

# Independent medical examinations and the fuzzy politics of disclosure

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In Brief

THE NUMBER OF THIRD-PARTY INDEPENDENT MEDICAL EXAMINATIONS is increasing, and so is the controversy surrounding them. Dorothy Grant of the Medical Society of Nova Scotia provides advice on how physicians should address this potentially contentious issue.

En bref

EN MÊME TEMPS QUE LE NOMBRE D'EXAMENS MÉDICAUX exigés par des tiers indépendants ne cesse d'augmenter, la controverse à ce sujet s'intensifie également. Dorothy Grant, de la Société médicale de la Nouvelle-Écosse, offre des conseils aux médecins sur la façon d'aborder ce problème controversé.

**W**hen they call me at the Medical Society of Nova Scotia their anger is palpable. They are the growing number of men and women frustrated that they have been denied access to information contained in third-party medical reports. In most cases the problem relates to an independent medical examination (IME) done by a physician chosen by a third party; they are very popular with insurance companies, which use IMEs to determine a claimant's eligibility for long-term disability.

A 1992 Supreme Court ruling (*McInerney v MacDonald*) had a dramatic effect on both the patient-physician relationship and IMEs. Many patients are now aware that, with few exceptions, they can no longer be denied reasonable access to medical information doctors compile about them (see sidebar).

Because of this well-publicized access to medical information, it isn't surprising that those subject to third-party exams now believe they have a right to read what an IME says about them. Many patients who call the medical society are incredulous when told they are not entitled to examine or receive a copy of such a report. "The report is about me and my body," they say. "I think I have every right to see what the doctor said about me."

The anger is heightened if the person concludes that the IME is responsible for a decision to deny a disability claim. It is not unusual for disgruntled patients to threaten to go to a physician's office to demand a copy of a third-party report. Some have even talked to me about taking it by force.

Physicians who do IMEs are expected to inform patients that their primary role is to help a third party determine disability or physical impairment. It is assumed they will also explain that they are acting on behalf of the third party, which is paying for their professional services. However, doctors can state — and often do — that there is a possibility their report may contain recommendations for further investigation or treatment.

Physicians should advise these patients that they will not be able to obtain the results of the examination from the doctor, since the findings become the property of the third party.



Features

Chroniques

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*Can Med Assoc J* 1997;156(1): 73-5.

## What to tell patients about third-party exams

Physicians who conduct examinations on behalf of a third party should inform patients:

- Whoever pays for a third-party examination owns it and controls its release. It is not the same as an examination done under a provincial health insurance plan and patients will only see the results if the third party that paid for the report releases them.
- In some cases physicians pass along information resulting from a third-party examination to the patient's doctor, but rules are fuzzy and vary according to the physicians and third parties involved. In most cases patients will not be allowed to see these reports.



Not just the people IMEs are written about become angry over the access issue. An assistant to a member of Parliament became enraged after learning that an insurance company would not provide a copy of an IME to a constituent applying for disability benefits under the Canada Pension Plan (CPP).

The MP's assistant, citing *McInerney v MacDonald*, insisted that the constituent was entitled to this information. The insurance company was equally adamant that it owned the report because it had paid for it; CPP officials would see it only if they obtained a subpoena. (Subsequently, I was advised that the patient should have asked his family doctor to contact the insurance company to obtain a copy of the IME. With the patient's authorization, a copy could then be sent to the CPP.)

## Restrictions, inconsistent practices

Many family doctors say they feel stymied by the restrictions and inconsistent practices associated with third-party reports, because insurance companies seem to have differing policies about disclosure of the medical information they acquire. Another confusing factor is that some physicians who perform IMEs and make medical recommendations sometimes send copies of the reports to the person's family doctor; other consultants never do this, recognizing that this would breach their contract with the third party.

