MEDICAL EXAMINATION MANUAL

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Ohio | Industrial Commission

MEDICAL EXAMINATION MANUAL

Our mission is to serve the injured workers and the Ohio employers through expeditious and impartial resolution of issues arising from workers' compensation claims and through establishment of adjudication policy.

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INTRODUCTION

The Ohio Workers' Compensation System has provided Injured Workers with medical care and financial compensation for work-related injuries, diseases, and deaths since 1913. The Ohio Bureau of Workers' Compensation (BWC) is the administrative branch of this system, managing claims, collecting employer premiums, and paying bills. The Ohio Industrial Commission (Commission) is the adjudicatory branch of this system. The Commission is responsible for providing a forum for fair and impartial claims resolution, conducting hearings on disputed claims and issues, adjudicating claims involving Employers' Violations of Specific Safety Requirements and determining eligibility for Permanent Total Disability benefits.

This manual presents Commission policies for independent medical examinations and medical file reviews. Most examinations and file reviews are to assist the Commission in the consideration of Permanent Total Disability. To meet Commission requirements, the reports of these examinations and reviews must be medically sufficient and legally reliable.

The independent specialist examiner's (specialist examiner) role is to:

1. determine the Injured Worker's functional impairment from the allowed condition(s) and how it affects work activities; and
2. submit a report which is fair, unbiased, objective, unequivocal, credible, and void of inconsistencies.

The Commission's role is to make a legal determination on disability based on Ohio law.

It is necessary the specialist examiner understands the medical and legal reporting requirements for these examinations and reviews. The Commission's Medical Examination Manual is a resource to assist specialist examiners in understanding Ohio BWC and Commission laws, rules, and statutes when opining on questions posed as part of the Permanent Total Disability independent medical examination and medical file review process.

SPECIALIST EXAMINERS' CONSIDERATIONS

Commission-approved specialist examiners must be well-trained and well-experienced in their field of practice. (See Examiner Recruitment, Credentialing and Advancement.) Specialist examiners must have no bias with regard to the Injured Worker, Employer or BWC. Approval of a specialist examiner does not constitute employment with the Commission. Commission-approved specialist examiners are independent contractors.

Specialist examiners shall immediately notify the Commission of any changes in professional status, as indicated at the time of application or reapplication.

Specialist examiners may elect to designate an administrative agent to perform administrative functions on their behalf, such as providing transcription services, office space, scheduling, and office staff. The Commission shall have no contractual relationship with administrative agents.

Independent Medical Examinations

The independent medical examination report is based on objective evidence which should stand up to scrutiny at the hearing. Specialist examiners should provide unbiased medical opinions on only the allowed condition(s) in the claim and the questions posed.

The Commission may require examinations on the following issues:

1. Permanent Total Disability;
2. Original or additional allowance;
3. Temporary Total Disability; and
4. Permanent Partial Disability.

Specifically, for the issue of Permanent Total Disability, the purpose of the independent medical examination is:

1. to evaluate whether the allowed condition(s) has reached a level of maximum medical improvement; and
2. to determine if, and how much, impairment has resulted from the allowed condition(s).

Commission independent medical examination referrals are on a one-time fee-for-service basis. (See Independent Medical Examination & File Review Fees.)

Addenda

In circumstances where additional information becomes available after the time of an examination, the specialist examiner may be requested to provide an addendum to the original report. In some cases, specialist examiners may charge for time spent preparing these addenda. (See Fees for Addenda, Interrogatories, & Depositions.)

The following are reasons for addenda completion at no cost:

1. The specialist examiner submitted an incomplete or insufficient report;
2. There was illegible hand-written documentation on the assessment form; and/or
3. The specialist examiner failed to adequately address all questions posed in the referral letter.

Interrogatories

Interrogatories are written questions submitted to the Commission by Injured Worker and/or Employer legal representative(s). Once approved, these questions must be answered by the specialist examiner. Specialist examiners may charge for time spent preparing their responses. The specialist examiner must bill the requesting party directly. (See Fees for Addenda, Interrogatories, & Depositions.)

