

# **IME Reports - Writing for Physicians**

Judge Mary A. Black

What Would the Judge Do?

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# **IME Reports - Writing for Physicians**

## **I. INTRODUCTION**

Treating physicians' reports and medical-legal evaluations are used to establish a worker's eligibility for benefits and to resolve disputes over treatment, disability, and other issues. These decisions have a major impact on the life of an injured worker because they will determine whether or not the worker will receive medical treatment, temporary and permanent disability payments, and vocational rehabilitation services under the workers' compensation system.

It is therefore critical that physicians have a good understanding of how the workers' compensation system works, what role their written reports play in the system, and how their reports will be interpreted and used. Independent medical examiners who write medical reports for the Court must be familiar with the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides) and the applicable workers' compensation statutes and Court Rules. Mastering these will assist the Court in its decision making process and translate into more effective and cost appropriate services for injured workers within the Oklahoma workers' compensation system.

These materials are prepared as a broad overview of the requirements of medical reports submitted to the Workers' Compensation Court. The information is not intended to be exhaustive or to take the place of Oklahoma law governing workers' compensation cases. You should consult additional resources as needed, to stay current and to ensure that you fully comply with requirements under the law.

## **II. REPORT WRITING**

### **How is medical testimony offered?**

Expert medical testimony may be offered by a verified or declared medical report, deposition, or oral examination in open court. *Court Rule 20*. The most commonly used method for the presentation of medical evidence is a medical report.

### **Who may provide medical testimony?**

A medical doctor, chiropractor, podiatrist, dentist, osteopathic physician, or optometrist is qualified by statute to render an expert medical opinion. Expert medical testimony also may be provided by a psychologist, if the testimony of the psychologist is made under the direction of a medical doctor. *85 O.S., §14*. The Court also may accept testimony from a person licensed by another state who would be qualified to be a licensed physician under the laws of Oklahoma. *85 O.S., §17(A)*.

### **What are the required elements of a medical-legal report?**

#### In General

The medical-legal report serves as evidence to prove or disprove disputed medical issues such as causation, permanent impairment, work restrictions, and need for future medical care. The law does not require that the report be written in any particular style, but physicians should keep in mind that the main audience for the report is nonmedical. The claimant, claims administrators, attorneys, and Workers' Compensation Court judges rely on the opinion to make decisions that may drastically

affect the claimant's life. The report should be clear, concise, reasoned, internally consistent and objective.

Workers' Compensation Court Rule 20 provides physicians with some guidance on the contents of a medical report. The rule encourages, **but does not require**, a report to contain the following information, as applicable, in order to provide the Court and the parties and their representatives with the most complete picture of the worker's medical condition:

1. A complete history of the worker, including all previous relevant or contributory injuries with a detailed description of the present injury.
2. The complaints of the claimant.
3. The physician's findings on examination, including a description of the examination and any diagnostic tests and x-rays.
4. The date and cause of the alleged injury and whether, in the physician's opinion, it is job-related.
5. The period during which the claimant was temporarily and totally disabled and, if such temporary total disability has ended, the date on which it ended. If temporary total disability continues at the time of the report, the physician should so state.
6. A finding which apportions the percentage of the claimant's pre-existing permanent partial disability, if any.
7. Whether the claimant is capable of returning to light duty or full duty work, and what physical restrictions, if any, should be imposed on the claimant, either temporarily or permanently.
8. Whether the claimant has reached maximum medical improvement.
9. Whether the claimant is able to return to the employee's former employment or is a candidate for vocational rehabilitation.
10. Whether the claimant is in need of continuing medical care, and if so, the type of continuing medical care needed.
11. The nature and extent of any permanent impairment.
12. An apportionment of injury causation.
13. Any other detailed factors upon which the physician's evaluation of permanent impairment is based.

**All medical reports must be verified or contain a written declaration, made under penalty of perjury, that the report is true.** The following form of declaration is suggested: “I declare under penalty of perjury that I have examined this report and all statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete. *Court Rule 20(D)*.”

