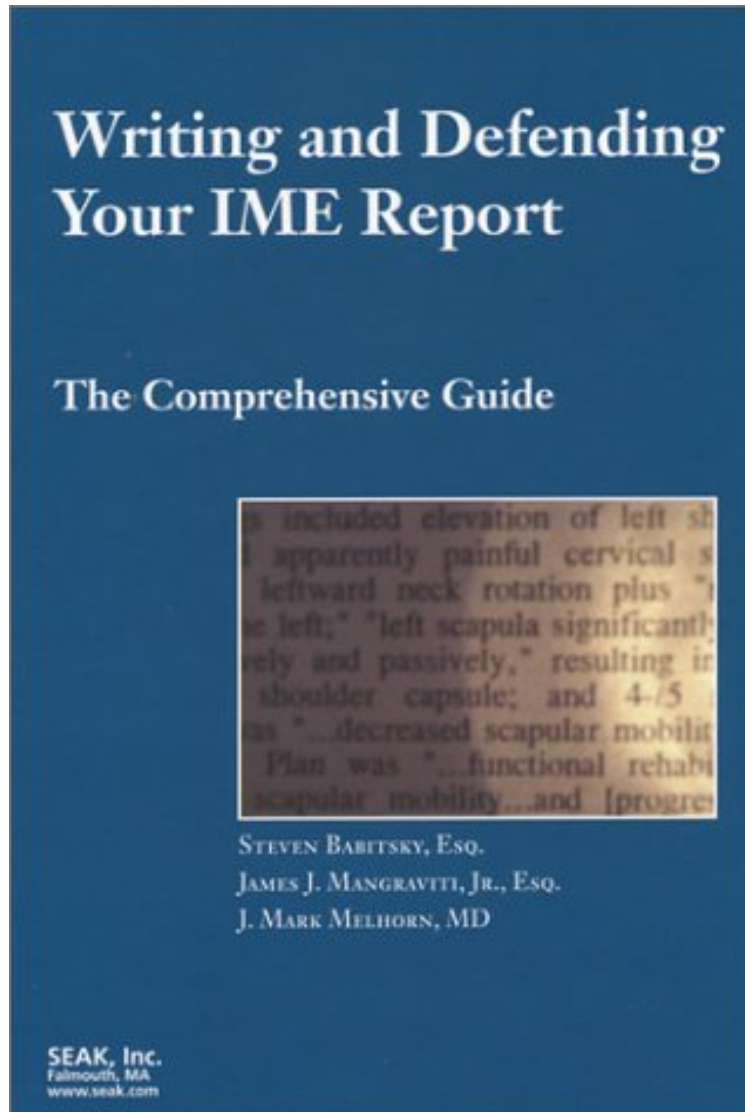


# Writing and Defending Your IME Report: The Comprehensive Guide

*Steven Babitsky, Esq., James J. Mangraviti, Jr., Esq. and J. Mark Melhorn, MD*  
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**Steven Babitsky, Esq., James J. Mangraviti, Jr., Esq. and J. Mark Melhorn, MD : Writing and Defending Your IME Report: The Comprehensive Guide** before purchasing it in order to gage whether or not it would be worth my time, and all praised Writing and Defending Your IME Report: The Comprehensive Guide:

0 of 0 people found the following review helpful. Excellent.By M.A.W.Expensive but very helpful if you're doing IMEs.19 of 20 people found the following review helpful. Hey, this is acutally fun to read.By Pen Name and That

The book was enjoyable to read because it was well set out and has plenty of dialogue between the barrister and the testifying doctor. It works for books as well as television shows, it seems. An audiobook on roughly the same topic is *How to Be a Successful Independent Medical Examiner*. The material is a bit the same and you can listen to it in the car, thus saving yourself a lot of time. I have not written many IMEs and I have never appeared in court to defend them. However, the advice given applies equally to written IMEs and to testifying in court. The advice given is specific and systematic. The advice certainly includes basic things like what not to put in cover letters and dealing with electronic signatures. There are a fair few books about medical practitioners testifying in court but this is the only book of the type on the AMA website, which is a recommendation, I suppose. I would have preferred if the book gave a definition or explained the meaning of the oft-used magic words "a reasonable degree of medical certainty." Below is a rough summary I did for my own benefit. It will give you some idea of what is in the book.

