>28</sup> For example, if the limitation prevents them from arriving at a recommendation or conclusion on a particular point.

<sup>29</sup> Some types of bias include: implicit, affective, cognitive, framing, hindsight or outcome, and learned intuition.

164 **Transparent**

165 24. Physicians **must** be clear about who the requesting party was and what has been  
166 requested of them (i.e., what questions they were asked to answer).

167

168 25. Physicians **must** clearly identify who assisted them in conducting the IME and/or  
169 who contributed to the third party medical report.

170

171 26. For any third party medical reports and testimony provided, physicians **must**:

172 a. Describe the basis and rationale for their statements and/or opinions,  
173 including:

174 i. the facts their statements and/or opinions are based on;

175 ii. what clinical information and opinions they obtained and reviewed and  
176 who the source was; and

177 iii. any research or literature they relied upon.<sup>30</sup>

178 b. Indicate where their statements and/or opinions stand in relation to the  
179 profession (e.g., if there is a range of opinions on an issue, and if their  
180 statements and/or opinions are contrary to the accepted views of the  
181 profession).

182 **Accurate**

183 27. For any third party medical reports and testimony provided, physicians **must**:

184 a. ensure their statements and/or opinions are accurate; and

185 b. communicate any errors they become aware of, and any changes to their  
186 statements and/or opinions to the third party in a timely manner.

187 **Clear**

188 28. Where possible, physicians **must** use language and terminology that will be readily  
189 understood by the audience.

190 a. When physicians use abbreviations and medical or technical terminology,  
191 they **must** explain the meaning.

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<sup>30</sup> If acting as a medical expert, see Rule 53.03(2.1) of the *Rules of Civil Procedure*, O. Reg. 194, enacted under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 for specific information required in an expert report.



196 **Timely**

197 29. Absent a specific legal requirement,<sup>31</sup> physicians who are not acting as medical  
198 experts **must** conduct IMEs and/or provide third party medical reports in a timely  
199 manner,<sup>32</sup> but no later than:

- 200 a. 60 days after receiving the request to conduct an IME and report on the  
201 findings; and
- 202 b. 45 days after receiving the request to provide a third party medical report.

203  
204 30. If physicians are not able to meet the timeframes set out in provision 29, physicians  
205 **must** discuss the matter with the requesting party and reach an agreement for a  
206 reasonable extension.<sup>33</sup>

207  
208 31. Physicians who are acting as medical experts in the context of a legal proceeding  
209 **must:**

- 210 a. reach an agreement with the requesting party regarding the timeframe for  
211 providing third party medical reports;
- 212 b. reach an agreement with the requesting party for a reasonable extension if  
213 they are not able to meet the original timeframe; and
- 214 c. provide third party medical reports within the agreed upon timeframe.

215  
216 32. Physicians **must** respond to any requests or orders (e.g., subpoenas or summons) to  
217 provide testimony in a timely manner.

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<sup>31</sup> There may be specific timelines for providing third party medical reports set out in legislation. For example, see section 68.1 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10, enacted under the *Insurance Act*, R.S.O. 1990, c. I.8, together with sections 32.1 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.

<sup>32</sup> What is considered timely will depend on the nature of the request, taking into consideration the complexity and urgency of the request. For example, third party medical reports that relate to income or the necessities of life would need to be completed urgently.

<sup>33</sup> Section 1(1), paragraph 17 of O. Reg. 856/93, *Professional Misconduct*, enacted under the *Medicine Act*, 1991, S.O. 1991, c.30 states 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.

220 **Independent Medical Examinations**

221 ***Presence of Observers & Audio/Video Recordings***

222 33. Physicians **must** comply with any legal requirements regarding the presence of  
223 observers<sup>34</sup> and recordings that apply to the examination being conducted.

224  
225 34. In the absence of any legal requirements, physicians **must** ensure:

- 226 a. any arrangements with respect to observers or recordings are mutually
- 227 agreeable to all the parties involved; and
- 228 b. consent with respect to observers or recordings has been obtained from all
- 229 the parties involved.<sup>35</sup>

230  
231 35. If an observer is present, physicians **must** inform the observer that they cannot  
232 interfere or intervene in any way during the examination.

233 ***Clinically Significant Findings***

234 36. If physicians are conducting an IME and become aware of a clinically significant  
235 finding<sup>36</sup> that may not have been previously identified, they **must** determine if the  
236 subject is at imminent risk of serious harm and requires urgent medical intervention.