### Reports By Court Appointed Independent Medical Examiners

The content of a Court appointed independent medical examiner’s narrative medical report is governed by the Court order appointing the physician to provide services in a particular case. The order identifies the issues the physician shall address and the services the physician may perform. The IME’s report is to cover **only** those issues specified in the order. Addressing all issues helps expedite consideration of the case and may eliminate the need for a deposition.

### Reports On Temporary Disability

An injury can cause a worker to be temporarily disabled. A temporary disability prevents the worker from performing all or part of the worker’s job. An injured worker who cannot work at the usual job, or at modified work assignments, is eligible for temporary total disability (TTD) benefits. A worker is considered TTD until the worker has returned to work, the medical condition has become static, or the worker reaches maximum medical improvement. If the treating physician has recommended light duty for the worker and the workers’ employer supplies such light duty work, the worker should not be receiving TTD benefits. An injured worker who is able to perform modified work assignments is considered to have a temporary partial disability (TPD). *85 O.S., §22(4)*.

A medical report for temporary disability **must** include a determination of whether or not the employee is capable of returning to light duty work, and what restrictions, if any, must be followed by the employer in order to permit the worker to return to work.

The report **should** contain the information enumerated in Court Rule 20, as applicable, and address:

1. whether the claimant has reached maximum medical improvement.
2. whether the claimant is able to return to the employee’s former employment or is a candidate for vocational rehabilitation.
3. whether the claimant is in need of continuing medical care, and if so, the type of continuing medical care needed.
4. a summary of all medical reports and records reviewed by the reporting physician from all physicians and medical facilities that rendered treatment to the claimant.

Physicians may supplement a medical report for temporary disability with the Court’s Form 5 (Physician’s Report on Release and Restrictions). The form addresses the worker’s physical limitations and capabilities in relation to job tasks or working conditions.

### Reports On Permanent Partial Disability

Permanent partial disability is permanent disability which is less than total and is equal to or the same as permanent impairment. 85 O.S., §3(21). The term “permanent impairment” is defined by law as “any anatomical abnormality after maximum medical improvement has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made.” 85 O.S., §3(19). A worker’s medical condition is considered to have reached maximum medical improvement when no further material improvement would reasonably be expected from medical treatment or the passage of time. 85 O.S., §3(22).

All medical opinions addressing compensability and permanent impairment **must** be stated within a reasonable degree of medical certainty. *Court Rule 20(C)*. All evaluations of permanent impairment **must** be supported by objective medical evidence, 85 O.S., §3(19), and, in appropriate cases, may include credible medical evidence that the ability of the employee to earn wages at the same level as before the injury has been permanently impaired, 85 O.S., §3(22). The “major cause” (i.e. the predominate cause) of a compensable injury must result from employment. 85 O.S., §3(7)(13)(16)(18). “Objective medical evidence” means “evidence which meets the criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court case law applicable thereto.” 85 O.S., §3(17). It includes “medical testimony that rests on reliable scientific, technical or specialized knowledge, and assists the Court to understand the evidence or to determine a fact in issue.” *Court Rule 20(C)*.

A medical report for permanent partial disability **should** contain the information enumerated in Court Rule 20, as applicable. In addition to being verified or declared, a medical report for permanent partial disability **must**:

1. address causation and the percent of permanent impairment attributable to the injury stated within a reasonable degree of medical certainty, 85 O.S., §17.
2. include an apportionment of injury causation, unless the injury is a cumulative trauma injury for which the last employer is liable under 85 O.S., §11(B)(5) (*imposes liability upon the last employer in the event of a cumulative trauma injury for which the period of injurious exposure was at least 90 days, and permits contribution only if there are no periods of injurious exposure of at least 90 days*). See, 85 O.S., §§3 and 22.
3. include an apportionment for all adjudicated pre-existing conditions, *J.C. Penny Co. v. Crumby*, 1978 OK 80, 584 P.2d 1325, and an apportionment for all non-adjudicated pre-existing conditions affecting body parts involved in the claim.

