

# Ethical Guidelines for Conducting Independent Medical Assessments

## 2010

These guidelines should be read in conjunction with the AMA's *Guidelines for Report Preparation and Court Attendance in Relation to Independent Medical Assessments 2010*.

### 1. Preamble

1.1 Medical practitioners are requested to conduct independent medical assessments to assess persons on behalf of third parties such as insurance companies and employers. Where a doctor is conducting an independent medical assessment, a traditional therapeutic relationship does not exist. The role of the doctor in conducting these assessments is to provide an impartial medical opinion, not to treat the person. These guidelines have been developed to inform the public on the nature of independent medical assessments and to advise doctors on the major ethical issues involved in conducting such assessments.

1.2 The AMA promotes the highest standards of practice in the provision of independent medical assessments by medical practitioners.

1.3 Independent medical assessment requires adherence to the discipline of medicine in which scientific and clinical expertise is applied to medical issues in legal contexts. Independent medical assessments should be practised in accordance with guidelines and ethical principles enunciated by the medical profession. Doctors should also be familiar with relevant court rules of procedure for the provision of expert evidence.

1.4 These guidelines establish a basic standard of ethical practice in the preparation of independent medical assessments. However they may not be relevant in all medico-legal circumstances. The AMA recognises that in some circumstances treating doctors will be required to report in medico-legal settings, especially doctors working in rural and remote districts and criminal jurisdictions when statutory requirements apply to the treating doctor. However, in this situation this does not constitute an independent medical assessment and report by a doctor. In this circumstance, the doctor must state his or her role as a past or present treating doctor.

### 2. Respect for the Person Being Examined

2.1 Doctors have a duty to conduct themselves in an ethical and professional manner when assessing a person, regardless of whether the doctor is in a treating role or a non-treating role with that individual.

2.2 The person being assessed (herein, the 'examinee') should be treated with respect and dignity at all times. Independent medical assessments may be a source of complaint from the examinee. Independent medical assessors (herein 'the doctor') should be aware that persons presenting for a medico-legal or other third party assessment are often nervous, anxious or defensive. Compensation, insurance cover and even employment may depend on the outcome of the assessment. Doctors should therefore act in a courteous, professional manner and be sensitive to the concerns of the person.

2.3 The doctor should introduce themselves to the person and explain their specialty field of medicine in easily understandable terms, the purpose and nature of the assessment and their role as an assessor. The issues that are likely to be considered as part of the history should be outlined to the person. This is particularly important where a psychiatric history is to be taken. The examinee should understand that the role of an independent medical assessor is not to treat nor to offer opinions to the person on his or her condition.

2.4 The doctor should explain all aspects of the assessment to the examinee prior to the commencement of the assessment. This is particularly important if the assessment and physical examination, if required, may be intrusive or involves undressing. Sympathetic consideration should be given to requests for chaperones or an accompanying friend or relative and same gender independent medical assessors. It

would be prudent for the doctor to record the names of all persons present during the assessment. A psychiatric assessment should be conducted solely between the doctor and the examinee, except where an interpreter is required. The psychiatrist may choose to collect collateral history from a family member, with the permission of the examinee.

### **3. Consent**

3.1 The examinee's explicit consent to participate in the independent assessment and to provide the report to the third party should be obtained before the doctor proceeds (where a person is unable to provide consent due to limited decision-making capacity, consent should be sought from the examinee's authorised surrogate decision-maker). In order to facilitate the consent process, the examinee should be provided with the following information:

- Where a doctor is requested to conduct an independent medical assessment on behalf of third parties such as insurance companies and employers, a traditional doctor-patient therapeutic relationship does not arise. The role of the doctor in these examinations is to provide an impartial medical opinion. It is not to treat the person or offer opinions to the person on his or her condition;
- The result of the assessment is a report to the third party, not to the examinee or their treating doctor;
- The purpose and nature of the assessment, including the issues that are likely to be considered as part of the history;
- The name and speciality of the doctor conducting the assessment;
- Payment of fees;
- Requirements regarding chaperones, same gender assessors, interpreters and presence and role of accompanying persons.

3.2 Where chaperones are present, they should be informed that they are not to take an active part in the assessment. Interpreters or other persons accompanying the person to assist in communication should be informed that they are not to offer opinions or subjective interpretations. Ideally, chaperones, interpreters and other persons accompanying the person should not be family members.

3.3 If a person declines to undergo the assessment, the doctor must not proceed and the party requesting the assessment should be informed as soon as possible.

### **4. Privacy and Confidentiality**

4.1 Doctors should inform the examinee of the arrangements made for their privacy and the limits of confidentiality (if any) which will apply to the examination, subsequent preparation of the report, and any court testimony.

4.2 Doctors need to be aware that some examinees may wish to record the assessment. It is the doctor's decision as to whether or not the assessment is recorded.

4.3 Should the doctor wish to record the assessment, consent from the examinee must be obtained first.

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

5.1 A doctor conducting an independent medical assessment should not provide routine treatment for the examinee. Emergency treatment should only be provided where no reasonable alternative exists and immediate referral is then made to a treating agency or treating doctor for ongoing care.

5.2 Doctors should not offer an opinion nor offer gratuitous advice on the examinee's claim, medical or surgical management. If an independent medical assessor identifies a potentially life threatening matter regarding the immediate management of the examinee, they should contact the person's treating doctor.

5.3 Incidental matters identified during the assessment may be notified to the examinee, but there may be some situations where it is appropriate to notify their treating doctor. The examinee's consent to notify their treating doctor should be obtained first.

**6. Expertise**

6.1 Doctors must present their qualifications accurately and precisely. Doctors in specialist categories should, where practical, distinguish between opinion based on their medical specialty (if any) and matters outside their specialty expertise.

**7. Disclosure of Information Sources**

7.1 Doctors must disclose all sources of information provided by the agency requesting the evaluation and any other parties providing information.

**8. Maintenance of Professional Standards**

8.1 Continuing medical education is a fundamental responsibility of all doctors. Opinions in independent medical reports provided by doctors should be based on contemporary scientific standards.

**9. Professional Boundaries**

9.1 Any comment concerning difference of opinion with a medical colleague should be confined to matters of substance and expressed in professional terms. Doctors must use their best endeavours to identify and disclose actual and potential conflicts of interest. Doctors should not allow the financial interest of the examinee, or their own financial interest or that of the third party to influence their assessment, opinion, or recommendations.

9.2 Fee agreements for a medico-legal report which are dependent upon a particular outcome are unethical.