Depositions

Parties to the claim must request Commission approval to schedule a specialist examiner deposition on the associated independent medical examination. The party requesting this administrative deposition must state the reason for the deposition, provide an estimate of the time period required for deposition, and pay all deposition costs. Commission policy prohibits pre-deposition conference between the specialist examiner and any party to the claim. The specialist examiner must bill the requesting party directly. (See Fees for Addenda, Interrogatories, & Depositions.)

A Commission Hearing Officer will attend administrative depositions held in Ohio. This hearing officer will control the deposition by determining the appropriateness of questions, and which questions the specialist examiner must answer. However, the hearing officer does not represent the specialist examiner in the deposition.

When a claim is pending in court, administrative deposition rules no longer apply. In a court deposition, the Rules of Civil Procedure and Evidence apply.

File Reviews

The Ohio Supreme Court has held that "a physician who reviews the medical record, without conducting an examination of the Injured Worker, is required to expressly accept all allowed conditions and the clinical findings of the examining physicians, but not necessarily the opinion drawn therefrom." *State ex rel. Sturgill v. P&G Sheet Metal, Inc.,* 2009-Ohio-3749, P6, 2009 Ohio App. LEXIS 3183, *3, 2009 WL 2331869 citing *State ex rel. Wallace v. Industrial Com. of Ohio,* 57 Ohio St. 2d 55, 386 N.E.2d 1109, 1979 Ohio LEXIS 365, 11 Ohio Op. 3d 216. A reviewing specialist examiner is required to consider and note all medical reports on record which may be considered relevant to the review issue. For these reasons, specialist examiners must:

1. indicate all examination reports considered in their review;
2. expressly accept the findings reported by examiners; and
3. review all available relevant medical records.

File reviews may be requested when an Injured Worker is incapable of travel, deceased, or has other special circumstances. Similar to the independent medical examination, specialist examiners should provide an unbiased medical opinion on only the allowed condition(s) in the claim and the questions posed.

Commission file review referrals are on a one-time fee-for-service basis. (See Independent Medical Examination & File Review Fees.)

Impairment

The Ohio Courts define **impairment** as "…the amount of the claimant's anatomical and/or mental loss of function caused by the allowed injury/occupational disease." *State ex rel. Beyer v. Autoneum N. Am.,* 157 Ohio St.3d 316, 320, 2019-Ohio-3714, P12, 136 N.E.3d 454, 458, 2019 Ohio LEXIS 1823, *7. An impairment rating is a medical opinion given by the specialist examiner to assist in the determination of disability. It is the responsibility of the specialist examiner in Permanent Total Disability independent medical examinations and file reviews to provide an estimated percentage of whole person impairment arising from the allowed condition(s) in the claim, and to provide a discussion setting forth the physical or mental limitations resulting from the allowed condition(s). All medical opinions must be supported by objective evidence to assist the adjudicator in the final legal determination.

Disability

The Ohio Courts define **disability** as "…the effect that the medical impairment has on the claimant's ability to work," *State ex rel. Meeks v. Ohio Brass Co.,* 10 Ohio St. 3d 147, 149, 462 N.E.2d 389, 390, 1984 Ohio LEXIS 1083, *4, 10 Ohio B. Rep. 482, based on the allowed conditions in the claim. Disability is a legal determination and is made only by the Ohio Courts or the Commission via the hearing process. The Commission considers impairment arising from the allowed conditions, and non-medical disability factors (age, education and work training/experience) in determining Permanent Total Disability. Non-medical disability factors are not to be considered by the specialist examiner. Considering non-medical disability factors and/or impairments resulting from non-allowed conditions will disqualify the report.

Acceptance of Allowed Condition(s)

When an injury occurs, a first report of injury (FROI-1) is filed. If approved, the allowed condition(s) becomes the legal basis for the Injured Worker's claim for compensation.

Specialist examiners must accept the allowed condition(s) in the claim when reporting their findings and opinions of independent medical examinations and file reviews. That is, the specialist examiner should not question the validity of the legally established allowed condition(s), and may not state: "There is no evidence of the allowed condition(s)." This constitutes a denial of an allowed condition(s) and may disqualify the examination as "some evidence" at hearing, or in court. If current examination findings fail to confirm the presence of an allowed condition(s), specialist examiners should state: "There is no evidence of impairment from the allowed condition(s) at the time of this examination."

