OBTAINING MEDICAL RECORDS

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I. Introduction

The soul of a disability claim is the supporting medical evidence. In an ideal world, all our clients would be able to pay for any medical, psychological and vocational evaluations we desired. In the real world, they rarely have any significant resources to devote to the development of evidence. In this presentation, I will discuss a number of strategies for successfully obtaining medical evidence without going broke, will discuss some potential ethical issues the may arise in the course of medical development, and will make a strenuous effort to keep anyone from going to sleep. If you are like me, you will be happy if you learn one good tip per conference. I think that I can guarantee that the vast majority of you will at least hear one thing that you have never done, even if you have never tried it because it seemed too stupid for you. Since nothing is too stupid a trick for me to try, I hope to be able to tell you how some stupid tricks came out for me.

It is impossible for me to tell you everything you need to know about obtaining medical records because I do not know everything there is to know about this subject. I was asked to do this presentation because I have used some unusual techniques to obtain evidence which may be useful to other practitioners, but I am certain that I can learn as

much from the people attending the conference as they can learn from me. For that reason, I want this session more closely to resemble a round-table discussion than a lecture. This may have the twin side-effects of letting me learn more than I can teach, and of keeping everyone awake by raising the hope that someone smarter than I may speak up. Please feel free to interrupt me at any point to add your tips to my own, to question my sanity, or otherwise to make a contribution. As you will soon see, I have felt free to illustrate my points with "war stories," and I hope you will feel free to share yours if they illustrate a novel way to obtain evidence. Just make sure they are not as good as mine!

A. What are "medical records"?

I am assuming in this presentation that it is not necessary to state that you should obtain all relevant medical records from all sources, that you should compare what you get to what the Administration has, and that you should submit for consideration all relevant and material missing evidence. I do not intend to enter into a direct discussion of your obligation to submit harmful medical evidence, but to focus on what to obtain and how to obtain it. I will try not to focus on the obvious, but to direct your attention to the "peripheral" of the sport of medical evidence procurement.

Before you set out on your journey to obtain medical records, you should define the destination. A clear picture of where you are going makes it somewhat easier to know when you have arrived. My first definition of medical records is rather broad. **Everything that demonstrates facts relevant to a medical condition qualifies as a "medical record."** This may include some rather unorthodox methods of proof, but if it helps demonstrate your point it qualifies by my definition. As an example of how far I take this, I made sure a client of mine took off his shoes and sox in a hearing, and put his feet on the table in front of the Administrative Law Judge. Other than being extremely large and rather smelly, there was nothing remarkable about the claimant's feet. On the other hand, his graphic description of how his feet kept him from working, and insistence that

they were demonstrably and obviously abnormal did help demonstrate that the claimant had a severe mental impairment. It turned out that he was schizophrenic, and that his IQ was 42.

B. Obtaining a complete medical history

Now that you are prepared to enter into evidence a photograph of the claimant's bed-side table and his plastic-wrapped bedpan to support the credibility of his statement that he never gets out of bed on most days, you should back up and form a plan for obtaining the evidence to prove your case. This process begins with the obtaining of a complete medical history from the client. In most cases you will find that it is very useful to have a family member come with the claimant for his development interview. I have found it useful to have two people interview each claimant where possible. I find that my paralegal will often obtain information that I miss, and vice-versa.

1. Go back far enough-often to childhood

Often a client will ask if I need to know about treatment which took place in the distant past. My reply is that I want to know about all sources of information for every condition which is still bothering the client, regardless of how old the treatment may be. I may not obtain all of it, but I want to know it exists just in case.

2. Always ask about psychological symptoms

You may safely assume that all your clients suffer from mental impairments. If they did not have one to start with, the certainly will have picked one up through their contact with the Social Security Administration or with their representative. Knowing what their symptoms are may lead you to unanticipated evidence. For example, I recently submitted a written statement from a manager of a Chinese laundromat that my client had recently chased him about his business while hitting him over the head with a broom handle. I might never have found out about this hobby had I not inquired into the client's ability to relate appropriately to strangers.

You may not safely assume that your claimant's education is as he described it. You can often go down one grade simply by asking the claimant who said he "completed" the 10th grade "Did you finish the entire year and pass all your subjects?" Often further inquiry into the nature of their education will help demonstrate a limited education, IQ, or other helpful fact (Regular classes, or Special Ed? Vocational program?).

