



## POLICY

# Medical Examinations by Non-Treating Physicians

<b>STATUS:</b>	<b>APPROVED IN PRINCIPLE</b>
Approved by Council:	June 2001
Amended:	TBD
To be reviewed:	TBD

## 1. Purpose and scope of this Policy

When conducting a non-treating medical examination (NTME), a therapeutic relationship does not exist. The role of the physician is to provide a medical opinion to a third party, rather than to provide treatment to the individual being examined. Despite the lack of therapeutic relationship, physicians are subject to many of the same professional and ethical obligations that apply when seeing patients within a therapeutic relationship.

This policy is intended to ensure physicians who perform NTMEs are familiar with their professional and ethical obligations when acting as a non-treating physician to complete an independent medical examination. The policy applies to examinations of individuals by non-treating physicians, but is *not* intended to address file reviews.

In conducting NTMEs directed by the Court pursuant to Rule 5-49 of the *Saskatchewan Queen's Bench Rules*<sup>1</sup> or section 36 of *The Queen's Bench Act, 1998*, S.S. 1998, c. Q-1.01, or by Saskatchewan Government Insurance pursuant to section 35.63 of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35 and section 25.2 of *The Automobile Accident Insurance (Injury) Regulations*, c. A-35 Reg 5, or by the Saskatchewan Worker's Compensation Board pursuant to section 58 of *The Workers' Compensation Act, 2013*, SS 2013, c. W-17.11, physicians are expected to act in accordance with those provisions in addition to the expectations contained in this policy.

## 2. Definitions

For the purposes of this Policy, the following definitions apply:

**Non-treating medical examination (NTME)** – Any medical examination/assessment of an individual for the purpose of a third party process and not for the provision of health care. It is often requested when faced with uncertainty about the cause or nature of a claimed disability, or the functional status and/or

<sup>1</sup> 5-49 In an action brought to recover damages or other compensation with respect to bodily injuries sustained by any person, a judge may order the injured person to be examined by one or more duly qualified medical practitioners who are not being called by a party as witnesses at the trial of the action.

rehabilitation potential of a claimant. More familiar terminology is *independent medical examination* (IME), but NTME is more appropriately descriptive of the relationship.

An NTME is a clinical examination performed by a physician for legal, financial, or insurance reasons. The examination commonly includes a review of clinical data (history, physical examination, and test results). The physician is often required to answer questions concerning diagnosis, impairment, and causal linkage.

**Third party** – Any party other than the physician and claimant, including a government department or agency, private non-governmental sectors such as lawyers, Saskatchewan Government Insurance (SGI) or private insurance companies, disability insurance companies, employers, educational institutions, etc.

**Claimant** – The individual who is the subject of the medical examination.

**Conflict of interest** – As described in CPSS Guideline “[Conflict of interest](#)”, “a conflict of interest arises where a reasonable person could think that a physician’s duty to act in the patient’s best interests may be affected or influenced by other competing interests. Conflicts of interest can be real, potential or perceived. Conflicts of interest may arise in a variety of circumstances including financial, non-financial, direct, and indirect transactions with patients and others. Financial gain by the physician is not necessary to establish a conflict of interest...”

For the purposes of this Policy, a **physician** is any individual licensed by the CPSS including individuals licensed on the educational register.

### 3. Expectations

3.1 Before accepting a request to conduct an NTME, physicians **must**:

- a. clearly, and preferably in writing, address any real, perceived or potential conflict(s) of interest that may be present. The physician must, together with the requesting third party, determine that no conflict exists; alternatively, any conflict must be waived by all parties.
- b. disclose to all parties their involvement at any time in the claimant’s medical care, and any relationship with the third party aside from a fee-for-service arrangement.

3.2 Physicians **must** only accept a request to conduct an NTME if:

- a. they have an active licence;
- b. the matter falls within their current scope of practice and area of competency; and
- c. they have the requisite knowledge, skill and judgment to conduct the NTME.

3.3 Prior to conducting an NTME, physicians **must**:

- a. unless the NTME was ordered by a court order or statutory direction, ensure the claimant has provided valid and documented consent for the collection, use and/or disclosure to a third party of the patient’s personal health information;
- b. unless the NTME was ordered by a court order or statutory direction, ensure the claimant has provided valid and documented consent for the examination, any diagnostic interventions and release of the physician’s report;
- c. ensure that the information conveyed during the consent process includes:
  - the purpose, scope and rationale of the NTME, if applicable, including the fact that the NTME is for the purpose of a third party process and *not* for the provision of health care;
  - that the physician’s role is to provide information and/or opinions for the third party and not to decide how the information and/or opinions will be used by the third party or the relevant decision-makers;

- that consent can be withdrawn at any time, but that this may prevent the physician from completing the NTME;
  - that if the claimant places limits on the information the physician can disclose, such limitations may prevent the physician from providing the NTME;
  - if consent is withdrawn or limited by the claimant, the physician may still be permitted or required by law to collect, use and/or disclose the claimant’s personal information and/or personal health information;
- d. agree, in advance, on the fee structure for the NTME and the payment terms;
- e. notify the requesting third party if any of the questions posed are not within the physician’s scope of practice or area of competency.