Causation

Specialist examiners must not express opinions on causation unless specifically asked to do so. Opinions implying or stating the industrial accident or exposure did not or could not cause the allowed condition(s) will disqualify the report as evidence at hearing.

Review of Pertinent Medical Records

The specialist examiners are required to review pertinent medical records contained in the claim file.

In some cases, the Injured Worker may hand carry documentation into the examination. Specialist examiners must not accept and/or review these documents. If specialist examiners have questions regarding treatments, testing, or examinations mentioned by the Injured Worker during the examination, not found in the claim file, they may contact Medical Services with questions.

Clinical Findings

Reports must present the objective clinical findings to support the specialist examiner's opinion. These findings shall be of sufficient quantity that the specialist examiner's opinion would hold true in more than fifty percent of similar cases. This represents "a reasonable degree of medical probability".

Possibilities are not acceptable clinical findings, as they are true less than fifty percent of the time.

Maximum Medical Improvement

A Commission independent medical examination report may require an opinion of the Injured Worker's status with regard to maximum medical improvement. The legal definition of **maximum medical improvement** is: "Maximum medical improvement is a treatment plateau (static or well stabilized) where no fundamental or physiological change can be expected within reasonable probability, in spite of continuing medical or rehabilitative procedures. An Injured Worker may require supportive treatment to maintain this level of function."

To support an opinion that an Injured Worker has reached maximum medical improvement, the specialist examiner should state whether there has been any recent change in symptoms, function or treatment of the allowed condition(s) and if any change is expected in the foreseeable future.

Whole Person Impairment

Commission independent medical examination and file review reports may require an opinion on the Injured Worker's percentage of whole person impairment. Impairment percentages estimate the extent of impairment arising from the allowed condition(s) on whole person functioning, and account for basic activities of daily living, not including work. These estimates are standardized through use of the following references*:

1. American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides)
    a. *5th Edition* – Cardiology, Internal Medicine, Occupational Medicine, Orthopedic Surgery, Physical Medicine and Rehabilitation, Otolaryngology and Pulmonary Medicine
    b. *5th Edition* and Commission Mental Behavioral Table – Neuropsychology and Psychology
    c. *4th Edition* – Ophthalmology
2. American Association of Oral and Maxillofacial Surgeons' Guidelines to the Evaluation of Impairment of the Oral and Maxillofacial Region (AAOMS Guides) – Dentistry

Specialist examiners performing Permanent Total Disability independent medical examinations and file reviews must document appropriate references, including citations to specific tables, figures and page numbers to assist reviewers in understanding the justification for the impairment rating. If the specialist examiner identifies conditions which are not allowed within the claim, but which may contribute to functional impairment, the specialist examiner must limit the impairment percentage to the best estimate arising from the allowed condition(s) only.

*For specialty-specific considerations, see Exam Forms and Templates (ohio.gov)

Residual Functional Capacity

Commission independent medical examination and file review reports may require an opinion of the Injured Worker's residual functional capacity. Residual functional capacity represents an Injured Worker's ability to completely perform a task in light of limitations due to the impairment associated with the allowed condition(s) in the claim(s). To support an opinion regarding residual functional capacity, the specialist examiner must provide a summary of:

1. objective examination findings reasonably associated with the allowed condition(s);
2. findings on review of records which support an opinion of the severity of impact and degree of impairment due to the allowed condition(s); and
3. the Injured Worker's subjective reports of symptoms and function consistent with what would reasonably be expected to arise from the allowed condition(s), and congruent with the review of records and examination findings.

The specialist examiner must then indicate the appropriate work category on the specialty-specific assessment form in relation to the Injured Worker's residual functional capacity, as well as any further limitations.

ETHICAL CONSIDERATIONS

Confidentiality

The Commission defines **confidential personal information** (CPI) as personal information which is not a public record. Pursuant to R.C. 4123.88, records contained in a claim file and any information identifying the addresses or telephone numbers of Injured Workers are not public records. **Improper use or invalid access** is defined as access or use that is not for a valid business reason. A **valid business reason** is any reason which reflects the execution of one's job duties for the Commission.

