

Summary of Comments

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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 review¹ and/or examination² 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 physicians³ in writing and/or orally for a third party process and *not* for the provision of health care.

Subjects: Patients or individuals⁴ who are the subject of an IME, third party medical report and/or testimony.

¹ The file review could include reviewing medical records, reports, etc.

² The examination could be physical, psychological, functional, etc.

³ 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, non-treating physicians may report on the findings of the independent medical examinations they conduct on individuals.

⁴ 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)*.

- Author: Anonymous Subject: Sticky Note
In case of dispute with the Ontario Rules of Procedure (e.g. Rule 53), what is the process? Should add a reference to the Ontario Rules of Procedures and associated case law.
Need transparency regarding the guidelines given to the CPSO committees and hierarchy.
My own experience has been to be told to follow the College Policy and ignore legislation.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
A policy is to provide clarity as opposed to ambiguity or vagueness. What constitutes reasonable discretion? Discretion for an expert may not be viewed as the proper exercise of discretion by parties to the dispute.
- Author: Anonymous Subject: Sticky Note
In the 2002 Policy, A third party is any person, or organization other than the physician and patient. A third party is often an insurance company, employer, lawyer, educational institution or WSIB. The 2012, 2018 and current draft policy does not define who or what is a third party.
- Author: Anonymous Subject: Sticky Note
Logically, the Ontario Health Insurance Program and Ministry of Health Programs Benefits would therefore meet the definition of a Third Party Process.
- Author: Anonymous Subject: Sticky Note
However, examples which do not fit in the definition of third party processes include:
* Work or school absence note
* MOH Assistive Device Program
* WSIB functional ability form
* OCF-18 (SABS treatment plan)
* ODSF, LTD, CPP disability application
These are all examples of first party processes. The physician completing these "first" party reports are not in compliance with what CPSO refers to as the requirements of third party medical reports outlined on lines 104-114.
- Author: Anonymous Subject: Sticky Note
How do you then call an insurer's examination to address medical rehabilitation benefits (e.g. SABS) or a future care cost report for Tort purposes - both of which are for the provision of health care.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
For lawyers, a file review result is frequently communicated verbally prior to deciding whether to proceed with a written file review or formal examination.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
See previous 2 Comments Above
- Author: Anonymous Subject: Sticky Note
Does it mean that when one writes a drug or device prescription which will be submitted to a public or private insurer such as Trillium or Green Shield, it is a third party medical report? It is essential that this policy clarify what is not a third party report/form.
- Author: Anonymous Subject: Highlight

23 **Medical experts:** 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 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.⁶

31 Physician Participation in Third Party Processes

- 32 3. When requested, treating physicians **must** provide third party medical reports **but**
 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.⁷
- 35
- 36 4. When requested or ordered (e.g., by subpoena or summons), treating physicians
 37 **must** provide testimony about their current and former patients.⁸
- 38

⁵ '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.

⁶ 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.

⁷ 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".

⁸ 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*.

Author: Anonymous Subject: Sticky Note

Only the Court or administrative tribunal can qualify a physician as an expert in any given specific situation. The College has legislative authority on the issue of competency but not on whether a physician should be considered an expert or not. Line 124 to 129 of the Advice document covers it better than this Policy.

Author: Anonymous Subject: Sticky Note

I concur that the medical scope of practice of a physician should preclude

Author: Anonymous Subject: Sticky Note

Unfortunately, many people may take unfair advantage of social assistance programs, public or private insurance benefits or compensation. Society has an expectation that physician providing their specialized knowledge in these matters will demonstrate the forensic ethics and professionalism necessary in this context. Fiduciary duty exists only when there is a physician patient relationship when delivering health care.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note

It is essential for CPSO and its Committees to declare unequivocally that their Policies are superseded and respect all existing Acts, Regulations and Case Law. A physician or his lawyer should not have to second guess whether existing Legislation supersede the College Policy in case of conflict. CPSO transparency in this regard is essential to maintain the Public trust in this self-regulatory organization.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note

One cannot underestimate the burden of such obligation for certain specialties such as physical medicine and rehabilitation. As an example, having to produce a "third party" report to lawyers or insurers for every admission of patients with serious or catastrophic injuries is unrealistic. Not providing any boundaries to the obligation of producing a "Third Party" medical report has already led many physicians to choose health care sectors which do not include looking after patients with active WSIB or Automobile Insurance claims.