- 237 a. If yes, physicians **must**:
  - 238 i. disclose the finding to the subject; and
  - 239 ii. if the subject has a primary health-care provider, communicate the
  - 240 finding to them<sup>37</sup> after obtaining the subject's consent to do so and
  - 241 determine who will be responsible for providing any necessary care
  - 242 and follow-up; or
  - 243 iii. if the subject doesn't have a primary health-care provider,
    - 244 (a) provide any necessary care that is within the physician's scope
    - 245 of practice and coordinate the provision of any follow-up; or

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<sup>34</sup> For example, for court-ordered examinations, Rule 33.05 of the *Rules of Civil Procedure*, O. Reg. 194, enacted under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 states that observers shall not be present during examinations, unless the court orders otherwise.

<sup>35</sup> For more information on observers and recordings, see the Advice to the Profession document.

<sup>36</sup> An unexpected clinically significant finding, a condition which raises serious concern, or a symptom or condition which requires essential intervention. This includes, but is not limited to, undiagnosed conditions and conditions for which immediate intervention is required.

<sup>37</sup> Physicians must use their professional judgment to determine how to communicate the finding to the primary health-care provider (e.g., by phoning them directly or sending a written note), taking into consideration the nature of the finding.

- 246 (b) direct the subject to another health-care provider that is  
247 available to provide any necessary care and follow-up.
- 248 b. If no and the IME is not being conducted in the context of a legal proceeding  
249 or the subject hired the physician to conduct the IME,<sup>38</sup> physicians **must**:  
250 i. disclose the finding to the subject; and  
251 ii. if the subject has a primary health-care provider, communicate the  
252 finding to them<sup>39</sup> after obtaining the subject's consent to do so and  
253 determine who will be responsible for providing any necessary care  
254 and follow-up; or  
255 iii. if the subject doesn't have a primary health-care provider, advise the  
256 subject to see a health-care provider for any necessary care and  
257 follow-up.
- 258 c. If no and a third party (not the subject) hired the physician to conduct the  
259 IME,<sup>40</sup> physicians **must**:  
260 i. seek independent legal advice regarding the disclosure of the finding;  
261 and  
262 ii. consult with the third party to determine whether the third party waives  
263 any impediment to disclosure.  
264

265 37. If the clinically significant finding is disclosed, physicians **must** only provide clinical  
266 information that is directly relevant to the finding.

## 267 **Documentation, Retention and Access**

- 268 38. Physicians **must** document the following for all professional encounters or services  
269 provided for a third party process, where applicable:  
270 a. identification of the subject and their contact information;  
271 b. identification of the requesting party;  
272 c. date of professional encounter or service;  
273 d. consent that has been obtained for the collection, use and disclosure of  
274 information;  
275 e. consent that has been obtained for examinations;

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<sup>38</sup> If the subject (or their representative) hired the physician to conduct an IME in the context of a legal proceeding, there are no impediments to disclosure (such as legal privilege).

<sup>39</sup> See footnote 37.

<sup>40</sup> If a third party (not the subject) hired the physician to conduct an IME in the context of a legal proceeding, legal privilege may apply and may be an impediment to disclosure when the subject is not at imminent risk of serious harm and does not require urgent medical intervention. The purpose of seeking independent legal advice is to determine to whether any such impediment to disclosure exists in the circumstances.

- 276 f. information regarding the IMEs that have been conducted;  
277 g. consent that has been obtained with respect to the presence of observers  
278 and/or recordings of examinations; and  
279 h. any clinically significant findings and any action taken with respect to the  
280 findings.

281

282 39. Physicians' documentation of the information in provision 38 **must** be:

- 283 a. legible;  
284 b. accurate;  
285 c. complete and comprehensive;  
286 d. identifiable, containing a signature or audit trail that identifies the author;  
287 e. written in either English or French; and  
288 f. organized in a chronological or systematic manner.

289

290 40. In addition to documenting the information in provision 38, physicians **must** retain  
291 any related materials including, where applicable:

- 292 a. contracts with the requesting party (e.g., outlining scope, purpose, timelines,  
293 fee arrangements, etc.);  
294 b. clinical information or opinions not created by the physician, which the  
295 physician relied upon;  
296 c. audio or video recordings of examinations; and  
297 d. third party medical reports.

298

299 41. Physicians **must** retain and provide access to the information and related materials  
300 in provisions 38 and 40 in accordance with the legal requirements that apply to the  
301 specific circumstances.<sup>41</sup>

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<sup>41</sup> For example, retention requirements would depend on whether or not the information or related materials are retained as part of a patient's medical record, and access requirements would depend on whether the examination/report was conducted for a commercial purpose and is subject to *PIPEDA*, or a health-care purpose and is subject to *PHIPA*.