

## THIRD PARTY PHYSICIAN

### WHAT IS A THIRD PARTY PHYSICIAN?

"Third party physicians" are often employed in situations where a "third party" is potentially or actually adverse in interest to the patient. Examples of a "third party" include an employer, insurer, or defendant in a personal injury lawsuit, who has an interest in assessing some aspect of a patient's medical condition. In such cases, the physician is referred to as a "Third Party Physician".

A third party physician examination is a clinical examination requested by someone other than the patient and performed by the physician usually for legal, financial or insurance reasons. The examination commonly includes a review of clinical data (history, physical examination, and test results). The examiner often must answer questions concerning diagnosis, impairment, long-term prognosis, and causal linkage. A central responsibility of the Third Party Physician is usually the submission of a report to the Third Party requesting the examination. Typically the Third Party, not the patient, initiates and pays for the examination.

The Third Party Physician role should be distinguished from other situations where a physician is asked to provide a report, such as:

#### **Patient's Own Doctor**

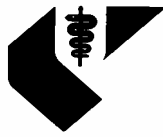
- The patient's own doctor may be asked to send a report to a third party. In such situations, the physician must ensure that he/she has the patient's consent and the physician must let the patient know the contents of the report in accordance with the requirements of *The Personal Health Information Act* ("PHIA").

#### **Independent Physician**

- The patient and a third party may jointly request (and pay for) a report concerning the patient. In such situations, a physician acceptable to both the patient and the third party conducts the examination and provides the same report to both parties. Sometimes physicians acting in this joint capacity are referred to as "independent physicians" but should not be confused with the Third Party Physicians described above.

#### **Occupational Physician**

- The Occupational Physician, although employed by a third party, is primarily responsible to the employee and reports to the employer only on matters which may affect the safety of the employee or co-workers.



## No. 129

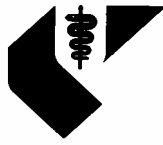
### RESPONSIBILITIES OF THE THIRD PARTY PHYSICIAN:

A Third Party Physician has professional responsibilities to the third party and to the patient. The circumstances that give rise to third party consultations, the involuntary aspect of a third party consultation, and the lack of a long-term ongoing doctor-patient relationship may create tension in examination of the patient. However, Third Party Physicians should always be mindful that the physician's ethical duties to the patient are unchanged even though a third party initiated the examination. The patient is to be treated with dignity and the report which is prepared must be professional and scientifically sound. However, once the patient agrees to the examination, the Third Party Physician's observations and opinions may be included in the report to the third party without the patient's further consent.

The Third Party Physician must be wholly objective and impartial, ideally through having no involvement at any time in the patient's medical care. If there has been a professional relationship in the past, the physician must disclose this to the third party. Where the previous professional relationship would raise a perceived or real conflict of interest, the physician must decline to act as the Third Party Physician. Any relationship between the physician and the third party except on a fee-for-service basis must be declared openly to the patient and in the report.

An ethical physician will observe the following precautions when collecting information and providing a report as a Third Party Physician:

- 1. Informed Consent.** The Third Party Physician must be satisfied that the patient understands the purpose of the examination, the way it will be conducted, and who will receive information arising from the examination. Written documentation of consent is recommended, separate from the blanket form of consent that the patient may have signed for the third party. During the course of the examination, the patient retains the right to withdraw consent to continuing the examination. **Physicians should make it clear to the patient that consent to release information to the third party cannot be withdrawn during the course of the examination. A Third Party Physician should not proceed with an examination where the patient attempts to make consent conditional upon review of the report prior to its release to the third party.**
- 2. Third Party Physicians May Not Treat.** It is not acceptable for the Third Party Physician to treat or offer to treat the patient except in an emergency. It is important to explain to the patient at the outset that the purpose is not to treat and that the Third Party Physician cannot give the patient advice about the patient's medical condition or concerns.
- 3. Unexpected Problem Found.** If, during the third party examination, the Third Party Physician discovers a significant medical condition requiring treatment, the Third Party Physician is responsible for ensuring that this is disclosed to the patient, with a recommendation to seek treatment. With the patient's consent, the Third Party Physician may also contact the patient's treating physician directly to inform him/her of the medical condition requiring treatment.



4. **Disclosure to the Patient.** The patient has a right to know what personal health information has been made available to the physician by the third party.
5. **Information Available to the Third Party Physician.** Only information made available by the third party or the patient may be accessed for the purpose of this examination. If further information is required, it must be requested from the patient or the third party. It is important to recognize that even though the Third Party Physician has a professional obligation to request information necessary for the proper completion of an assessment, the Third Party Physician has no right of access to other personal health information. Accordingly, if the requested information is not forthcoming, the report must be appropriately qualified.
6. **The Use of Composite Records.** If the Third Party Physician works at a setting where past records on the patient may exist, then care must be taken to ensure:
  - No information is accessed other than that provided by the third party or the patient.
  - Any third party report should not be kept on the patient medical record. **Any third party report should be separately filed or clearly marked so that it does not enter into the usual medical record of the patient.**
7. **Nature of the Opinion to be Given.** The Third Party Physician shall confine the opinion to the specific issue requested by the third party and consented to by the patient.
8. **Substantiation:** The Third Party Physician's opinion in the report must be substantiated by an objective analysis of the relevant facts and findings, free from bias.
9. **Access by Patient to Third Party Physician Records:** The Third Party Physician is a Trustee under PHIA. Thus it is incumbent upon the Third Party Physician to understand his/her obligations under PHIA. Reports prepared or records relating to examinations conducted at the request of a third party are considered the same as any other medical records. The Third Party Physician must allow the patient access to these reports if requested, subject to the same conditions applicable to other medical records. This does not apply to situations where the physician had no patient contact and offers an opinion based on pre-existing records.
10. **Payment for the Report.** The patient must be informed whether the third party will be paying for the examination and report or whether the patient is expected to do so. This must be done before the examination takes place. If the patient is expected to pay, the patient has the right to know what the total cost will be in advance of the examination.

First Print CC 04-94  
Revision Exec 01-02

**A statement is a formal position of the College with which members shall comply.**