Author: Anonymous Subject: Highlight

- 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;⁹
 44 and
 45 c. have disclosed to the requesting party any perceived or potential conflicts of
 46 interest¹⁰ and the physician and requesting party determined a conflict
 47 exists.¹¹
- 48
- 49 6. In discharging provision 5c, physicians **must not** disclose any personal health
 50 information¹² about a patient without their consent, unless permitted or required by
 51 law.¹³
- 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,¹⁴
 55 third party medical report, and/or testimony);
 56 b. understand what they are being asked to do,¹⁵ and specifically, what
 57 questions they are being asked to answer; and

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

¹⁰ 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.

¹¹ 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.

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

¹³ 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.

¹⁴ 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.

¹⁵ 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;

Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Sticky Note
party have determined	
Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Sticky Note
Need a legal opinion here as the foot note refers to all parties not just the requesting party. Financial benefits can take multiple forms such as trips, golf, memberships, events, meals or research funding. Experts who have a close relationship with a given law firm, insurer, claimant or goods supplier (Botox, prosthetics, etc) rarely disclose such relationship.	
Author: Anonymous	Subject: Sticky Note
See para 7. C regarding Fees.	
Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Text Box
ALERT	
Author: Anonymous	Subject: Sticky Note
This is not what it seems. Quebec introduced this plaintiff oriented approach which PRECLUDES the ability of the defense lawyer to ask ANY additional questions which were not asked in the the original mandate. If in the "Third Party" medical report, a highly relevant intervening event is described having bearing on the litigation outcome, the physician would not be able to answer any question posed by author of the original mandate. The CPSO is now inserting themselves into the what is clearly a well identified legal procedural issue. SEE Page 5 of the February 6, 2020 OTLA Submission.	
Author: Anonymous	Subject: Sticky Note
Does the word parties include their representatives?	
Author: Anonymous	Subject: Highlight

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^{16,17} 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 outcome¹⁸ 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)¹⁹ for a third party process; and
 - 70 c. if applicable, may involve conducting an examination²⁰ a third party process.

71 Consent

- 72 9. Physicians **must ensure express**²⁰ 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.²¹
- 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.

- 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.

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

¹⁷ 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.

¹⁸ 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.

¹⁹ 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".

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

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

Author: Anonymous Subject: Text Box
ALERT

Author: Anonymous Subject: Sticky Note
The CPSO has no authority to provide expectations (MUST) on legal contracts. Contract Law disputes falls outside of the CPSO's authority under the Medicine Act (with the notable exception of No Show Fees). Fees are best left to the Court or legislated financial regulators (eg. FRSA).

Author: Anonymous Subject: Sticky Note
The CPSO has no authority over lawyers' mandate. In regard to the matter of scope and purpose, the CPSO must acquiesce to the Ontario Civil Rules of Procedure and associated Case Law. The ultimate arbitrator is the Court! In other Ontario legal dispute resolution systems, the decision maker regarding these matters may be an arbitrator or an Administrative Tribunal, but certainly not the CPSO.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
The word "etc." has no place in the text of a policy which can result in License to Practice suspension.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
Treating or Non-Treating Physicians?

Author: Anonymous Subject: Text Box
Alert

Author: Anonymous Subject: Sticky Note
Third Party has yet to be defined. In a dispute between the subject and as an example an insurer, they are the first and second party. Unfortunately, working through IME brokers has led to the situation to be even more muddled.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
What is the family physician to do? They provide first party "CPSO third party" reports all the time.

Author: Anonymous Subject: Sticky Note
What type of examination? IME or simply one for a first party process such as completing the medical report for an application for CPP Disability.

Author: Anonymous Subject: Sticky Note
Please note the word must. Refer to p.2 of OTLA August 17, 2012 paper to the CPSO regarding Consent (rule 33 of the Ontario Rules of Civil Procedure and S.44 of the SABS).

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Highlight

- 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.²²

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.²³ 
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.²⁴ 
103

- Author: Anonymous Subject: Sticky Note
Should refer to p.2 of the OTLA 2012 paper. In addition it does not apply to subject presenting by Court Order. Section 11 does not give any wiggle room as it states what at a minimum physician must do!
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Underline
- Author: Anonymous Subject: Underline
- Author: Anonymous Subject: Sticky Note
Vagueness - The Physician CAN or MUST disclosed when required by Law.
Mandatory reporting under Public Health and OH&S (e.g. Employee has Covid but does not want the employer to know)
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
There is no discussion necessary when the rates are already established by regulations such as the SABS (Financial Services Regulatory Authority)
- Author: Anonymous Subject: Sticky Note
Contract Law
- Author: Anonymous Subject: Sticky Note
The Uninsured Services Policy does not cover IMEs.

²² 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.

²³ 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.).