Specialist examiners or their designated agents shall protect the CPI of the Injured Worker, and must adhere to the laws pertaining to confidentiality of medical information and professional standards of conduct. Only the Commission shall distribute independent medical examination or file review reports to entitled parties to the claim in accordance with confidentiality provisions stated above. Any improper use or access of CPI by a specialist examiner, their administrative agent, or designee will result in termination of the specialist examiner's access.

When using electronic communications to transmit Injured Workers' names, claim numbers, sensitive medical information, or other CPI, specialist examiners must use encryption software. Specialist examiners are required to use the Industrial Commission Online Network (ICON) to transmit independent medical examination and file review reports. Medical Services personnel will assist specialist examiners in establishing an account in ICON and will provide orientation to the system. Additional support will be provided by Medical Services as needed.

Maintenance of Medical Records

The Commission holds specialist examiners responsible for the methods in which they maintain and destroy Injured Workers' medical records. Specialist examiners:

1. are responsible for their staff or other administrative agents including, but not limited to, secure handling, proper maintenance, utilization and destruction of all claim documents whether provided by the Commission or generated by the specialist examiners' offices or agents;

2. are responsible and liable for costs incurred by the Commission as a result of any loss, misuse, or improper destruction of such claim records by the specialist examiners, their staff, or administrative agents;

3. must maintain a copy of independent medical examination and file review reports and associated documentation, either electronically or as hardcopy, for a period of one (1) year following the approval of and payment for final reports, in an accessible, safe, and secure manner; and

4. must properly dispose of any claim-related documents in a safe, secure manner.

ADMINISTRATIVE POLICIES

Legal Status

Specialist examiners are independent contractors. Referral for independent medical examination or file review represents a single fee-for-service commitment for the Commission and the specialist examiner. No authorization for treatment of the Injured Worker is implied or given in the Commission's request for examinations. The specialist examiner must not accept the Injured Worker into treatment.

The Commission requires specialist examiners maintain the prerequisites to appointment as described on the Commission's website under Become an Examiner (ohio.gov).

Examination Observers

Specialist examiners may allow Injured Workers to have a relative present during the examination. The relative must quietly observe, avoid interference with the examination and cooperate with the specialist examiner. The specialist examiner may ask the relative for additional information if needed. Legal representatives and affiliates may not be present at or during examinations.

Recording Examinations

Recording of the examination, by any means, is not permitted.

Interpreter

When requested by a party to the claim, the Commission shall provide an interpreter, at no cost to the Injured Worker or the specialist examiner. A relative is not considered a reliable interpreter. At the time of examination, the Commission shall reschedule the examination at the request of the Injured Worker or the specialist examiner in the absence of a necessary interpreter.

Conflict of Interest

Examinations and file reviews are to be performed by specialist examiners with no conflict of interest with respect to the Injured Worker, the Employer, BWC, or the Commission.

Specialist examiners are excluded from performing independent medical examinations when they have examined the Injured Worker or reviewed the claim file for the Employer, the Injured Worker, BWC or the Commission within three years of the filing date of an application for Permanent Total Disability. Specialist examiners are also excluded from performing independent medical examinations when one of the following occurs:

1. The specialist examiner has a contractual relationship with the Injured Worker, Employer, and/or their representative(s);
2. The specialist examiner has been the physician of record for the Injured Worker; or
3. The specialist examiner routinely shares patients within the practice of the physician of record.

A specialist examiner who has a conflict of interest with regard to the Injured Worker, the Employer, BWC or the Commission must decline to examine the Injured Worker, and notify the Commission immediately.

Chaperone

Examinations should be conducted with a chaperone present when appropriate.

Ex Parte Communication

Specialist examiners must avoid ex parte communication, which means no person or party other than a Commission employee shall communicate with the physician examining or reviewing on behalf of the Commission. The preceding prohibition applies to both prior to and subsequent to the medical examination or file review, other than to the Injured Worker during a medical examination itself. Specialist examiners must direct any such written or verbal communication to Medical Services.