3. Sickness on vacation?

For some reason a large number of my clients only get so sick they need treatment at a hospital when they are on vacation. While you should recognize the pitfall of introducing evidence that your client who is unable to stand more than 5 minutes or sit more than 30 minutes without laying down for two hours ran the Boston Marathon, or drove non-stop 3200 miles from Miami to Seattle, you should consider the possibility that he may have been arrested for DUI in four states while driving his family to Disneyland, or that she was taken from jail to a hospital after assaulting a police officer in Minneapolis during an epileptic seizure.

C. The Social Security file

Surprising as it may seem, there often is evidence in the Social Security file which can help the claimant. Not only might the claimant remember an entirely different set of doctors and hospitals when asked by SSA than in your office, but there may be observations of Claims Representatives, reports of contact with neighbors who have had your client arrested, and other useful information. In your review of the folder, carefully scrutinize the Disability Report (especially the observations of the claims representative on the last two pages), the junk file, all Reports of Contact, and even the Disability Determination and Transmittals with accompanying analysis. More than once I have found that the state-agency orthopedic medical advisor said the claimant met the listing, so the agency had an obstetrician re-evaluate the claim to discover than the claimant does not now nor has he ever met §1.05. You may also make your job easier if you can

convince the Administrative Law Judge to accept the residual functional capacity at the reconsideration level

II. Sources of existing medical records

If you are lucky you can win your case by relying on existing evidence that already exists and is just waiting for you to uncover it. Poverty, your own and your clients', can help you identify innovative ways to prove medical facts on a budget.

A. Experts

I suppose the place to begin is at the beginning. The first and most obvious source of medical records are the various professionals who have worked with your client in their professional capacity.

1. The treating physician

The starting point in your search for medical records is, of course, the treating physician. Make sure that the treating physician understands the importance of providing the underlying clinical findings along with any opinions. Physicians will often fail to send you very helpful information which they have but which they did not know you wanted. You should specifically ask if they have any reports of examinations by other physicians, psychologists or other professionals. The physician also will be likely to have hospital records. If you can save her the expense of copying them for you by getting them from the Social Security Administration you probably want to do so, but if you have difficulty getting them from the hospital you should ask the treating or admitting physician.

2. Hospitals

Hospitals are often large and confusing places. Obtaining the records you want can be an exciting game of chance. You can improve the odds by learning the hospital's system for keeping medical records.

You may be surprised to find, after being told that all records are kept in "Medical Records," that some records are kept in specialty clinics and never sent to the general medical records department. Psychiatry records are notorious for vaporizing before you

can get your hands on them. I never have figured out what happens to them, but I have found out that if you act quickly, and request directly to the psychiatric ward, you have a decent chance of getting progress and nursing notes. If you think that the client had treatment which is not contained in the records sent to you, contact (by person or phone) the specific clinic which provided the treatment.

Often the hospital billing office will have a record of exactly what services, consultations, and tests were performed. Knowing what you are looking for can help immeasurably. I have discovered, with no help from the hospital medical records department, that interpretations of radiological, blood chemistry, and some other tests are accessible to physicians by computer and are often never printed out and sent to medical records. The hospital pharmacy will have a record of medications dispensed. This can sometimes lead to treatment records previously unknown to you, and, more often, can help support credibility of pain complaints.

Some hospitals I deal with keep their emergency room records separate from the general medical records. These hospitals require a separate request directed towards the emergency room.

3. Ambulance services

With some impairments it is common for friends and family to call “the paramedics” when the claimant does not want or need to be taken to the hospital. Examples include those with asthma, epilepsy, and occasionally diabetes mellitus.

4. Alcohol/Drug treatment programs

Although difficult to extract meaningful information from, alcohol treatment programs can provide valuable evidence of frequency of treatment, location of prior treatment. Generally there will also be a referral for follow-up treatment.

5. School psychologists

In disabled child’s cases, check to see if the child’s school or former school had testing done by a psychologist. With young children the testing may simply be informal

observation with little documentation, but it may lead you to other evidence or a potential witness.

6. Prison or jail treatment records

Claimants who have been incarcerated often have medical treatment in prison. This includes continuation of treatment for chronic impairments, court-ordered sanity evaluations, defense purchased evaluations, etc. Occasionally you can get a defense attorney to obtain a psychological evaluation.

7. Pharmacy records

Just as hospital pharmacy records can be useful, private pharmacies keep records of drugs dispensed. These records can lead to treatment records previously unknown to you, and, more often, can help support credibility of pain complaints.

