

Duty to Disclose and Limits of Pre-Employment Examination

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A significant number of internists (and other medical specialist) find themselves either as an industry employed physicians or an independent medical examiners. They conduct medical examinations or screening for the benefit of a third party. Such examinations are not part of medical treatment and are generally paid for by the third party. This pre-employment examination or screening is often times a mandatory requirement and required by an employer. This mandatory requirement is even sanctioned by the government, thus, in the case of *Limchaypo, et. al. v. The Honorable Court of Appeals, et. al.*¹ the Supreme Court held that "(I)t must be remembered, however, physical fitness is already required of applicants for examination in the Civil Service. It is but logical that such requirement of physical fitness is essential for employment in the Government." Obviously, the medical condition vis-a-vis the physical fitness of a prospective employee is an important concern of an employer.

However, an internist (and other medical specialist) must recognize that contractual obligations arising from conducting a pre-employment examination is not similar to contractual obligations arising from the classic/traditional physician-patient relationship, i.e., examination of sick patient in a clinic or a hospital. One outstanding difference is the consensual contract between a physician and a sick patient – a patient seeks the services of a physician for medical treatment and the physician agrees to take him as his patient. In a pre-employment examination, on the other hand, a physician provides a professional service on a prospective employee (examinee) based on a contract obligation between him and an employer. In other words, his (physician) subsequent encounter with a prospective employee is mandated by his contractual obligation with the employer and not by his independent professional representation to any (prospective employee). "(T)ypically, a physician conducting an (independent medical examination) is not selected by the examinee, is not hired by the examinee, does not report to the examinee, and does not provide treatment to the examinee."²

Absent a classic physician-patient relationship, it is however foolhardy for a physician to conclude, albeit his contractual obligation to an employer, that he has no legal duty to a prospective employee. In fact, whether or not a physician-patient relationship exists, within the full meaning of that term, a physician in the exercise of his profession examining a person at the request of an employer owes that person a duty of reasonable care.³ Caution also

dictates that "(d)espite their ties to a third party, the responsibilities of (industry employed physicians) and (independent medical examiners) are in some basic respects very similar to those of other physicians."⁴

The responsibility to disclose significant medical problems discovered in pre-employment examination is always highlighted. The examinee is entitled to rely on the physician to tell him of a potential serious illness if it is discovered.⁵ Several courts even stated that "(a)ny reasonable person would expect that and the duty to communicate with a patient who is found to be ill is non-delegable."⁶ "When a doctor conducts a physical examination, the examinee generally assumes that "no news is good news" and relies on the assumption that any serious condition will be revealed."⁷ A doctor's silence can misled the examinee. The standard of care means that "a physician undertaking a physical examination has a duty to disclose what he had found and to warn the examinee of any finding that would indicate that the patient is in danger and should seek further medical evaluation and treatment. This duty is stronger when the physician has no reason to believe that the examinee is aware of the condition and danger."⁸

As a matter of prudent practice, exercise conscious effort to explain the nature of pre-employment examination to an examinee. Emphasize that the results of your examination will not be kept confidential and will be relayed to the prospective employer.

Understanding the limits of your duty as an industry employed physicians or independent medical examiners will prevent unnecessary medical malpractice suits. Never attempt to treat any medical condition of an examinee. Never request for additional diagnostic tests or request the examinee to return for further evaluation of a pre-existing medical condition. These behaviors can ripen into a classic physician-patient relationship exposing you to medical malpractice suits. The last thing you want to happen, of course, is to be sued for medical malpractice.

References

1. G.R. No. L-19528, December 29, 1964
2. *Smith v. Radecki*, 238 P.3d 111 (2010)
3. *Hoover v. Williamson*, 236 Md. 250 (1964)
4. *Reed v. Bojarsky*, 764 A.2d 433 (2001)
5. *Id.*
6. *Id.*
7. *Betesh v. U.S.A.*, 400 F.Supp. 238 (1974)
8. *Id.*

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