

Table of Contents for IME Course

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**AOOP Annual Meeting—Basic Skills Workshop**

**January 17, 2003**

**Independent Psychiatric Medical Evaluations (IME's)**

Please consider all patient material in this presentation to be confidential, and do not re-release. Except for published opinions, easily identifying patient data has been redacted.

**Plan for this presentation**

- 1) Review critical concepts
- 2) Review 3 Court decisions to learn what standards are important legally
- 3) Review and critique IMEs, and practice formulating responses to IME assignment letters

**Critical Concepts:**

1. To conduct Worker's Compensation IME's competently one should also treat such patients.
2. Maintain neutrality and avoid prejudice; IMEs significantly impact peoples' lives.
3. Refuse work in which there is an "expected outcome". Be aware of questions that are phrased prejudicially in assignment letters.
4. Conduct evaluations with comprehensive access to prior medical records.
5. Evaluations must be fact based—both from medical records and your own evaluation.
6. Know the questions you are expected to answer.
7. Don't offer opinions outside the area of your professional expertise.
8. The summary and conclusions should tell a story—with an integration of plot line and character development that is supported by data. It is much easier to present testimony in a court setting when it has a foundation.
9. In reviewing other IME's, be on the lookout for boilerplate phraseology—and clichés. Avoid them in your own work. It is harder than it seems.

**Introduction:**

Performing Independent Psychiatric Evaluations in Worker's Compensation Cases provides an opportunity for you to increase the economic base of your practice while developing new skills that will be of value in the rest of your practice. Writing reports of superior quality is an intellectual challenge—requiring preservation of neutrality with no investment in "outcome", the efficient integration of considerable amounts of clinical material, framing a hypothesis regarding the subject's psychiatric diagnosis (es), and depending on the assignment presented by the client, offering opinions regarding causality, prognosis, and treatment.

You should be familiar with the Workers' Compensation Statutes in your state, as the rules that govern administration of claims vary from state to state.

## **Resources**

A good resource is the **United States Department of Labor** website--  
<http://www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm>.  
Using this web resource and your browser's search engine you can determine your particular state's guidelines for coverage, physician selection, and medical benefits.

<http://www.dol.gov/esa/regs/compliance/owcp/wc.htm> is another useful Department of Labor listing that contains the names, addresses and phone numbers of State Worker's Compensation officials for all 50 states, from whose offices additional information may be obtained.

## **Create a new market or expand the existing market in your community**

*"Panels of consultants"* typically market their services to corporations, and state funds. Psychiatrists perform evaluations in concert with orthopedic, neurology, and other specialists.

Alternatively, the solo psychiatrist may have an opportunity to provide a level of service that is not generally available through panels.

Your goal is to provide professional service at a level that is needed but has not been available.

## **Be a part of the solution, not part of the problem**

Do your work quickly and well. Don't be a bottleneck for your referral sources.

Avoid arrogance, practice humility. Learn from your clients and don't condescend to them.

## **Know your client's needs and objectives**

Insurance companies request second opinions regarding diagnosis and treatment of insured's.

Attorneys require a balanced professional assessment of workers' compensation cases to frame effective decisions regarding litigation and settlement negotiations. Claims managers need honest evaluations to manage claims. Successful attorneys are adept at case analysis. They understand law and precedents better than psychiatrists. Our task is to

answer their questions, employing our expert medical-psychiatric knowledge.

If the nature and scope of the assignment is unclear, communicate with your referral source. Discover the actual needs in terms of record review, depth of report, and depth of analysis. The client should be given a reasonably accurate estimate of the cost in advance. If it is not satisfactory, discuss how adjustments might be made.

Judges and commissions order independent evaluations to assist them in making decisions about individuals over whom they have jurisdiction. They should specify the issues that need to be addressed. These are generally within the Fitness for Duty realm, and are addressed in a separate presentation.

The Social Security Administration contracts for a large number of Independent Psychiatric Evaluations. These are special purpose evaluations, and are addressed in a separate presentation.

### **Integrity**

Your conclusions should flow from the data—**Consistency** is important.

### **Quality**

Cultivate organization, coherence, effective grammar, and clear logic in your reports. Answer the questions posed in the assignment letter, or else explain clearly why you cannot.

If you make a mistake, fix it for free--immediately, with grace, elegance, and aplomb

### **Performance Objectives**

Exceed the expectations of your client. Promise your report by Friday, but deliver it the preceding Wednesday.

By your performance, educate your clients to expect a professional product your competition is unable or unwilling to provide.

### **Requirements for the psychiatrist performing Worker's Compensation IMEs**

**Professional Commitment**—Your mission is to provide professional services of exceptional quality on a 24/7 basis. If you treat this work as a sideline activity used to fill in schedule gaps, and assign it a lower priority than the rest of your practice, you will perform at an average level. If a client requires special services, provide them.