B. Medical research

While Administrative Law Judge's can rarely be influenced by copies of chapters of medical textbooks, articles in medical journals, and the like, but for uncommon impairments they may need to be educated. For more common impairments such research may help educate a federal judge in the event of an appeal. In at least one case I have used medical research as new and material evidence to re-open a prior application where the only "new" evidence was the research and the reports and testimony of a medical advisor (retained by me for the claimant).

The best way to find the information is to rely on others who know better than you, including the treating or other physician, medical school librarians, advocacy groups, support groups, and even your client. You should also have access to Medline, and the other databases administered by the National Library of Medicine. You can purchase computer software called Grateful Med to make searching the computer databases simple and painless from the National Technical Information Service. The address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Their telephone number is 730 487-4650.

C. Other sources

The non-medical sources of evidence that will help are limited only by your imagination. Often you can imagine what obstacles your client faces in her everyday life and can discover ways of proving the effects of the impairment with evidence not apparent at first.

1. Arrest record

A long and colorful history of entanglements with the law may demonstrate the severity of an alcohol addiction, a personality disorder or other problems. This can usually be obtained for a small fee from a local law enforcement agency by the claimant.

2. Former employers, co-workers

Affidavits, statements or testimony of people who worked with the claimant may demonstrate the severity of symptoms, the effect they have on the claimant, the motivation of the claimant to persist in spite of pain, or that co-workers hid from supervisors the fact that she was incapable of doing the job (best to try to get former employees for this one). Such statements may be used to rebut the presumption that work was substantial gainful activity. In a case where there is a questionable brain injury, descriptions of the way the claimant was while still working may be useful. Time cards from employers can also show excess absences.

3. Family

Family members are obvious witnesses to the claimant's pain-related limitations, seizure or asthma attack frequency, alcoholism, and a multitude of other impairments which are diagnosed by treating physicians but where the physician cannot document the frequency or severity needed to meet a listing. Having the family member begin making contemporaneous records from the first contact with you helps improve their credibility with the Administrative Law Judge.

4. Advocacy and Support groups

As mentioned above under medical research, advocacy and support groups can be very helpful in providing you with or leading you to medical research. Members of these groups may also be able to provide testimony of their observations of the claimant. They are generally educated about the impairment, so they will be better able to give observations that support specific symptoms associated with the impairment.

5. Shelters (Battered women's, etc.)

It is a long shot, but battered-women's shelters and other shelters may have social workers, counselors, or others who can give statements regarding the claimant's condition and symptoms.

6. Minister or Rabbi

People who are suffering often turn to their spiritual community for emotional support, and such a community may provide witnesses to the claimant's symptoms. Often a minister or rabbi will be trained in counseling, and can describe specific symptoms of depression, etc.

7. School records

I frequently request school records. They may tell me that my client did go to school for ten years, but that three of those years represented repeated years, and that in the last three years he never made a passing grade. This can move a claimant from the "limited" to the "illiterate" category. Occasionally there will be an IQ score which may justify a §12.05 c argument (and probably spawn a consultative psychological evaluation). On one occasion I obtained a college transcript showing an IQ score of 126 and straight "A's" for a client who had been tested by the Administration's psychologist at and IQ of 86. While an IQ of 86 is not necessary disabling, a decline of 40 points was very helpful in convincing the judge that the claimant did indeed have a brain injury, as I had unsuccessfully argued before getting the school records.

I have recently used school records to show that a claimant who had repeated three grades had never attended beyond the 7th grade, even though he correctly stated he

has ten years of school. He neglected to mention his three repeated years. He also failed to mention that he did not pass a single subject (save physical education) the second time through the 7th grade, or that he had only made a passing grade in English one year, in the second grade. Nor did he point out that he had missed over 30 days in his tenth year. Pointing out these items to the ALJ helped justify a psychological evaluation, which demonstrated that he met §12.05 c.

8. Military records

If you think going to the dentist is fun, you are going to like this one. Where your client was in the military, question him closely regarding any medical treatment in the service, and especially the reason for the discharge. An early discharge on general grounds may indicate a mental impairment. It can be difficult to obtain these records, but it can be worth the effort. Start by writing the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132.

9. Social workers

Social Workers are professional bleeding hearts. You may get a good statement from a welfare, AFDC or food stamp case worker.