### Reports On Causation

When a physician is asked to determine causation, the physician **must** state, to a reasonable degree of medical certainty, whether the work-related activity revealed by the worker’s medical history, and/or which the worker asserts is the cause of the impairment, would naturally result in the worker’s impairment. The focus of the determination that an injury is compensable is whether there is a causal relationship between the act engaged in at the time the injury occurred, and the requirements of employment. *Thomas v. Keith Hensel Optical Labs*, 1982 OK 120, 653 P.2d 201. To be

compensable, employment must be the “major cause” of the specific injury or illness. 85 O.S., §3(7)(13)(18). “Major cause” is the “predominate cause” of the resulting injury or illness. 85 O.S., §3(16).

Medical proof of causation cannot be based upon possibility, but must be based upon a probable causal connection. McConnell v. Oklahoma Gas & Electric Co., 1977 OK 65, 563 P.2d 632, 633; Cohenour v. Smart, 1951 OK 339, 205 Okla. 668, 240 P.2d 91. To make a determination based on a reasonable degree of medical certainty means the determination is more probable than not. Lukenbill v. Longfellow Corp., 1958 OK 190, 329 P.2d 1036, 1038. A medical opinion regarding causation that is based on possibility or chance, and which does not include words indicating probability or likelihood, is not competent evidence supporting a finding that the injury arose out of and in the course of employment. See for example, Ada Coca-Cola Bottling Co. v. State Industrial Commission, 1959 OK 123, 341 P.2d 568, 571 (a medical report stating that it is the doctor’s “impression” that various symptoms “could be” caused by an injury in the course of employment is not competent evidence supporting the Workers’ Compensation Court’s findings of fact); Dolese v. James, 1995 OK CIV APP 12, 894 P.2d 442 (doctor’s statement that an injury “could be” job-related was not competent medical evidence to support the award of compensation); Tyson Foods, Inc. v. Marez, 1996 OK CIV APP 137, 931 P.2d 760, 762 (physician’s medical report stating that it is the physician’s “impression” that the claimant’s injury “could be” the result of cumulative trauma caused by standing or working on a concrete floor for long periods, was not competent evidence to support a finding that the claimant’s injury arose out of and in the course of employment).

### Reports Rating Permanent Impairment

Permanent disability for work-related injuries is determined by judges of the Workers’ Compensation Court based on medical opinions of permanent impairment stated within a reasonable degree of medical certainty. 85 O.S., §17(A). Treating physicians and Court appointed independent medical examiners are among physicians authorized to rate permanent impairment. *Id.*

In all cases except impairments to “scheduled members,” the medical evaluation of permanent impairment must be performed in substantial compliance with the edition of the American Medical Association’s Guides to the Evaluation of Permanent Impairment in effect at the time of injury. 85 O.S., §§3, 22; *Court Rule 21*. Deviations from the AMA Guides are permitted only when the deviation is specifically provided for in the Guides [85 O.S., *Section 3(19)*] or is pursuant to a recommendation of the Physician Advisory Committee approved as provided for by law [85 O.S., *Sections 3, 22, 201.1(B)(3)*]. Physicians also are prohibited from following the Guides based on race or ethnic origin. 85 O.S., §§3 and 22.

Under Court Rule 21, the following editions of the AMA Guides shall be used to rate permanent impairment as a result of injuries occurring within the time period indicated:

- a. First Edition - 7/1/78 through 10/31/84
- b. Second Edition - 11/1/84 through 12/31/88
- c. Third Edition - 1/1/89 through 4/30/91
- d. Third Edition Revised - 5/1/91 through 10/31/93

- e. Fourth Edition - 11/1/93 through 6/27/01 for which an evaluation is conducted from 11/1/93 through 6/19/94
- f. Fourth Edition, with the following deviation: A physician shall not use the Injury or Diagnosis Related Estimates (DRE) models, including the DRE Tables - 11/1/93 through 6/27/01 for which an evaluation is conducted from 6/20/94 through 6/27/01
- g. Fifth Edition, with the following exception: A physician shall not use the Diagnosis-Related Estimates (DRE) Method, including the DRE Tables set forth in Chapter 15, "The Spine." - 6/28/01 to present.
- h. Injuries occurring before July 1, 1978 are to be evaluated based on the claimant's ability to perform "ordinary manual labor."