**Adequate support staff and equipment**—

For a busy IME practice you need: **On site transcriptionist, an office manager to schedule appointments and manage the books, and a clerk to arrange the files for record review in a 3 ring binder so that you can dictate efficiently.**

Unless you can command \$300 per hour to perform those tasks yourself, pay someone to do it for you at a lower hourly rate. The goal is to provide an extremely high quality cost-effective report to your clients. Many clients are prepared to spend \$600-1200 for an independent psychiatric evaluation; fewer clients are willing to repeatedly spend \$3000-4000. Do not permit procedural or equipment obstacles to stand in your way. Have sufficient telephone lines so that callers do not get busy signals or an answering machine or answering service, except outside of normal business hours. A fax machine with a dedicated phone line and computer fax sending capability direct from your word processor is essential. WinfaxPro is one efficient Windows based fax program.

Prepare to achieve the following goals:

- Medical records will be organized for efficient review when you dictate your report; staff will do this as you become busier.
- Strive to accomplish immediate on-site transcription and review, with same day faxing of the report to your client.
- Work to achieve a 2-3 day turnaround from completion of patient interview to the provision of final report to your client.

**Continuous quality improvement**--Solicit feedback from your clients, asking how the report could have been more useful. It is always possible to do a better job, and your clients will provide your training. Your reports in 2003 should be better than your 2002 reports, and so forth.

### **Organization of the report**

An **outline** for a formal disability evaluation can be found at the following link: <http://www.cdonaldwilliamsmd.com/PsychiatricAssessmentDisabilitySyndromes.htm>.

This is a chapter Ron Schouten MD and I wrote for Psychiatric Care of the Medical Patient, Oxford University Press, 2000.

Records are easier to review if they are organized both chronologically and by type. You or your staff will need to assemble, organize, and prune duplicates from the records you are provided. Use a time log sheet to track the time spent, to the minute, on each report. This provides transparency and accountability and a basis for your charges.

The use of outlines of report templates will increase the accuracy and the efficiency of your report production. Your transcriptionist can then type directly into them, and be familiar with the flow of information, reducing errors and your review time.

Produce a synthesis and integration of all of the data—including the medical records and your examination. It is essential to establish causal chains, and to evaluating alternative hypotheses critically. Discuss the opinions of other psychiatric examiners and provide reasons why you concur or disagree with different aspects of their opinions. Write like you are being examined on the witness stand in a court of law—never say anything that you would be embarrassed to defend.

### **Maintaining objectivity and consistency—avoiding pitfalls**

Performing Independent Psychiatric Evaluations, and testifying at depositions or live in court present challenges similar to those encountered in the conduct of psychotherapy. There are some potential pitfalls not usually faced in psychotherapy that are particular to the roles of the independent expert. Not only that, there are also technical challenges faced by the treating psychiatrist that confront the independent examiner in unexpected ways.

Unintentional, or innocently arrived at pitfalls are those that arise from **role confusion** and unconscious countertransference reactions. The responsibility of the independent examiner is to be a seeker of truth, and not to cure. To perform that role with integrity requires informed consent on the part of the person being examined. Many examinees are unsophisticated, and may think that any doctor they see is going to try to help them. *All examinees must be informed of the fact that the evaluation is not for treatment, who is paying for it, that it is not confidential, where the report will be sent.* This is also a useful intellectual discipline for the independent examiner. The psychiatrist may have been treating another patient the hour immediately before the exam, and it is necessary that they “shift gears”, emotionally and intellectually to conduct the examination properly.

The second "innocent" pitfall is that of **unexamined countertransference**, or other intense emotional responses that could contribute to distortion. The personal qualities of the examinee, i.e. whether they are "likable" or not, whether or not they have managed their lives in effective or ineffective ways, and the nature of other personal qualities will often have an impact on the examiner. Countertransference, and other emotional reactions are inescapable. They are a threat to integrity of the examination process only when the evaluator is not conscious of his/her reaction.

**An example might be useful to illustrate this point. "A 53 year old 220 pound divorced woman, recovering alcoholic x13 years, was injured transferring a resident in a nursing home from a commode to a bed. Her pain complaints appear to be in excess of the objective medical findings. She has been out of work and is on public assistance. She is poorly groomed when she arrives at your office, and makes poor eye contact. Her vocabulary and grammar are limited." Or, switch genders; change the**

occupation from CNA to farm worker, and the injury to that of having fallen off a ladder from 5 feet. Discussion: These synopses are not meant to be a complete clinical descriptions, but are intended to illustrate situations in which it might be "normal" for the examiner to discount, distance, and otherwise fail to clearly and completely assess the mental status of the examinee, and dismiss their complaints as exaggeration rather than adequately assess for depressive illness, pain disorder, and other treatable conditions.