10. Juvenile court

I recently found that my pregnant client had 6 children removed from her custody due to neglect. The juvenile court was developing information to justify taking the new child, born prematurely when my client was smoking crack with a client of her prostitution proprietorship, which also helped show that she was not capable of holding a job.

11. State unemployment office

One of my biggest surprises in my search for the Never-Never land of evidence was the discovery that the state unemployment office had information which could demonstrate that my client could not work. An off-hand remark by my client that he had taken some test (a "Gatby" or some such) at the unemployment office sent me on a

frantic search, since I had nothing on which to hang my hat and the hearing was the next day. A call to the state Department of Labor revealed that they routinely administer a test called, I think, the G.A.T.B.E. This is a simple test of basic vocational skills to assist the unemployment counselor in finding some job to recommend to the client. On my request, they FAXed the test results to me. I had to call them for an explanation, which they willingly gave. On further inquiry, I discovered that the assistant director of the Department of Labor would be willing (glad was too much to hope for) to testify at my hearing the next morning to de-code the test results. After this person testified that the test results demonstrated that my client who was already limited to sedentary work would be unsuitable for jobs requiring manual dexterity (he was in the 15th percentile), I had little trouble getting the Vocational Expert to testify that there were not a significant number of jobs he could do.

12. Insurance company records

Insurance companies who pay short or long term disability benefits have a great interest in having their insureds receive Social Security benefits. They are generally happy to provide you with copies of the medical reports which lead them to begin paying disability benefits, and sometimes are willing to purchase new evidence.

D. Other agency decisions

Decisions by other agencies, such as the Veterans Administration, that a claimant is disabled may be given some weight by and Administrative Law Judge, and almost certainly will by a federal court in the event of an appeal.

E. State laws re: access/cost

Carefully review your state law to see what laws affect the provision of medical records by or on behalf of a patient. In most states you will find that the patients' access to their records is assured. Some states assure that access at a reasonable cost.

In my state, Georgia, the provision of medical records for disability claims must be at the provider's expense. Although the utility of this law is somewhat greater for

hospitals than for individual physicians, its discovery has been a great help to my clients. I am somewhat embarrassed to admit that I did not discover this law had been passed until seven years later! My embarrassment was only slightly reduced by discovering that no other Social Security attorney I could find would admit to having heard of the law either. The moral to this story is that you should research your client's legal rights to his medical records, and not rely on your assumptions. You should also be at least passably familiar with the Freedom of Information Act, which may give your access to records in facilities which are subject to that act.

III. Techniques for obtaining new evidence

Frequently the records which already exists are insufficient to justify a favorable decision, or are insufficient to remove from the ALJ's discretion the option of denial. In these cases you will want to have additional information created to help prove your case. Much of this requires an investment by you or your client, but much of it can be done for little or no costs. The key is always to be flexible and use your imagination.

A. Treating physicians

The first, and often the only, source of new evidence will be the treating physician. She is best equipped to give what you need. What do you need? You need a medical opinion that demonstrates that the claimant must be found disabled. This might be a physical capacities opinion which limits the 55 year old former brick mason to sedentary work. The best way to get this opinion is through the use of a check-list style form. Although the Administration does not generally like these forms, they will be forced to rely on them if there is adequate support for the stated limitations and no contradictory evidence.

B. Obtaining your own consultative exam

I know the first reaction many have to the suggestion that you should purchase a consultative exam where the treating physician cannot give the necessary detail; your cannot afford them. My answer is that the client cannot afford not to purchase them, and

you can afford the consultative exam easier than you could afford to be tied up in a federal court appeal for four years or so. You do not have to throw a lot of money around; you know the government does not pay large sums for their exams. While the government does not generally get exams worth the little they pay, look carefully and you will find the occasional consultant who does a very good job on agency consultations. This person is doing a good job on extremely low fees with the very quick turn-around demanded by the agency. If he does not object to playing both sides of the fence, he will give you a good deal too (although not as good-you cannot send him 1000 cases a year, can you?). If he objects to working for "the other side," you can use his response to impeach his reports in future hearings, and have him removed from the panel. On the other hand, you may be able to educate him if he is worth the effort.

C. Obtaining opinions of agency consultants

It is with mixed success that I have tried to obtain opinion evidence from agency consultants who have performed evaluations of the claimant for the government. Actually, I have had little success. But I have had enough that I will still try where I need it. Requests to the consulting physician generally produce a reply that they did the report for the Social Security Administration, and they would thank me to obtain a copy for them. But occasionally I can get a consulting physician to give an opinion as to functional limitations. This can lock up a case, where the functional limitations agree well with the treating physician's.

