SECOND OPINIONS AND INDEPENDENT MEDICAL EXAMINATIONS

OBJECTIVES:

- Understand the roles of the patient, original treating physician, and second-opinion physician in the process of initiating, obtaining, and performing a second opinion
- Understand the role, ethical obligations, and potential conflicts of interest of a physician who elects to perform Independent Medical Examinations (IMEs)
- Be aware of potential sources of conflicts of interest and ethical dilemmas inherent in performing both second opinions and IMEs

Second opinions and Independent Medical Examinations can be sought or initiated by patients, primary physicians, specialists, insurance companies, claimants, attorneys, and others for opinions regarding medical care, work-related incidents/injuries, insurance determinations, or legal action. Regardless of the source, the opinions generated by the examining physician must be governed by ethical and legal considerations with awareness of potential conflicts of interest for fairness and objectivity.

Slides 3-5: Case 1

Dr. Sato is a senior resident working with a senior hand attending, Dr. James, in his Tuesday afternoon clinic. The patient, Mrs. Powell, has been referred for a second opinion. She is a 59-year-old, right hand dominant woman with a history of carpal tunnel syndrome who had nerve decompression surgery 3 months ago.

Mrs. Powell had positive electrodiagnostic studies prior to surgery and failed all conservative treatment prior to her endoscopic right carpal tunnel release. Dr. Sato’s physical examination confirmed mild thenar atrophy, +Phalen and +Tinel signs, and +median nerve compression test. Her 2-point discrimination is diminished as is her sensitivity to light touch.

Mrs. Powell feels she did not experience any relief from her previous surgery. New electrodiagnostic studies do not show any improvement, and her radiographs were unremarkable. Her current hand surgeon advises watchful waiting with a recheck in three months.
Dr. Sato presents the case to Dr. James. Dr. James examines Mrs. Powell, and his evaluation also shows signs and symptoms of continued carpal tunnel syndrome.

Slide 6: Questions

- What should Dr. James say to Mrs. Powell regarding the issue of the apparently failed carpal tunnel release?
- What options could Dr. James present to Mrs. Powell regarding future treatment, and by whom?

A second-opinion physician, after evaluation of the patient, must provide an opinion in a clear and understandable manner, regardless of whether the second opinion differs or coincides with that of the original physician. It is important that the opinion of the second physician be truthful, unbiased, fair, and objective. The second-opinion physician may not have all the facts about the previous care and treatment and was not present in the operating room or privy to all aspects of the case. The second-opinion physician should refrain from placing blame on the original treating physician or surgeon, as the duration and severity of symptoms are not indicated, and the lack of symptom resolution could be due to disease severity with prolonged recovery time or complicating factors rather than surgery failure.

The second-opinion physician should discuss all options available to the patient in an unbiased manner, including pros and cons of each option, so that the patient can make an informed decision on how to proceed. The second-opinion physician should indicate to the patient that it is the patient's choice of the type of continued treatment as well as the physician providing care.

Slides 7: Case continued

Dr. James is unsure if he is willing to take on Mrs. Powell as his patient. One option is to suggest that she continue to follow-up with her surgeon to see if there is some improvement over time.

Slide 8: Question

What if Mrs. Powell refuses to return to her original surgeon and requests to transfer her care to Dr. James?

The orthopaedic surgeon may choose whom he or she will serve.1 There is no requirement or expectation that a second-opinion physician will assume care of a patient referred for a medical opinion. If the second-opinion
physician does choose to allow the transfer of care to him/her, it is not unethical to do so, and, in essence, affirms the right of patients to have free choice in the selection of their physicians.²

**Slides 9-10: Case continued**

*On the other hand, Dr. James knows her former surgeon and considers him to be incompetent. Dr. James orders new electrodiagnostic studies that show no improvement and radiographs that show no contributory cause. Dr. James advises Mrs. Powell that there was an obvious problem with her previous surgery and that he can fix it with another surgery.*

*Mrs. Powell is hesitant about leaving her original surgeon, but Dr. James assures her that he is expected to take over her care since she was referred for a second opinion.*

**Slide 11: Questions**

- Is this correct?
- Is this ethical?
- How relevant is Dr. James’ opinion that Mrs. Powell’s surgeon is incompetent?
- What are the ethical considerations of a second opinion?

It would be illegal as well as unethical for the consulting physician to disparage or slander the actions or treatment of the original physician if the slanderous claims or information are known to be or can be proven to be false.³

There is no requirement or expectation that a second-opinion physician will assume care of a patient referred for a medical opinion. When accepting a patient for a second opinion, it is ethical (and often presumed) that the consulting physician will render an opinion and return the patient to the treating physician with full communication about the opinion. It is unethical for the consulting physician to solicit care of the patient. At the sole discretion of the patient, the patient may choose to terminate the relationship with the original physician and enter into a treating relationship with the second-opinion physician. It is ethical for the consulting surgeon to accept this patient under these circumstances, although some choose not to do so to avoid the possible perception of a conflict of interest.³

