

SOME ISSUES FOR PSYCHIATRIST MEMBERS OF THE VICTORIAN MEDICAL PANEL

Dr Michael Epstein

There have been significant changes in the operations of the Medical Panels over the last two or three years. These changes have been driven by judicial decisions upholding appeals against the opinion of Medical Panels. This has caused a great deal of soul-searching and has helped to clarify a number of issues that members, especially presiding members should keep in the forefront of their minds. This paper has been written to discuss these issues and has been directed specifically to psychiatrist members of Medical Panels.

In understanding what has occurred it is fundamental that members of Medical Panels understand that they form a **Tribunal** whose role is to answer **Medical Questions**. As a tribunal members of the Medical Panel are operating in a different context than when they are providing reports as independent medical examiners.

The fact that the Medical Panel is a tribunal has significant implications in terms of the operations of each Medical Panel. This effects what happens before the interview with the worker, the interview with the worker and the subsequent development of the Opinion and Reasons for Opinion. What are these implications generally?

1. BEFORE THE INTERVIEW

- a. Members of the Medical Panel should discuss between themselves the two or three key issues of the referral and the dispute before they see the worker. This means that all members of the Medical Panel are working from the same page.
- b. Members of the Medical Panel should also try and identify the potential issues on which there could be an appeal. This will ensure that the history taken is comprehensive enough to cover all or most of the bases.
- c. There may be some difficulties in those Medical Panels where members, usually psychiatrist, see the worker separately. It then becomes important for the Presiding Member, in consultation with other members to communicate the above issues to all members of the Medical Panel.
- d. The psychiatrist/s in the process of reading the documentation should clarify the reason/s for the referral issues and the dispute/s. This may need to be clarified with the presiding member. Similarly, the psychiatrist should be aware of potential issues on which there could be an appeal. These issues for psychiatrists include the following:
 - i. Marked disparity between psychiatric impairment assessments by the Medical Panel psychiatrist/s and an IME.
 - ii. Apportionment of a psychiatric impairment assessment between interrelated conditions and pre-existing and non related conditions.

- iii. Lack of clarification (in some cases confusion) about secondary and non-secondary psychiatric impairment.

2. THE INTERVIEW

- a. Members must identify themselves as neutral parties to the dispute.
- b. Members must be aware of the nature of the dispute that has led to the referral and the particular issues that are in question, e.g. the worker's challenge to a particular impairment assessment.
- c. Members must be seen to act fairly, this includes seeing the worker for an appropriate length of time, even if the decision on the Medical Questions has been reached very quickly.
- d. If there is video surveillance material, this must be viewed in the presence of the worker and the worker must be given an opportunity to respond to this material. This response should be recorded.
- e. The psychiatric interview should be a standard clinical interview but the psychiatrist needs to be aware that where there are issues that have not been disputed, little detail is required. The psychiatrist should focus the interview on the areas of dispute. This may include asking such questions as "why don't you think you can work" and recording the answer.
- f. Psychiatrists should avoid using obvious checklists as these are an invitation to the worker to respond affirmatively and an invitation to gaming.
- g. Psychiatrist should be very careful about dealing with issues such as sexual abuse, sexual function and family issues that may appear unrelated to the claim. This is not to say that these issues should not be explored but the exploration of these may require some explanation. The psychiatrist may indicate that having heard the information, the psychiatrist has decided this is not relevant to the claim and advises the worker that the information will not be included in the report. If the worker refuses to respond to such questions, the psychiatrist should accept that response. The psychiatrist may subsequently indicate in the reasons document this lack of response.
- h. Where there are issues of pre-existing mental illness or concurrent mental illness that appears unrelated to the injury, this must be explored if it is relevant to the question/s that has been asked.
- i. If the Medical Question relates to work capacity than the psychiatrist should clarify whether the psychiatric injury contributes to any work incapacity and should ask the worker why the worker's psychiatric condition prevents the worker from working.