Editions subsequent to the 5<sup>th</sup> edition and revisions to the Guides published after December 31, 1994 are not effective unless approved by the Workers' Compensation Court Administrator and the Legislature. Such editions or revisions become effective 120 days after the last day of the month in which the Administrator submits them to the Legislature if the Legislature takes no action or 120 days after the last day of the month in which the Legislature disapproves them in part.

Injuries to "scheduled members" other than deafness, the eyes and hernia (i.e. the thumb; first, second, third and fourth fingers; great toe; other toes; hand; arm; foot; and leg) are specifically exempt from the requirement of evaluation under the AMA Guides. 85 O.S., §3(19). Deafness, while listed as a scheduled member is to be evaluated using the AMA Guides if the last exposure occurred on or after June 1, 1987. *Court Rule 22*. Where the last exposure occurred before June 1, 1987, former Court Rule 37 as set out in the Appendix "A" to the Court Rules is to be used to evaluate hearing loss. Permanent impairment to the eye is to be evaluated in accordance with Court Rule 23. Although a hernia is considered a scheduled member, permanent impairment is applicable only in limited situations. 85 O.S., §22(3).

Physicians may use any reasonable medical criteria, including the AMA Guides or subjective opinion, to evaluate permanent impairment of scheduled members. *TRW/Reda Pump v. Brewington*, 1992 OK 31, 829 P.2d 15.

Under current Oklahoma law, scheduled member injuries are rated as follows:

- To the HAND, if the injury results in a functional impairment to the hand or that part of the arm below the elbow: *Wilkerson Chevrolet, Inc. v. Mackey*, 1961 OK 267, 366 P.2d 422;
- To the ARM, if the injury results in a functional impairment to the arm at or above the elbow to the shoulder joint: *See 85 O.S., §22(3) (amputations)*;
- To the FOOT, if the injury results in a functional impairment to the foot or that part of the leg below the knee: *Stoldt Builders, Inc. v. Thomas*, 1964 OK 127, 393 P.2d 875, 876-77; and
- To the LEG, if the injury results in a functional impairment to the leg at or above the knee to the hip joint: *Transcon Lines v. Brotherton*, 1967 OK 248, 438 P.2d 935, 937.

Scheduled member ratings are never converted to the body as a whole, unless two or more members are involved. A common example is bilateral carpal tunnel syndrome. Combining of disability to two or more scheduled members into disability to the body as a whole is a *permissive* method to

determine an injured worker's entitlement to compensation. Stoldt Builders, Inc. v. Thomas, 1964 OK 127, 393 P.2d 875, 876-77. It is properly used in cases where it is medically determined that the cumulative effect of the individual injuries impacts whole body disability. People v. Oklahoma Medical Research Foundation, 1994 OK CIV APP 101, 879 P.2d 843. Whole body disability generally involves a greater physical and economic detriment to a worker than the individual injuries and disabilities to specific members. Acceptable methods of conversion include: (1) the Combined Values Chart of the AMA Guides, (2) direct conversion of each hand into whole body impairment using the AMA Guides; and (3) adding the impairment rating for each hand and dividing by two to arrive at an average to be applied to the whole body.

NEITHER THE SHOULDER NOR THE HIP ARE A SCHEDULED MEMBER. AN INJURY TO THE SHOULDER OR TO THE HIP IS RATED TO THE BODY AS A WHOLE. Leeway Motor Freight, Inc. v. Highfill, 1967 OK 139, 429 P.2d 745 (shoulder); Brown v. Oxy USA, Inc., 1993 OK CIV APP 63, 854 P.2d 378 (clavicle and shoulder are under "other cases"); Corbus Spring Service v. Cresswell, 1961 OK 18, 359 P.2d 219 (hip). It is important to note that under the AMA Guides, the shoulder is considered part of the upper extremity. At least one appellate decision requires the physician to rate the shoulder according to the AMA Guides by converting an upper extremity rating to the whole body. Shebester-Bechtel, Inc. v. Higginbottom, 1995 OK CIV APP 120, 905 P.2d 1137.