D. Vocational Experts

In a case where you do not have a Vocational Expert you trust but such testimony is crucial to your case, you may want to consider obtaining the assistance of your own Vocational Expert. I have had them testify at hearings, on video tape and by deposition. Whatever the method of presenting the testimony, you have your choice of which expert to use. This is a major advantage. With a skeptical judge, you may want to hire a Vocational Expert who testifies for the Administration, as her credibility may be higher. If

the ALJ is unfamiliar with the Vocational Expert, you should be certain to carefully establish the witnesses expertise with the particular impairment. If the VE can administer testing to the claimant it can give her a "leg up" on the government's witness, and perhaps make her testimony insurmountable.

E. Medical advisors

Just as the use of your own Vocational Expert can give you a leg up on the government's, a medical advisor can sew up a case for you. This may be someone who has examined the claimant, or it may be a physician giving an opinion based on the documentary evidence. I planned to use one in a case where my client had attempted suicide by a gunshot between the eyes. At the first hearing, the ALJ concluded that there was no need to obtain a psychological evaluation as there was no evidence which could be expected to produce any mental abnormality, miscellaneous lead fragments scattered throughout her brain notwithstanding. I could only assume that I was wrong in thinking that most people would expect some mental abnormalities under the circumstances, and arranged for a neurologist to testify that the brain tissue damage was likely due to the fact that examination revealed an entry wound in the center of the forehead, and x-rays demonstrated a large bullet fragment in the rear of her brain, a chip on the posterior skull apparently indicating where the bullet bounced off the skull and back into the brain, and smaller fragments of lead scattered along a path from the entry wound to the chip to the large fragment, would possibly lead to the type of mental abnormalities revealed in the post-hearing psychological. It turned out to be unnecessary because the ALJ called a medical advisor to the hearing which I trusted to give the same testimony.

F. Getting others to purchase CEs

This is my favorite topic, and is the real reason I am on this program.

1. The Social Security Administration

The new regulations on the purchase of consultative examinations should prove helpful to claimants in time. They set out more specific criteria than in the regulations

previously, and they are more specific in the requirement that an effort be made to purchase such exams from the treating physicians. In Georgia this is not being followed yet, but it should eventually bear fruit.

2. Community Mental Health Centers

On several occasions I have gotten neighborhood or community mental health centers to perform full psychological evaluations of a claimant, and to write a report which compares favorably with any, and to do so without any charge. The key here is to explain to the treating psychologist the reason the benefits will be denied without the report, the specific questions which need to be answered along with their attendant supporting findings, and to give an adequate amount of time to schedule the examination and prepare the report.

3. Public hospitals

It must be extremely rare, but a Medicaid development person at a local hospital admitted to me that the hospital has arranged for consultative examinations to be done by the hospital staff at hospital expense for Social Security purposes. I imagine that this is to assist in the recovery of Medicaid so that the hospital's outstanding bills could be paid. This is a logical reason for hospitals to assist SSI claimants with their claims, and I hope hospitals can be made more amenable to suggestions that they assist in this way.

4. State Rehabilitation Agencies

The Rehabilitation Act of 1973 was passed to help disabled individuals return to work. It is administered through state agencies in accordance with federal regulations. It is largely beyond to scope of this presentation, but one provision in the law is relevant here. All applicants are entitled to a determination of whether they are eligible for services under this law. Eligibility requires, among other things, a physical or mental disability which causes a substantial handicap to employment, and a reasonable expectation that the provision of rehabilitation services can return them to work. In many cases medical

information is necessary to make the eligibility determination. If such information does not exist, the rehabilitation agency may decide to purchase it.

These evaluations may demonstrate that your client can work, or they may demonstrate that he cannot. If you are willing to take the risk, or have nothing to lose because you have no evidence at all, you may want to refer your client to the rehabilitation agency. You should be aware that most rehabilitation counselors, who make all decisions under the Rehabilitation Act, think that working with people who apply for Social Security disability, and their lawyers, is as pleasant as a jab in the eye with a sharp stick. They have limited resources, and if they perceive that you are using them solely for your own purposes they know how to demonstrate that a client can work (Where do you think those Vocational Expert's who always are able to find a job got their training?).