3. THE OPINION AND THE REASONS FOR THE OPINION

- a. The Reasons for Opinion should indicate information provided by the worker by use of such terms as he/she said etc and also indicate other sources of information, e.g. from medical reports.
- b. The Reasons document should not name the various treaters and should provide minimum information about the dispute/s.
- c. The Opinion should first mention the diagnosis and then discuss the relationship between the injury and the diagnosis.
- d. The Opinion should also comment on any pre-existing condition and any concurrent condition that appears unrelated to the injury.

- e. The Opinion should provide some explanation as to why the psychiatric injury interferes with work capacity, if this is the question that is being asked. Furthermore, if the question of work capacity is also related to pre-existing illness and concurrent illness that is unrelated to the injury, these matters must be discussed and the reasons must make clear the effect of the work injury alone in leading to loss of work capacity (if this is the case).

4. PSYCHIATRIC IMPAIRMENT

- a. The Reasons document should include a mental status assessment, this mental status assessment should be the framework on which the psychiatric impairment assessment is determined. It may be useful to consider the six factors involved in determining psychiatric impairment in the mental status assessment.
- b. If there is a significant difference between the impairment assessment determined by an independent medical assessor and by the Medical Panel the opinion should comment on the difference clarifying why there is a difference. Such a response could be as follows: *The Panel considered the assessment of impairment contained in the medical report of Dr of. On the basis of the Panel's examination of the worker and the assessed severity of his impairment of thinking, perception, judgment, mood and behaviour, the Panel considers that the psychiatric impairment of % more adequately reflects the extent of the worker's psychiatric impairment resulting from the accepted injury.*
- c. The psychiatric member/s should also indicate the relative apportionment between pre-existing and non related conditions and explain briefly the reasons for this apportionment.
- d. The psychiatric member/s should remember that the question of secondary impairment relates to impairment secondary to physical injury and not impairment secondary to the injury itself. For example in a recent case a hotel worker was the victim of a hold-up and developed a well documented post traumatic stress disorder arising from the hold-up. Subsequently the worker was the victim of a police raid that she found terrifying, accusations were made that she had been a member of the criminal gang but no charges were laid. The worker's reputation in the industry was destroyed and the worker became much more traumatised and her level of symptoms were exacerbated and this has continued. An independent medical examiner stated that she had a 20% psychiatric impairment of which 10% was primary to the injury and 10% was secondary to the police raid. This is a misunderstanding. There was no physical injury so all her impairment arising from the injury and its aftermath is counted.
- e. The psychiatric member/s may also be required to comment on the worker's credibility. This is usually the case when there is information provided by the employer that contradicts the information provided by the worker, he said/she said. If the psychiatrist/s prefers the information provided by the worker, this should be stated and the reasons for this should also be stated.
- f. If there is any question about the credibility of the worker, for example an investigation report indicating the disparity between the information provided by the worker and that provided by the employer, some comment should be made about the Medical Panel's view of the credit of the worker. A generic response has been developed that may be of value: *The Panel also considered*

the submissions of the Plaintiff and the Defendant, including the issues raised concerning the Plaintiff's credit. The Panel concluded that it could rely on the history of injury and the progress of symptoms provided by the Plaintiff on examination in conjunction with the other material accompanying the referral in order to reach its conclusions in respect of the Medical Questions.

CONCLUSION

The role of the Medical Panellist has become more complex both because of the volume of additional information that is now being provided but also because there had been several successful appeals against decisions of the Medical Panel. This has forced members of the Medical Panel, and especially presiding members to be much more aware of the issues involved and to be more responsive to the nature of the dispute and to possible grounds for appeal against the decision of the Medical Panel. This has required psychiatrist members of any Medical Panel to be aware of the environment in which we operate and to anticipate problems. This does not mean that we are required to act as lawyers, rather it means that we need to be more rigorous and, perhaps, do what we should have always been doing. That is, to write a Reasons document that is an impenetrable fortress of logic in defending our opinion.