²⁴ 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** [ALERT]

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;**²⁵
- 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;²⁶ 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 obtain²⁷ 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:

²⁵ 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** [] act of professional misconduct.

²⁶ 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.

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

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
Expert Testimony has generally been given a relative immunity. The Ontario Superior Court of Justice in Paul v Sasso (2016 ONSC 7488) reaffirmed the principle that a testifying expert enjoys immunity from a subsequent lawsuit arising out of the testimony previously given in court. For example, the Court may accept the relevancy of your Expert Testimony but one of the parties may still lodge a College complaint regarding the relevancy of the testimony. The threat or submission of a CPSO complaint immediately before a trial is regularly used as a form of expert witness intimidation. The immunity affirmed by the Court has been ignored by CPSO by starting investigations before and after Court decisions to the detriment of the administration of justice. Forensic neuropsychologists have been particularly subjected to these tactics employed by a party.

Author: Anonymous Subject: Text Box
ALERT

Author: Anonymous Subject: Sticky Note
The determination as to what is relevant or not is best left to the Trier of fact who has much more information to make that determination. The term relevant has appeared first in the Quebec "code of ethics" of physician and has been received badly by IME physicians as it being abused and misused. No wonder OTLA wants it as referenced on page 5 of their Feb 6, 2020 submission. I had addressed it in my earlier submission (enclosed) on February 9, 2020 no 26.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
Fairness being a totally subjective concept should be added to other words that OTLA has identified that the practical meaning is "glaringly lacking from the CPSO Third Party Reports Policy...".

Author: Anonymous Subject: Sticky Note
Fairness and objectivity are totally subjective concepts. In the eyes of an advocate, there is no fairness or objectivity unless you are on their advocate.

As noted on page 2 of OTLA February 6, 2020 "Physicians should be given a clear indication of what these terms mean, especially objectivity and impartiality." I will defer to the Oxford University Press book by Gaukroger entitled: Objectivity a very short introduction (ISBN 978-0-19-960669-6). Objectivity is not a simple concept that CPSO want us to think! Such nebulous term is open to arbitrary interpretation. Of note, psychiatrists readily admit that the only "objective" part of their examination is the mental status examination.

Author: Anonymous Subject: Sticky Note
Having the necessary and sufficient information to render a considered opinion is central to being non-partisan. However, as directed by the Ontario Court of Appeal in the decision Bruff-Murphy v Gunawardena, one must address inconsistencies during the evaluation which does not make the interview particularly pleasant.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
I have written extensively on the topic of IME Ethics, I have never encountered the word "transparent".

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
It is appropriate for CPSO to remind us what constitute Professional Misconduct. However, information provided by subjects during the interview cannot always be corroborated or validated. Nobody possesses the ability to validate the claimant's subjective reporting as to what is "accurate" information.

IME physicians deal with factual assumptions until the Court accepts them as fact. Forensic experts are somewhat better at it but there is the cost which by in large insurers prefer not to incur. Minister of Finance Sousa (under the Liberal Government) estimated the cost of automobile insurance Fraud in Ontario to be in excess of 1 Billion dollars per year. The Ontario Serious Fraud Office was set up to address this situation.

Author: Anonymous Subject: Sticky Note
Some physicians may hold more than one professional designation and be accountable to more than one Regulatory College or Professional body. Economics, Disability Management, Hospital administration, etc.

Author: Anonymous Subject: Sticky Note
Once again, what are the necessary and sufficient steps that make it reasonable in the eyes of the CPSO? Subject and the parties involved may hide things! OMG Does that include surveillance???

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
It is a two way street. Subject can be non-cooperative and/or deceptive.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Sticky Note
If you question the accuracy or validity of the subject's report, you are then accused of being biased!

Author: Anonymous Subject: Highlight

- 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.

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.²⁸

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

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

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 from 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.

1 Author: Anonymous Subject: Underline

1 Author: Anonymous Subject: Underline

4 Author: Anonymous Subject: Sticky Note
It should read not all but what is medically necessary and sufficient to make a considered opinion

1 Author: Anonymous Subject: Highlight

1 Author: Anonymous Subject: Highlight

4 Author: Anonymous Subject: Sticky Note
All this burden and expectations are on the defense or insurer IME physicians. Complaint raised are always from the plaintiff.

4 Author: Anonymous Subject: Sticky Note
Addressing "consciousness" of leaving relevant information out is very tricky. My earlier comment regard "accuracy" line 112 also applies.