Physicians should recommend a second opinion when they believe it would be helpful or needed in the care of their patient and with the patient's consent. Patients may also initiate a second opinion on their own with or
without their physician's knowledge. The original treating physician should not terminate the patient-physician relationship solely due to the patient's decision to obtain a second opinion, and services may be discontinued only with appropriate and adequate notice so that the patient can obtain alternative care. All necessary medical records must be provided to the second-opinion physician under appropriate confidentiality guidelines.\textsuperscript{1,3}

Physicians may choose not to treat patients that they have seen for second opinions, and may also agree not to treat second-opinion patients due to previously-determined arrangements with insurers or third-party payers. Physicians must independently decide whether or not they will treat second-opinion patients, and may not have an agreement or understanding among themselves that they will not treat each other’s patients when asked to give a second opinion, as this prevents patients from receiving care from the physicians of their choice. This is both unethical and unlawful.\textsuperscript{2}

**Slides 12-14: Case 2**

*In a similar scenario, Ms. Crane presents for an Independent Medical Examination after having an endoscopic carpal tunnel release that did not resolve her numbness and tingling. She alleges that the carpal tunnel syndrome was caused by her job. After Dr. Sato presents the case to Dr. James, he goes into the room to evaluate Mrs. Crane.*

*After his workup, Dr. James reiterates the diagnosis of carpal tunnel syndrome and solicits the patient for care and revision surgery. He quickly states that the condition indeed is work related as he notes that the referral source for the examination was the patient’s attorney for the workers’ compensation litigation.*

*Dr. Sato discerns during the discussion that Dr. James has not reviewed the information in the medical records regarding the patient’s work position, job duties, length of employment, and the alleged injury. She is aware that the patient’s medical records show that she only began her job with the company two weeks prior to claiming the carpal tunnel syndrome as a job-related injury.*

**Slide 15-16: Questions**

- Should Dr. Sato mention the medical records content to Dr. James?
- Does Dr. Sato have any ethical obligation given her observations?
- What are the ethical obligations of a physician who agrees to perform Independent Medical Examinations?
• Was Dr. James correct in soliciting the patient for future treatment during the course of performing an IME?
• Does the source of the referral for a requested IME create an inherent bias or ethical dilemma for the examining physician?
• What could be the ethical issues of agreeing with the potential position or bias of the referral source of the IME?
• What other potential conflicts of interest can arise with performing IMEs?

Independent Medical Examinations encompass many types of second or additional opinions, including Required Medical Examinations (RMEs), Designated Doctor Examinations (DDEs), post-Designated Doctor Required Medical Examinations (post-DDRMEs), and Disability Evaluations. Independent Medical Examinations are most often requested and utilized by insurance carriers such as workers' compensation, automobile insurers, and self-insured employers, who may also select the physician to be utilized. There is a widespread perception that physicians who perform Independent Medical Examinations work for the insurance company that requested the exam and are inherently biased against the patient. To counter this, some entities involved with evaluation medicine have developed specific programs, such as the Designated Doctor system for workers' compensation in Texas that utilizes examinations performed by Designated Doctors, who are independent physicians that have successfully completed specialized training, testing, and certification through the Division of Workers' Compensation and are appointed to perform the examinations as experts for the Division.

A physician who agrees to perform Independent Medical Examinations must have access to and be familiar with the medical records of the patient as well as the medical-legal requirements of the entity involved with the request, particularly for specific requests such as extent of injury and causality. The same ethical considerations exist for all types of IMEs as well as for second opinions in general, and bias and conflicts of interest must assiduously be avoided.

As with any second opinion, it is unethical to solicit the care of the patient. The Independent Medical Examiner cannot have any previous or current professional ties to the patient and cannot be involved with the patient's care or treatment, as this constitutes a conflict of interest.

IMEs can be requested by patients, insurance companies, and attorneys, all with inherent biases regarding their role in the case and the desired outcome. The Independent Medical Examiner must be unbiased and utilize facts, objective findings, a complete medical exam, the medical records, peer
reviewed literature, and appropriate guidelines to formulate and support his/her opinion. Agreeing with the position of the referral source that requested the IME is not inherently unethical if the examiner arrives at this opinion independently and without bias after consideration of all of the components of the exam.

The Independent Medical Examiner must be aware of other potential conflicts of interest that could influence his/her opinion, such as personal treatment bias where the examiner prefers using certain treatments, possible financial incentives, ties to insurance panels, or other potential payment incentives.

**Slides 17-19: Summary**

In busy clinical practices, second opinions and Independent Medical Examinations (IMEs) can become a significant part of the clinical practice. Careful consideration of the ethical issues and potential conflicts of interest is important. The veracity and quality of the opinions generated depend on an honest and ethical approach and an appropriate reporting of the opinions to the parties involved.

State and local laws must be taken into consideration, as different jurisdictions vary in matters such as extent of injury or causality of medical condition. In addition local, state and national rules of disclosure of protected health information remain relevant. The patient presenting for a second opinion has a stake in the process as well and his/her best interest must be respected.

It must be remembered that the patient has the freedom to seek additional medical opinions, initiate a consult with another physician, dismiss the treating physician, and transfer care to another. The patient’s actions are entirely within his/her prerogative. Most importantly, the examining physician must be truthful and consistent with any opinions generated, and honest, ethical, and respectful of colleagues, peers, and patients.

**References**

http://www.aaos.org/about/papers/ethics/1200eth.asp