### Reports On Permanent Total Disability

"Permanent total disability" is defined in 85 O.S., §3(20) as:

"incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof . . . ."

This definition describes two separate conditions which constitute permanent total disability. The first condition is "economic disability." Permanent total disability from an economic standpoint is not synonymous with total incapacity or total dependence, but means a lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury to health or danger to life. Special Indemnity Fund v. Washburn, 1986 OK 46, 722 P.2d 1204.

The second condition is what is referred to as "statutory permanent total disability." The loss of both hands, both feet, both legs, both eyes, or any two thereof creates a presumption of permanent total disability regardless of the earning capacity of the employee. Eslinger v. Cole Grain Co., 1982 OK CIV APP 24, 655 P.2d 164; Superior Smokeless Coal & Mining Co. v. Bishop, 85 Okla. 204, 205 P. 497 (Okla. 1922); Harry Tidd Construction Co. v. Mead, 163 Okla. 64, 20 P.2d 909 (Okla. 1933). Since most cases do not concern statutory PTD, the discussion and references in this paper are to economic PTD, unless otherwise noted.

A medical report for **economic permanent total disability** should contain the information included in a medical report for a permanent partial disability case. Additionally, the report should include an evaluation of the worker's economic disability based on a review of the worker's age, education, employment history, rehabilitative potential, and availability of work that the claimant can do. Rehabilitative potential (i.e. the education and training necessary to learn a new job which the worker presently is unable to perform) is a significant factor in the determination of the existence of economic permanent total disability. 85 O.S., §§3 and 16. It is within the Court's discretion to order a vocational evaluation. A Court appointed independent medical examiner is not authorized to refer the claimant for a vocational evaluation examination when asked to determine whether a worker is permanently and totally disabled. However, the IME may refer the worker for a functional capacity assessment. The independent medical examiner also can advise the Court that a vocational evaluation may be necessary in order to render a formal opinion.

### Reports For Death Cases

The causal connection between the worker's employment and the alleged injury is essentially the only element that must be addressed in a medical report for a death case. To establish causation, the physician must show a sufficient knowledge of the worker's past medical history relative to the medical condition that resulted in the worker's death, and what the worker was exposed to or injured by that precipitated the worker's death.

### Reports On Vocational Rehabilitation

Under 85 O.S., §16, an evaluation of a worker's need for vocational rehabilitation must be based on the worker's ability to do the job he/she had prior to the injury. Therefore, the essential elements of a physician's medical report pertaining to vocational rehabilitation are a statement of the extent of the worker's injuries, a statement of the physical requirements of the job on which the worker was injured, and the physician's opinion concerning whether the worker's injuries prevent the worker from doing the worker's job.

### Reports On Change of Condition

An order of the Workers' Compensation Court is an adjudication of an injured worker's condition as it then existed. Except for final disposition of a work-related claim by a joint petition settlement or a Form 1X compromise settlement, the order is not a final adjudication of the injured worker's rights prospectively since the injured worker's condition and level of impairment may change.

If the worker's physical condition does change after a court order determining the extent of permanent partial disability, and the worker can prove that the change of condition did in fact occur and that the physical change is attributable to the original injury, the Workers' Compensation Court may reopen the claim and award additional benefits. Requests to reopen on change of condition are limited to only those body parts adjudicated by a previous award or as a result of a consequential injury. The time limit for reopening work-related injuries is fixed by law.

Medical reports pertaining to a Motion to Reopen for a Change of Condition **must** comply with the provisions of Court Rule 35. The report must show how conditions which existed at the first trial have increased or decreased in severity since that time. The physician **must** explain how these conditions relate to the worker's original injury. The physician's opinion should be supported by the results of tests and examinations performed and objective findings which served as the basis for

the physician's conclusions. The report **must** identify whether additional medical treatment is needed, if the worker is again temporarily totally disabled, and whether the worker qualifies for additional permanent disability.