One physician told me about his frustrations concerning IMEs. "I have a patient who has serious health problems and I have encountered difficulty arriving at a diagnosis. This man is on long-term disability and recently the company where he has loan insurance arranged for an independent medical examination. This was completed with little delay. I'm told that I am not entitled to see the specialist's report so I haven't the least idea about his findings. My patient faces a 3-month wait before his appointment with the consultant I have arranged for him to see. Meanwhile, he is in considerable pain and there is really not much I can do to help him." (In this case I contacted the insurance company and explained the physician's concerns. It agreed to send him a copy of the consultant's report.)

I contacted one insurance company that has a policy of consulting the doctor who completed the IME before releasing the report to a family or the treating physician. Other companies never seek such permission; they feel it is their right to decide when the medical information they own should be released to a physician.

Sharon Hale, disability case manager for Maritime Life Assurance, says her company always sends reports containing medical recommendations to a treating physician because "not only is it in our own interest to do this, but it obviously makes good sense to provide a treating doctor with information that has the potential to improve a person's well-being."

She says Maritime Life, which handles large numbers of long-term disability claims, does not care if physicians discuss recommendations contained in an IME report with a patient, but this doesn't mean the patient should be given a copy.

Many questions arise from third-party reports that deal with serious medical conditions. Should a consultant be entitled to share a diagnosis and treatment recommendations with a family doctor, even though someone else paid for the report? Should a treating physician ever hesitate to discuss with a patient the results of an IME that contains potentially beneficial medical advice?

Some suggest *McInerney v MacDonald* may help interpret the legality of releasing information that has significant positive implications for a patient. In dismissing the appeal launched after that ruling, one judge stated: "In this case there is no evidence that access to the records would cause harm to the patient or a third party; nor does the appellant offer other compelling reasons for nondisclosure. Accordingly, the lower court quite properly held that the respondent was entitled to copies of the documentation in her medical chart."

## No specific mention of third-party reports in judgement

Although *McInerney v MacDonald* does not specifically refer to independent medical examinations done on behalf of a third party, the Supreme Court judgement spoke out clearly about disclosure and patient access to medical records.

The ruling was cited in a CMA policy summary, "The medical record: confidentiality, access and disclosure" (*Can Med Assoc J* 1992;147:1860A-B), which states: "In *McInerney v MacDonald* (1992; 2 SCR 138) the Supreme Court of Canada ruled that the medical record belongs to the physician or health care institution that compiled it. The court also ruled that the patient has the right to examine the record and to copy all the information contained in it, including consultation and other reports obtained from physicians.

"The CMA holds that physicians should be prepared to explain, on request, the information contained in the medical record."

Dr. Dennis Kendel, registrar of the College of Physicians and Surgeons of Saskatchewan, noted that following release of the *McInerney* ruling the Canadian Medical Protective Association pointed out that it did not apply to third-party reports. He said the issue remains "very confusing" and angers many patients.

## Is disclosure required?

Third parties, particularly insurance companies, say they recognize how important it is for people named in an IME to be made aware of any relevant medical recommendations. But what if the treating doctor does not agree with such recommendations or feels this unsolicited advice would undermine his own treatment protocol? In such cases doctors may choose not to disclose medical information that consider inappropriate meddling. In such situations physicians may decide they are not prepared to share the recommendations or their own objections with the patient.

Unfortunately, refusal to follow a treatment plan can lead to termination of a disability claim. Who protects the well-being of a patient who learns via a third party that a treating doctor has not followed the recommendations made in an IME? Would this be grounds for a formal complaint to a licensing body?

A spokesperson for an insurance company said that as advocates for their patients, physicians should not hesitate to contact a third party to request a copy of an IME that they believe resulted in an unjustified termination of a disability claim. Obtaining the information could provide grounds for appealing a ruling, or help both physician and patient more clearly understand why a consultant concluded that a claimant should no longer be considered disabled.

As the number of third-party IMEs increases and the public and physicians begin to face the fuzzy politics of disclosure associated with them, it is clear this controversial issue must be addressed. There must be efforts to develop enlightened third-party disclosure policies that recognize the interests of those who pay the piper as well as the paramount importance of physicians' duty to act in good faith to represent and care for their patients. ?