Thorough history taking and a careful chart review will lessen the chance of such errors. Knowing oneself well, and broad experience treating such patients clinically offer additional safeguards against poor work.

**For example, an IME reviewed recently contained a mental status examination with no report of objective data whatever--but simply asserted that "cognitive functions were grossly normal" on the road to asserting there was no need for psychiatric treatment.**

**A separate psychiatric examination of this person revealed a forward digit span of 4 numbers, an inability to perform serial 3 subtractions, and a volunteered statement that before he would allow himself to lose his home because of financial hardship he would "take steps" to see that his spouse of 35 years was not left homeless. Furthermore, he volunteered that he felt guilty that he was injured (although that made no sense to him), that he felt worthless because he could not contribute financially to the household, and that he felt guilty that he was yelling at his wife for no reason. He couldn't sleep and he lacked the energy to do work around the home that he had always enjoyed. By contrast, a history of his prior workplace injuries revealed a back injury 13 years ago, followed by a two-year process of successful recovery with physical therapy, work hardening, and a 3.8GPA at a local technical school. He then worked 10 years successfully managing a 5000-acre ranch earning \$40,000 per year.**

"Not so innocent" pitfalls include consciously taking work where there is an "expected outcome." Most clinicians do not begin by deciding to offer dishonest and slanted reports and testimony. Like other ethical lapses, shading findings according to the paying audience in most cases happens gradually and incrementally. The "slippery slope" is easier to resist at the outset than it is when downhill momentum has begun to build. A conscious commitment to apply the same critical standards to all opinions and to subject each of them to review before release is a useful safeguard.

**An example of how this can work in practice can be drawn from a recent experience. I had treated, and then terminated for non-compliance, a patient that had a complex history of several prior injuries. Because of the intricacies of case law regarding causality and financial responsibility in the worker's compensation arena a situation arose in which both counsel for the employer and counsel for the former patient had the same objective; they wanted an opinion that asserted that continuing psychiatric problems were wholly due to an injury from over a decade ago, as it would affect both charges to the most recent employer and benefits to my former**

patient in a favorable manner. I initially agreed to testify to this effect, but after a file review and reflection on other similar cases, I realized that the case appeared more appropriate for “second injury fund” resolution. (You can use Google to look this up if you wish) I telephoned the attorney back, advised him that I had reconsidered my opinion, and did not want him to be surprised by the change. He thanked me, and cancelled my testimony. I might or might not be correct in my opinion, but that is not the point. The integrity of the process was preserved and I felt comfortable that I was maintaining consistent standards of assessment and opinion.

Other threats to objectivity include overt pressure from referring sources, which may be expressed through assignment questions that are posed in a prejudicial manner and direct challenges to clinical findings, and also more subtle forms. Subtle pressures may be self-inflicted, and include limited time, an internal sense of being rushed, and too little opportunity to reflect. For example, a clinician may have work presented by a scheduler in a way that seems to demand an opinion on the spot, without prior time to examine old records and reports. Alternatively, the clinician may take a phone call in which a regular referral source asks a question, makes a plausible comment, and then deferentially asks for a response. In this situation the "natural" response may be to make a polite, compliant, and pleasing response in order to avoid conflict and maintain the appearance of harmony. The response may or not correspond to what the clinician might opine on considered review. What is important is that the review occur, and that an unconsidered opinion not be allowed to stand.

In summary, here are several tests one can apply to assess the quality and integrity of ones evaluations and the reports and testimony that result. These include:

1. Would the opinion be the same no matter who asked for it?
2. Is the opinion consistent with all other opinions you have offered in cases with similar fact patterns?
3. Do you have an uncomfortable feeling in the pit of your stomach that something isn't right?
4. Would you feel comfortable defending your opinion to an attorney in front of a jury if that attorney had access to all of your IME's?

**WE SHIFT NOW TO THE FIRST OF 3 “BOARD OF INDUSTRIAL INSURANCE APPEALS” DECISIONS FOR REVIEW IN DETAIL. READ THE JUDGE’S FINDINGS AND REASONING WITH ATTENTION TO THE LEGAL GROUNDS CITED FOR ACCEPTING OR REJECTING DOCTOR’S OPINIONS.**

**We will discuss each of the Board decisions in turn as a group.**

**I chose to begin with judicial decisions instead of IMEs because they illustrate what is important at the conclusion of the process. Later, when we review IMEs we will reference the grounds for decisions, and evaluate how well the IMEs meet the tests of foundation, consistency, treating status, and medical qualifications.**