News item

The lines are less blurred: independent medical examinations and limited doctor-patient relationship

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It continues to be commonplace for independent medical examiners to consider themselves as not liable for medical malpractice claims if no doctor-patient relationship is established. In fact, many were trained to start the independent medical examination with an explanation that no doctor-patient (treating) relationship would be established. This is expressed as an item in the *Guidelines of Conduct* of the Council on Forensic Sciences (CFS, <http://www.forensic-sciences.org/cfs/guideline.htm>) and the American Board of Independent Medical Examiners (<http://www.abime.org/node/21>).

The recent trends in state Supreme Courts¹⁻⁷ conclude that a limited doctor-patient relationship is created and sufficient to sustain certain malpractice claims. The American Medical Association's *Code of Medical Ethics* states, "When a physician is responsible for performing an isolated assessment of an individual's health or disability for an employer, business, or insurer, a limited patient-physician relationship should be considered to exist."⁸ The American Chiropractic Association policies do not address this issue.

The examiner is responsible for performing an objective evaluation and answering interrogatories specific to the examinee's/claimant's case. They do not monitor their health over time, treat them, or fulfill many other duties (provide sound advice, discuss treatment options) traditionally held by doctors of chiropractic. The examiner is charged only with assessing objectively an individual's health or impairment at that one point in

time. This narrowly defined role places limits on the doctor-patient relationship with the examinee/claimant.

The CFS (<http://www.forensic-sciences.org>) recently opined that the examiner, in the independent medical examination arena, has an ethical duty (responsibility) and possibly legal duty (practice scope) to examine (duty to diagnosis) the health of the examinee/claimant in an objective manner regardless of the circumstances; hold confidential (duty to maintain confidentiality) the information obtained and refrain from communication to an outside party without the individual's consent, unless required by law; and divulge (duty to divulge) important health information to the examinee/claimant discovered as a result of the examination. The CFS *Guideline of Conduct* (<http://www.forensic-sciences.org/cfs/guideline.htm>) is currently being revised to reflect this opinion.⁹⁻¹²

References

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6. Reed v. Bojarski, 764 A.2d 433 (N.J. 2001).
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