Specialty Selection

The Commission's expectation is that all independent medical examinations and file reviews be conducted by the most appropriately qualified specialist examiner. Medical Services has established a specialty selection process to direct this expectation. After receiving documentation regarding the scheduled examination or file review, the specialist examiner must contact Medical Services immediately if there are concerns regarding the allowed condition(s) assigned.

Examination Location Requirements

The examination location must be safe, clean, comfortable and permanent. It must comply with the Americans with Disabilities Act (ADA) requirements. Unsatisfactory sites include, but are not limited to, mobile vehicles, hotels or motels. Medical Services reserves the right to perform a facility site check without notice.

Timeliness of Reporting

In consideration for all parties involved, reports are due within ten (10) business days of the examination. If you are unable to meet this deadline, notify Medical Services immediately. Late reports may result in suspension or dismissal from the specialist examiners' panel.

EXAMINATION SCHEDULING

Medical Services is responsible for all scheduling and rescheduling of independent medical examinations and file reviews. After identifying the appropriate specialty through the Specialty Selection process, Medical Services will contact a specialist based on:

1. proximity to the Injured Worker's residence, and
2. availability of the appropriate specialist.

Access to Medical Record

At the time of scheduling, the following information will be uploaded to the specialist's ICON account:

1. Medical Examination Referral Letter, which states the examination issue and Commission requirements;
2. Appropriate Assessment Form (Physical Strength Rating, Occupational Activity Assessment, Residual Function Assessment), which provides established Commission work categories; and
3. IC Provider Fee Bill, which provides appropriate billing information for the service(s) rendered.

The Commission will provide all pertinent medical records through secure electronic access via ICON. These include, but are not limited to, the specialty specific Medical Exam worksheet(s), PTD Statement of Facts, and the specialty specific specialist packet(s). Access to the medical record will be available to the specialist examiner from the time of scheduling until the report is published.

BILLING PROCEDURES

Independent Medical Examination & File Review Fees

For independent medical examinations and file reviews which occur in the State of Ohio, the fee schedule is set forth by Commission resolution.

Fees for an examination occurring outside of the State of Ohio shall be negotiated by the Medical Services department. The fees shall be a reasonable and customary fee for the cost of the examination.

The fee includes payment for the following services:

1. reviewing the medical records provided by the Commission;
2. taking a history from the Injured Worker appropriate for the allowed condition(s) in the claim;
3. performing an examination appropriate for the allowed condition(s) in the claim; and
4. submitting a report to the Commission, which includes all the required elements, in the format required by the Commission, within ten business days of the scheduled appointment.

Cancellation & No-Show Fees

The specialist examiner must notify Medical Services immediately if the Injured Worker fails to keep an appointment.

A fee may be billed when:

1. the Injured Worker does not attend a scheduled independent medical examination (i.e., "no shows"); or
2. a scheduled independent medical examination is cancelled by the Injured Worker or Medical Services less than 48 hours prior to the time of the examination.

The cancellation and no-show fee schedule is set forth by Commission resolution.

Fees for Addenda, Interrogatories & Depositions

For addenda, specialist examiners may charge a fee for time spent preparing the requested information.

For interrogatories, specialist examiners may charge a fee for time spent preparing their responses.

For depositions, the requesting party must pay a fee to the specialist examiner one (1) week prior to the deposition date. The fee must be refunded by the specialist examiner if the deposition is cancelled more than 48 hours prior to the time of the deposition.

The addendum, interrogatory, and deposition fee schedule is set forth by Commission resolution.

Allowed Diagnostic Testing

Commission independent medical examinations are performed to determine degree of impairment and functional limitations due to allowed condition(s), not to establish a diagnosis. Therefore, diagnostic testing requirements are minimal.

However, the *AMA Guides* and *AAOMS Guides* clearly delineate necessary and appropriate testing for impairment rating for some body parts and systems. These tests require prior authorization by Medical Services before they are conducted.

The prior authorized testing fee schedule is set forth by Commission resolution.

Fee Bill Submission

Specialist Examiners must:

1. verify the accuracy of the information provided on the fee bill;
2. indicate on the fee bill any changes or additional information required to ensure accurate billing for services rendered;
3. sign and date the fee bill; and
4. upload the fee bill with the examination report and appropriate assessment form to the established ICON account.

Payment will be processed upon publishing of the report.