

# Follow-up on IME Physicians and the Treatment Relationship

**Professor Thaddeus Pope**



294 N.J. Super. 182 (1996)

682 A.2d 1220

**PENICE RANIER, PLAINTIFF-APPELLANT,**

**v.**

**LAWRENCE FRIEMAN, M.D., DEFENDANT-RESPONDENT, AND ANTHONY SAHAR, M.D., MARIANNE SAHAR, M.D. AND DR. RUSSELL SECKENDORF, DEFENDANTS.**

Superior Court of New Jersey, Appellate Division.

Decided September 27, 1996



“The question raised by this appeal is whether a physician **retained by the Department of Labor, Division of Disability Determinations (Division) to examine a claimant for social security disability benefits** has a duty to the examinee to exercise reasonable professional care in rendering a diagnosis.”



“all of the attributes, responsibilities, obligations and consequences of the physician-patient relationship **do not obtain** to the limited professional contact between the examining physician and the plaintiff here.”



“Defendant Frieman moved for summary judgment dismissing the complaint as against him, asserting that he owed no duty to plaintiff to exercise reasonable care in the making of his diagnosis.”



Trial court: Granted

App. Div. Reversed



“We have canvassed the law of other jurisdictions and acknowledge that the majority rule, based on privity and usually applied in the pre-employment examination context, **rejects the notion of the examining physician's liability** to the examinee for a professionally negligent diagnosis.”



“We do **not intend** to impose upon the examining physician **the same** scope of duty as is owed to the traditional patient.”





**BUIT**



“He has not seen any ophthalmologist in recent years because ‘I cannot afford it.’”

“Dr. Frieman further reported that he had advised plaintiff to ‘follow-up with his own Ophthalmologist,’ advice plaintiff denied having received.”

Did not see own physician for 6 months



“Certainly plaintiff here, at least *prima facie*, **relied, both reasonably and foreseeably**, on the examining physician's diagnosis. Clearly, he relied thereon with respect to his entitlement to disability benefits. Moreover, with respect to his asserted reliance on the diagnosis in making his **own subsequent medical decisions**, there is a reasonable factual dispute respecting the communication to him of the diagnosis, the manner of that communication, and the foreseeability both of the communication itself and his consequent reliance thereon.”



Treatment  
Relationship  
(full duties)

No Treatment  
Relationship  
(only ordinary  
negligence  
duties)



Treatment  
Relationship  
(full duties)

“Limited” treatment  
relationship – duty  
to not affirmatively  
injure and to warn  
of imminent serious  
risks

No Treatment  
Relationship  
(only ordinary  
negligence duties)



Treatment  
Relationship  
(full duties)

No treatment  
relationship but  
reliance induced, so  
duty to make  
reasonable diagnosis  
(that making for 3<sup>rd</sup>  
party)

**Ranier**

No Treatment  
Relationship  
(only ordinary  
negligence duties)



## Consent to Independent Medical Examination

I, \_\_\_\_\_, date of birth \_\_\_\_\_ consent to participate in an independent medical examination ("IME") conducted by Dr. Gabriel Hirsch. I am participating in the IME voluntarily or pursuant to Court Order arising from Rule 7-6(1) of the British Columbia Supreme Court Civil Rules.

I understand that Dr. Hirsh is not my treating physician and that no doctor/patient relationship arises from the IME. I also understand that Dr. Hirsch is independent of the parties involved in this matter and is not an employee of the party requesting the IME.

I acknowledge that I have received an explanation as to the nature of the assessment that will be undertaken in the IME and I authorize Dr. Hirsch to perform an assessment that includes a medical history, physical examination, review of medical imaging, tests, medical records, reports, and/or employment and school records related to my condition.

I understand that the assessment may be terminated if Dr. Hirsch determines that it is in the interest of my health and safety. I understand that I may choose to stop the assessment at any time.

I acknowledge that subsequent to the IME and pursuant to Rule 7-6(1) of the British Columbia Supreme Court Civil Rules, Dr. Hirsch may provide a medical-legal report to the referring source for the purposes of litigation. I release Dr. Hirsch and his employees from any claims which may arise as a result of the release of the above information. I am aware that the right to distribution of the report lies with the referring source and not Dr. Hirsch.

In signing this document I consent to take participate in this IME.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Signature of Evaluatee: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

**2017 BCSC 545 (CanLII)**