1 Author: Anonymous Subject: Highlight

1 Author: Anonymous Subject: Text Box
ALERT

1 Author: Anonymous Subject: Highlight

4 Author: Anonymous Subject: Sticky Note
Totally subjective and best left to the trier of fact. This is straight from Quebec Code of Ethics of Physicians and the OTLA February 6, 2020 submission on page 5. Of note, the CMQ is at odd with everybody else.
This can be construed as a form of mandated Self-Censorship by CPSO. Has CPSO itself fallen into advocacy? How do you reconcile this mandatory behaviour with the obligation of being comprehensive? Must not make unnecessary comments!

1 Author: Anonymous Subject: Text Box
ALERT

4 Author: Anonymous Subject: Sticky Note
It is an unrealistic assumption that statements and/or opinions need to be "balanced". What does CPSO mean with the word "balance". Statements must be based on factual assumptions and scientific evidence that is admissible to the Court. Evidence speaks for itself and may be more favorable to one party. The remainder of the sentence is what is expected by the Court. Reasonable and balanced could be replaced by the word "impartial". Independence is a status while impartiality is a virtue!

1 Author: Anonymous Subject: Cross-Out

4 Author: Anonymous Subject: Sticky Note
You can always find some form of bias. Simply put, by stating that physician must not be influenced by bias reflect the lack of knowledge by CPSO on this topic.

1 Author: Anonymous Subject: Highlight

1 Author: Anonymous Subject: Cross-Out

4 Author: Anonymous Subject: Sticky Note
It is not for CPSO or physicians to determine what is or is not a reasonable request. When asked by the Court, one must comply or make his case in Court for non compliance.

²⁸ For example, if the limitation prevents them from arriving at a recommendation or conclusion on a particular point.
²⁹ 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, including:
173 i. the facts their statements and/or opinions are based on;
174 ii. what clinical information and opinions they obtained and reviewed and
175 who the source was; and
176 iii. any research or literature they relied upon.³⁰
177
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.

ALERT

GHOSTWRITING

ALERT

- Author: Anonymous Subject: Text Box
ALERT
- Author: Anonymous Subject: Sticky Note
There is nothing in the Advice document. What should be viewed as privileged information in the Mandate is best left to lawyers to address this issue with CPSSO. For example, surveillance information that has yet to be disclosed to the other party. This is a continuation of Quebec model which limits the physicians who conducted the IME to only answer the questions asked at the time of the evaluation. CPSSO seems to have taken a partisan approach to this issue.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Text Box
GHOSTWRITING
- Author: Anonymous Subject: Highlight
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The CPSSO needs to be clear as to the meaning of the word "contributed". Does taking the call requesting an IME, receiving the medical brief, scanning it to the EMR, preparing the notice of assessment, preparing (including cleaning the examination room), welcoming at the reception desk, walking the subject to the examination room, cultural interpretation service provider arrangements, chaperone services, clinical assistant, Covid-19 testing, file review and highlights (including identified discrepancies), history taking, examination, questionnaires, transcription, data analysis, literature search, decision support, writing, editing, proofreading, printing, billing putting report in envelope, putting a stamp, calling the courier service or bringing it to the post office.
Who put in this coma? Who made this typo? What about "attorney work" which should be privileged communication between OTLA members and their experts? Please HELP!
- Author: Anonymous Subject: Text Box
ALERT
- Author: Anonymous Subject: Sticky Note
THE NEED FOR A CLEAR DEFINITION OF GHOSTWRITING
Transcription, editing, proofreading and reviewing support are common place. How far do you have to go? Who placed that comma must be identified??? Should it be limited to the Opinion. I am afraid that with LAT decision referred on page 4 of the OTLA February 6, 2020 that drafts will become a huge issue. Once again, this is an advocacy issue. OTLA does not define what constitute Ghostwriting in their submission. Fortunately for me, I am a fast typist!
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
What is the difference between basis and rationale. The Advice is silent about it.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
How can physicians ensure the accuracy of their statements when the subject is hiding facts or being deceptive? For example, a subject may state that there has been no intervening events when the records of having totaled his vehicle hitting a moose was not disclosed by his representative. Full disclosure by the parties is a legal procedure issue that the physicians or CPSSO have no control over.
- Author: Anonymous Subject: Sticky Note
Be cautious since it contravenes the questions that you were originally asked. You may not have consent to share very damaging information (e.g. staff saw the wheelchair lady at the hockey arena not necessitating any assistive devices). This is also highly relevant to the review of surveillance which the initial letter from the requesting party did not mention.
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
Great example for emphasizing that the CPSSO should follow what they preach!

³⁰ 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.