If you are careful about who you send, though, you may find a strong ally in a rehabilitation counselor, with or without purchase of additional evaluations. In quite a few cases of mine a vocational counselor has given testimony or a written statement that saved the day. It is likely that the Administration would be forced to give more weight to a rehabilitation counselor who has worked with a client for months, who has obtained and/or administered tests, and who has personally observed the client on numerous occasions, than to the Vocational Expert at the hearing. It is also likely that the rehabilitation counselor is in closer touch with actual employers, and can explain to the ALJ why a claimant may not be able to do the jobs a Vocational Expert names.

5. Church counseling center

While I imagine that not many churches have such facilities, I was pleasantly surprised to discover that a church which referred to me a 58 year-old parishioner who did not speak a word of English after living in Atlanta for 19 years, could provide me with an interpreter and with a psychiatrist who performed a psychiatric evaluation without charge. It never hurts to ask.

G. Affidavits from lay witnesses

I will not soon forget the case I had where a prior application had been abandoned after an initial denial, and a subsequent claim lead to my successful request for a psychological evaluation. The results of the evaluation showed that the claimant was a paranoid schizophrenic with an IQ of 42. The judge confided to me that he was sympathetic to the claimant, but that there was no evidence of treatment for any mental impairment prior to the current application, and his regular treatment for arthritis never referred to any mental impairment. Thus, he could not re-open the prior application. He granted my request to hold the record open, and I went to work. I had great difficulty even finding out where he used to work, but I eventually found out that he was a painter for the local housing authority. A call to the personnel office led me to several employees who had worked with my client, and I found out where they worked and paid them a visit. From one I obtained a statement describing a day when, after work, a group of employees gathered around my client and laughed and poked fun at him. He became agitated to the point that he was found by the police a short time later sitting on the top of a telephone pole howling like a dog. Another co-worker gave a statement that he had worked alongside my client, that my client would have to be taken to the room he was to paint because he would forget where he was going, and that once he got there he would curl himself into a fetal position and lie in the corner all day while the co-worker did his work for him. When I presented seven similar statements to the ALJ, he agreed to re-open the prior application and establish the onset date at the cessation of work.

H. Equifax, etc.

Where the treating physician is reluctant to release records, they may be released to a third-party, such as Equifax, with whom the doctor is probably used to dealing.

I. Informal or ex-parte depositions, demonstrative evidence

<u>1. Audio tape</u>

While depositions are the customary way lawyers memorialize the testimony of physicians who cannot appear as witnesses, the absence of strict rules of evidence in

Social Security hearings allows more affordable methods. Many Social Security practitioners tape record statements by or dialogs with expert witnesses. This can be done in person or over the telephone. The tape recorded statement or deposition can be transcribed and signed by the expert and submitted. I have never done this over the telephone, but it might help keep a physician's charges to a minimum if he can call at his convenience, and he does not have to allow vermin into his sterile environment.

2. Video tape

I have found video tape useful in several cases. In one, I video taped the claimant in his home because he could not attend the hearing due to agoraphobia. I examined him on video as I would have at a hearing, and I added a videotaped interview with the treating psychologist just for good measure. It did my heart good to watch the judge's rolling eyes and listen to his sighs of exasperation as my client mumbled and stuttered his way through his all but incomprehensible answers to my questions. The medical advisor at the hearing could not question him, so he was bound to the treating physician's conclusions for the most part. The Vocational Expert had to admit that the person on the tape did not demonstrate even the basic interpersonal skills needed to deal with a supervisor in work without close supervision. A good time was had by all.

3. Other

The above examples are by no means the exclusive ways of presenting evidence outside reports and testimony. Photographs, slide shows, audio tapes, and many other methods may be used to get a point across.

J. Questionnaires

Writing a good narrative is a time-consuming task if a physician does not do it routinely. Even a well-written one may not identify specific functional limits. Both of these concerns can be partially addressed with well-drawn questionnaires. As long as you understand that the questionnaire is a supplement to the examination report listing the objective findings, they can require a judge to pay a claim he might otherwise deny. I have

used many different forms over the years, and I have not been totally satisfied with any of them. Attached to this paper are several of my favorite ones.

1. PCE

It is vital that specific physical limitations be elicited from a treating physician where a claimant may be Gridded out. While I am not very fond of the attached Physical Capacities Evaluation form, it provides the basic information in a reasonably clear format using very little of the physician's time. I am re-designing this form presently to more closely track the DOT exertional categories. Note that one frequent ambiguity arising from the use of this form is whether the physical limitations checked off on page one are after or before consideration of the pain described on page two.