Reports On Combined Disabilities Against the Multiple Injury Trust Fund or the Last Employer

The law in this area has changed a number of times since 1999. Physicians are encouraged to review the provisions of Sections 171 through 176 of Title 85 of the Oklahoma Statutes when writing reports for combined disabilities cases. Medical reports addressing only combined disabilities **must** identify the extent of the last injury and the impairment, if any, resulting from a combination of that injury with previous disabilities. The report also should contain:

1. A complete history of the worker, including all previous relevant or contributory injuries with a detailed description of the present injury;
2. The complaints of the worker; and
3. The physician's findings on examination, including a description of the examination and any diagnostic tests and x-rays.

**III. WHEN MEDICAL REPORTS ARE DUE**

A Court appointed independent medical examiner's reports will be used to make critical decisions about whether or not a worker receives or, in some instances, is eligible to continue receiving, workers' compensation benefits, such as temporary and permanent disability payments, future medical benefits and vocational rehabilitation services. For this reason, timely delivery of the physician's reports is very important. A list of the required reports and when they must be submitted follows:

<b>Report</b>	<b>When Required</b>
Court Rule 20 Verified or Declared Written Report	Where only a review of records and information is required (i.e. death claim), within 14 calendar days of receipt of all necessary records and information.
	Where an examination and/or additional tests are required, within 14 calendar days of the completion of the examination or additional tests.
Form 5: Physician's Report on Release and Restrictions	When the IME determines the worker is capable of returning to work.
Supplemental Reports	On request from the Court.

The IME must send the original of all these reports to the assigned Judge AND a copy to each of the parties/attorneys involved in the case.

## IV. RELEASE OF MEDICAL RECORDS

The following materials are provided for informational purposes only. The law in this area is subject to change. It is recommended that the text of the source documents be referred to for specific provisions.

### HIPAA and Workers' Compensation

Federal regulations mandated by the Health Insurance Portability and Accountability Act (HIPAA) went into effect April 14, 2003 (April 14, 2004 for small health plans). One of the goals of HIPAA and the related regulations is to protect the privacy of health records used and disclosed by covered entities. Covered entities include health care providers who conduct certain financial and administrative transactions electronically, health care clearinghouses, and health plans.

The HIPAA Privacy Rule is important because covered health care providers, including those that treat employees with workers' compensation injuries, are required to comply with its requirements. The Privacy Rule recognizes the legitimate need of insurers and other entities involved in workers' compensation systems to have access to individuals' health information as authorized by state or other law.

Under HIPAA regulations, protected health information may be disclosed:

- As authorized by and to the extent necessary to comply with the laws relating to workers' compensation or similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. See 45 C.F.R. §164.512(l).
- To the extent that disclosure is required by state or other law. This disclosure must comply with and be limited to what the law requires. See 45 C.F.R. §164.512(a).
- For the purposes of obtaining payment for any health care provided to the injured or ill worker. See 45 C.F.R. §164.501.

Workers' compensation insurance is not a "health plan", and is specifically excluded from the HIPAA privacy regulation. 45 C.F.R. §160.103.

### Release Of Medical Records Under The Workers' Compensation Act

The following medical records are subject to release under the Workers' Compensation Act:

1. Full examining report of the worker's injuries at the time of examination and proposed treatment. *[The worker's treating physician must provide the report to the injured worker and the employer within 7 days of the initial exam. 85 O.S., § 14(A)(1).]*
2. Full report of treatment at the conclusion of treatment. *[The worker's treating physician must provide the worker's employer with the report at the conclusion of treatment. 85 O.S., §14(A)(1).]*

3. Report that the worker has reached maximum medical improvement, including any applicable light duty restrictions. *[The worker's treating physician must notify the worker and the worker's employer or the employer's insurer, of the worker's MMI status and must identify any applicable light duty restrictions. If the report is provided to the employer's insurer, the insurer must promptly notify the employer. 85 O.S., §14(A)(2).]*
4. Report of the employer's selected physician's examination of the worker. *[The employer's selected physician must release a report of the physician's examination of the claimant to the employer and the worker within 7 days after the examination. 85 O.S., §14(B).]*
5. Court-appointed independent medical examiner's narrative report. *[Court-appointed IMEs must report to the Court and parties. 85 O.S., Section 17(D)(6).]*
6. Report on the examination and treatment of the worker by a physician retained by the worker's employer and/or insurer. *(A physician retained by the worker's employer and/or insurer must provide a report of the physician's examination and treatment of the worker to the worker or the worker's attorney. 85 O.S., Section 25.)*