3.4 In completing NTMEs, physicians **must**:

- a. be aware of the terms of authority of the examination set out in contract, statute or *Queen’s Bench Rules*, whichever applies.
- b. treat the claimant pursuant to the same ethical obligations as would apply to any patient. The physician should be fair, compassionate and empathetic while also objective and non-partisan.
- c. provide a report that is fair, objective, impartial and scientifically sound. Physicians must clearly identify any limitations on the comprehensiveness of any NTME conducted and report provided.
- d. complete the NTME and provide the report in a timely manner.
- e. comply with any legal requirements regarding the presence of observers and recordings. In the absence of legal requirements, physicians must give claimants the option of having an observer present during any intimate examination and must permit claimants to have an observer present during any examination unless the physician reasonably believes that the observer’s presence will likely impact the examination.
- f. inform any observer who is present during the examination that they cannot interfere or intervene in any way during the examination.
- g. obtain consent from all parties involved with respect to observers or recordings.
- h. document all findings, as well as the start and end time of the NTME.
- i. retain a record of the NTME which includes:
  - the presence and name of any interpreter, chaperone and/or observers;
  - the final report, any interim reports and the informed consent document;
  - the contract (if any);
  - notes of history and physical examination;
  - audio and/or video recordings if made by the physician; and
  - a list of and copies of sources of ancillary information reviewed and relied upon by the physician.

The records must be prepared and retained in accordance with legislative and bylaw requirements.

3.5 In the event of a clinically significant finding during the NTME, physicians **must** disclose to the claimant any significant medical condition requiring treatment that is discovered during the examination, and provide a recommendation that the claimant seek treatment for the condition.

3.6 If the claimant is in imminent risk of serious harm and requires emergent or urgent medical intervention, the examining physician **must**, with the claimant’s consent, communicate the finding to the claimant’s primary health-care provider.

3.7 If the claimant is in imminent risk of serious harm and requires emergent or urgent medical intervention but does not have a primary health-care provider or does not provide consent to notify

them, the physician **must** provide any necessary care that is within the physician’s scope of practice or direct the claimant to the emergency department or to another health-care provider who is available to provide any necessary care and follow-up.

## OTHER RESOURCES

CPSS Regulatory Bylaw 7.1 – [The Code of Ethics](#)

CPSS Regulatory Bylaw 7.2 – [Code of Conduct](#)

CPSS Regulatory Bylaw 9.1 – [Conflict of Interest](#)

CPSS Regulatory Bylaw 23.1 – [Medical Records](#)

CPSS Policy “[Uninsured Services](#)”

CPSS Policy “[Informed Consent and Determining Capacity to Consent](#)”

CPSS Policy “[Certification of Work Absence or Accommodation due to Illness or Injury and Completion of Third Party Forms](#)”

CPSS Policy “[Scope of Practice Change](#)”

CPSS Guideline “[Confidentiality of Patient Information](#)”

CPSS Guideline “[Conflict of Interest](#)”

### **Canadian Medical Protective Association (CMPA) publications:**

“[Treating physician reports, IME reports, and expert opinions: The way forward](#)”, June 2019

“[Providing access to independent medical examinations](#)”, June 2018

“[Medical letters, forms, and reports](#)”, May 2022

“[Writing with care](#)”, March 2020

“[Did you know? You need authorization to provide medical records to lawyers](#)”, January 2018

### **Canadian Medical Association (CMA) publications:**

CMA Policy “[Third-Party Forms](#)”, 2017

[Ebrahim et al., “Ethics and legalities associated with independent medical evaluations”, CMAJ 2014 Mar 4; 186\(4\): 248-249](#)

## ACKNOWLEDGEMENTS

In developing amendments to this policy, the College of Physicians and Surgeons of Saskatchewan referenced the following documents:

- The College of Physicians and Surgeons of Alberta Standard of Practice “Non-Treating Medical Examinations”
- The College of Physicians and Surgeons of Ontario policy “Third Party Medical Reports”
- The College of Physicians and Surgeons of British Columbia Practice Standard “Independent Medical Examinations”

The College recognizes, with thanks, the contributions of those organizations to the development of this amended policy.