Author: Anonymous Subject: Sticky Note
is a word missing? not sure this makes sense
Author: Anonymous Subject: Cross-Out

196 **Timely**

- 197 29. Absent  specific legal requirement,³¹ physicians who are not acting as medical
198 experts **must** conduct IMEs and/or provide third party medical reports in a timely
199 manner,³² 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.³³
- 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~~.

218
219

³¹ 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.

³² 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.

³³ 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**

ALERT From Québec

222 33. Physicians **must comply with any legal requirements regarding the presence of**
 223 **observers³⁴** 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.³⁵

RULES OF CIVIL PROCEDURES PLEASE

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 finding³⁶ 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 them³⁷ 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

Author: Anonymous Subject: Sticky Note
 OTLA's expectation in the reformulation of the 2 Policies is addressed on p. 3-4 of their February 6, 2020 submission: "... emphasize the need for and importance of objectivity and impartiality in expert reports and IME reports, along with the CPSO taking a harder stance against the bad players in the industry, hired guns will become a thing of the past." What is glaringly missing is the OTLA's plan to address their own backward of bad players and hired guns. OTLA Members making CPSO complain a rule for every IME done by the other side is left unaddressed.

Author: Anonymous Subject: Text Box
 ALERT From Québec

Author: Anonymous Subject: Sticky Note
 Lawyer to address this craziness originally from Québec. However, the worse example is Florida when the plaintiff lawyers attend the defense medical. THE ONTARIO RULES OF PROCEDURE need to be addressed here. Jail guards excluded.

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Text Box
 RULES OF CIVIL PROCEDURES PLEASE

Author: Anonymous Subject: Highlight

Author: Anonymous Subject: Underline

Author: Anonymous Subject: Underline

Author: Anonymous Subject: Underline

Author: Anonymous Subject: Sticky Note
 Had a claimant that became unresponsive and an overdose was suspected. Must disclose the finding to the subject who is unresponsive??? Get an ambulance! The issue of urgency and saving life are not even considered!

Author: Anonymous Subject: Underline

Author: Anonymous Subject: Sticky Note
 not a complete sentence

³⁴ 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.

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

³⁶ 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.

³⁷ 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 [comment] the IME is not being conducted in the context of a legal proceeding
- 249 or the subject hired the physician to conduct the IME,³⁸ 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 them³⁹ 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 [comment] a third party (not the subject) hired the physician to conduct the
- 259 IME, [comment] physicians **must**: DEFINE THIRD PARTY
- 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, [comment] physicians **must** only provide clinical
- 266 information that is directly relevant to the finding.

- Author: Anonymous Subject: Sticky Note
- If no,
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
- If no,
- Author: Anonymous Subject: Text Box
- DEFINE THIRD PARTY
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
- TO WHOM?
- Author: Anonymous Subject: Highlight
- Author: Anonymous Subject: Sticky Note
- to determine whether

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;

³⁸ 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).

³⁹ See footnote 37.

⁴⁰ 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 [comment] whether any such impediment to disclosure exists in the circumstances.

- 276 f. information regarding the IMEs that have been conducted; **ALERT**
- 277 g. consent that has been obtained with respect to the presence of observers
- 278 and/or recordings of examinations; and **Rules of Civil Procedures re: Chaperone**
- 279 h. any clinically significant findings and any action taken with respect to the
- 280 findings. **Recording done covertly by subjects is common place.**
- 281

39. Physicians' documentation of the information in provision 36 **must** be:
- 282 a. legible;
 - 283 b. **accurate;** 
 - 284 c. complete and comprehensive;
 - 285 d. identifiable, containing a signature or audit trail that identifies the author;
 - 286 e. written in either English or French; and
 - 287 f. organized in a chronological or systematic manner.
 - 288
 - 289

40. In addition to documenting the information in provision 38, physicians **must** retain any related materials including, where applicable:
- 290 a. contracts with the requesting party (e.g., outlining scope, purpose, timelines,
 - 291 fee arrangements, etc.);
 - 292 b. clinical information or opinions not created by the physician, which the
 - 293 physician relied upon;
 - 294 c. audio or video recordings of examinations; and
 - 295 d. third party medical reports.
 - 296
 - 297
 - 298

41. Physicians **must** retain and provide access to the information and related materials in provisions 38 and 40 in accordance with the legal requirements that apply to the specific circumstances.⁴¹

Author: Anonymous	Subject: Text Box
ALERT	
Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Text Box
Rules of Civil Procedures re: Chaperone	
Author: Anonymous	Subject: Text Box
Recording done covertly by subjects is common place.	
Author: Anonymous	Subject: Highlight
Author: Anonymous	Subject: Sticky Note
Addressed earlier line 112	

⁴¹ 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.