2. MRFC

All my clients are mentally disabled. If the fact that they are willing to hire me is not enough proof, they have made a voluntary decision to enter a building where they know they will be subjected to humiliation, rudeness, distrust and suspicion to recover funds which will barely provide for basic sustenance. By the time I get to a hearing I cannot prove whether they were mentally impaired before they met me, but I try to identify their current limitations using one of the two Mental Residual Functional Capacity forms attached to this paper. Both forms are based on the typical OHA form for enumerating and quantifying mental impairments, but with an attempt to remove ambiguities which often arise. I have two forms because some judges insist that some ambiguity be left in, so they want each mental ability to be rated by severity of limitation and also by whether the remaining ability is satisfactory. Using a similar form can drastically improve the claimant's chances of obtaining benefits. I send these forms to the Administration's consultants in many cases as well; I do not often get them back, but sometimes I do.

3. Listing-specific

Although I do not have any "canned" forms for particular listings, I often prepare a list of questions to a physician covering all the elements of a listing. This often stands a better chance of a reply than a "please read the attached and give your opinion" letter, especially if done in interrogatory form with the encouragement that answers be hand-written on the form itself.

4. Impairment-specific

Some questionnaires must be more specific than that, and must deal with a particular impairment, or even a specific symptom. The key is that the easier you make the physician's task of replying to you, the better your chances of getting a reply.

K. Drafting letters for treating physicians

Along the lines of making things as easy for the physician as possible, I occasionally draft letters for physicians. Although once I had a hostile physician call me and complain that he thought it sleazy for me to submit a letter to him which purported to be drafted by him for his signature, a more common response is to thank me for my effort and to sign the letter as written. Of course this assumes that the letter was written with careful attention to the physician's own notes and that is it scrupulously accurate. You should not assume that it will offend ALJs to learn that you did this; although some will be offended, I have had an ALJ request that I do so because he feared the physician did not understand the regulations well enough to specifically address the questions the judge must decide.

L. Client diary or calendar

Evidence from the client is usually more compelling if she can demonstrate that testimony is based on contemporaneous records. Especially helpful examples are calendars on which frequency and severity of asthma attacks or seizures is noted.

1. Description of consultative examinations

Another thing you may want your client to record is a description of each consultative examination, made immediately after completion of the exam. If the exam

took 15 minutes and is required to be at least 30 minutes, a record made showing the exact time the physician entered and left the room may help limit the damage done by the resulting report.

2. The client's symptom record

No one knows how the client's problems affect her better than the client. Even if the client cannot coherently explain the problems to you, the client can give a detailed description of differences between pre-disability daily activities and current ones. Similar descriptions of hobbies, social life, and other activities can lead you to more potential sources of information.

M. Informal testing, in hearing or out

Where formal testing is impossible or impractical, informal testing can often be improvised. You can have your client try to read something in the hearing, perform simple arithmetic, demonstrate a limp, show swelling, or perform other simple demonstrations.

1. Informal working test-self report

You can accomplish a similar purpose with a slightly more formal method by having your client perform some simple tasks and use a clock or other means to measure performance. A record showing that the claimant could alternate between sitting and standing from 9:00 AM to 11:48 AM, at which time he had to lie down for half an hour before resuming may be effective with some judges.

2. Informal working test-observed by family or others

A more formal method to demonstrate limitations is to have the client perform tasks required for work, and to have others observe and report on his problems. I heard a great example at a NOSSCR conference a few years ago involving a nurse who took an a phobic client's vital signs as he was subjected to increasingly stressful stimuli, none of which even approached the requirements of sustained work. See several other great examples in Jim Gillespie's chapter (p. 14-28.11, 12) of NOSSCR/Matthew Bender's Social Security Practice Guide.

N. Subpoenas, cross-examination, exclusion

Although frequent use of requests for subpoenas will make you a very unpopular person at your local hearing office, there are times when it is demanded. Often a request for a subpoena of a consulting physician for purposes of cross-examination will result in the exclusion of the report. If you have the experience that I had recently of the judge denying the request for subpoena and failing to exclude the report, at least you have a good ground for appeal.

IV. Exhibits

Physical Capacity Evaluation

Mental Residual Functional Capacity (Form 1)

Mental Residual Functional Capacity (Form 2)