Additionally, under Court Rule 19(E), parties must exchange medical evidence upon which they are relying at trial. Other medical records are subject to the physician/patient privilege and may be released with authorization from the worker or pursuant to statutory discovery. Release of psychological or psychiatric records is subject to 76 O.S., §19 and 43A O.S., §1-109.

## **V. ETHICAL CONSIDERATIONS**

### Confidentiality

Confidentiality is an important and difficult issue, especially for treating physicians who have records that may become part of a patient's workers' compensation files. If a workers' compensation claim is in dispute, the employer and/or insurance company may subpoena the worker's records from the treating physician. If the treating physician is also the personal physician, these records may well contain personal information not relevant to the particular injury or illness being considered, and which the patient understandably might not want to pass on to the employer.

There are several things you can do to help protect the worker's confidentiality. For treating physicians, make sure your reports are timely and complete. This will reduce the need for subpoenas, which may be broader than necessary. For evaluating physicians, inform the employee of the confidentiality issues when conducting the exam, and explain that the Court and the employer or the employer's representative will receive a copy of the report. **You should only include information in the report that provides evidence relevant to the worker's claim and you should disclose all information reviewed in preparation of the report.** It is your responsibility as an impartial evaluator not to be influenced by information that is not relevant and not to unnecessarily repeat potentially sensitive information.

### Impartiality

As an evaluator, you are being asked to provide medical opinions that are fair, impartial, and based on your best medical judgment. Specifically, evaluators are required to treat all patients in the same way, that is, not to discriminate against or be biased against anyone because of race, sex, national origin, religion, sexual preference, or because the worker is or is not represented by an attorney. IME evaluators are also expected not to be biased in favor of the worker or in favor of the insurance carrier/employer.

### Ex Parte Communication

A basic principle in a fair legal system is that all parties have equal access to information. A state law, 85 O.S., §3.8, concerning ex parte communication (communication "done for, on behalf of, or on the application of, one party only") is meant to help maintain the neutrality of the physician's role and the role of a judge before whom an action is pending, and to insure that all parties are equally informed. It is important for physicians to understand the concept of ex parte communication, and to abide by this statute.

An IME is not allowed to communicate with either party or the assigned judge concerning the merits of a specific matter pending before the judge for resolution, except in writing, and any written communication must be directed to the assigned judge AND all parties. However, IMEs may contact the employer/insurer, claimant, or counsel for either, to request medical records. IMEs also may communicate with the employer/insurer, claimant, or counsel for either, concerning the scheduling of a deposition or medical authorizations upon which the parties agree.

To avoid ex parte communications, each report and letter from a court appointed physician MUST include a notation that it was sent to all parties. Each communication also MUST include the Workers' Compensation Court's claim number (located in the top right hand corner on each page of the IME order) to avoid any difficulty in matching it with the appropriate Court file.

## **VI. CONCLUSION**

The role that the health care community plays in the workers' compensation system cannot be overstated. This paper is intended to provide general information about treating physicians' reports and medical-legal evaluations and their significance in the operation of an efficient and cost appropriate system. For additional information on medical matters and workers' compensation, call the Workers' Compensation Court at 405-522-8794. If the Court order appointing you as an independent medical examiner is unclear, or if you need clarification related to correspondence from the Court, you should communicate your inquiry in writing to the assigned judge, making sure to copy each party/attorney in the case. Remember the prohibition on ex parte communication prohibits direct contact with the attorneys, adjusters or the Court, except in limited situations.

In addition to the sources of information mentioned in this paper, general information about workers' compensation is available on the Court's website, [www.owcc.state.ok.us](http://www.owcc.state.ok.us).