**WRITING AND DEFENDING YOUR IME REPORT**-----1. Introduction and Executive Summary\* Answer only the questions asked. Do not give the client the benefit of the doubt. If it is not clear, phone up the referrer.\* Just say no to bad referrals o Not your areas of expertise o Opinion without crucial documents o No translator o They will do quality control o Pressure o Advocate o Opinion about job capacity without job description\* Have the following boilerplate o Told the pt ' No treating relationship ' Information would be shared ' Report any discomfort immediately to me o Page x of y o 12 point font\* Note if applicable o Anyone else present o Dictation of history in front of the patient o Details of any uncooperation o Any requests to audio/videotape o Table of Contents\* Note beginning and end times with no rounding\* Stay within area of expertise o Do not use legal terms o Use terms you know the definitions of o Stick to your area\* List documents read o Give a numbered list o For each document: type of document, author, recipient, date and length o Sensible order of list o Do not list stuff you could not see\* Citations o Expect to be grilled o Be familiar with the ABIME guidelines\* Opinions o State with confidence o Use magic words: "based on a reasonable degree of medical certainty." o NOT: I think, it seems, I believe. o Give the reasons o Base of Daubert ' Falsifiable hypothesis ' Peer review publication ' Known error rate and maintained standards ' Generally accepted (Fry) o Provide objective justification for the prognosis o No pot shots\* Writing the report o Do not guess o Document all the reasons o Check boilerplate language o No italics, underling or bold o Active voice o Refer to oneself as I o Define medical terms o Use objective language o Define abbreviations o Document inconsistencies o Do not opine on credibility of the examinee o Make internally consistent and consistent with other reports o Avoid appearance of bias\* Extraneous language o No friendly language o No speeches o Cover letter one sentence long o Aggressively self-edit\* Do not comment on costs of treatment\* Words to avoid authoritative, legal, legally, draft, work product, confidential, possible, probable, substantially, obviously, clearly, appears, presumably, supposedly, is said, evidently, he, she, it, they, we, it seems, could, apparently, I believe, complete, thorough, meticulous, exhaustive, patient (is an examinee), malingering, alleged, credible, dictate but not read, electronic signature, malpractice (violation of standard of care that resulted in...),\* The influence of the referring agent o Do not circulate drafts o Do not discard drafts or cover letters o If they want the report changed, have the request put in writing o Review and sign all reports personally\* Carefully proof read the report\* Emulate quality reports\* Reply to barristers o Just because a question seems reasonable does not mean that you have to agree with it o You can have legitimate reasons for passing comments o No numbers game o Know the meanings of any words/rules you state o Graciously apologise for mistakes and correct them all at once o Don't just yes, no yourself into oblivion o Make sure that they have not made small, crucial changes to your report or quoted stuff out of context o "Why raise this now, you have had the report for months" o Here it is (the record / reference they refer to) o Re records "If you feel I have missed something, please share it with me now so I can review it." o "If you do have records you would like me to see, please show them to me and I will be happy to tell you if they change my opinion." o There are always pieces of the puzzle missing, records are never complete... conspiracy theory... o "That is not a reasonable request" o I find that it is o You chose 17 words out of a 200 000 word text to attack my... o Break momentum o Don't get mad o Should be allowed to create ambiguities where there are none o No need to apologise for opinions and can fight for them o "You are mischaracterising what I said" o You are in a strong position to defend an opinion when it is stated as an opinion o Make sure they are not leaving out bits of the standards/report or mischaracterising them o "May I please see the X study you are waving about." o "You left out a crucial part of two sentences." o "It is simply not believable" o Not a template but a checklist o Regarding the possibility of more transcription errors: "I will need 20-30 minutes to proofread the report carefully. Would you like me to start now?" o Do not list a differential (that you will cross examine yourself on) but a list of categories and that you ruled them out o "No, I did not base my opinion on that, but on the entirety of the following..."-----6. Properly Disclosing Precise Medical Records and Other Documents Reviewed\* Expect to be quizzed about how thorough the records are\* You can summarise them if you wish\* You can't say something is not relevant unless you have read it\* You can request the missing records and note that a supplemental report and bill will be issued on their receipt\* If they are poorly copied, get better copies.\* Do not rely on being illegible\* Note if you accepted their conclusion or based your conclusion on the raw materials of the medical record-----7. The Examinee's History\* Create the history from the records AND the examinee\* If inconsistent, state that is

inconsistent\* Must get preinjury records to determine which problems that were preexisting\* Do not mention the outcome of past lawsuits\* Get precise dates that stuff happened\* Summarise past records evenly and not to reinforce your conclusion\* Different types of job descriptiono Writteno Oral from employero Oral from the examineeo Labour agreementso A description in the Dictionary of Occupational Titles\* Get recreation before and after the injury\* Give an operational definition of stuff, not just "heavy chores"-----

8. Physical Examination\* More believable when not textbook normal\* Note pain behaviours\* Level of cooperation\* Use of assistance appliances and the state of repair of same.\* Observed tolerances\* Note inconsistencies\* If you are going to do pain, chose a battery of measures\* Carefully document stated functional capacities, in the patient's own words as this guides behavioural issues\* Satisfaction surveys9. How to Use Citations to Texts, Journals, Guidelines and Other Authority to Bolster a Report's Credibility\* "The following scientific/medical articles and references were consulted and reviewed."\* "In forming my opinion, I used, in part, Disability Evaluation written by Demeter. Particularly relevant portions of this text are attached to this report."\* You do not have to remember lists of requirements, but can refer to them.-----10. Stating Opinions and Conclusions in a Defensible Manner\* "based on a reasonable degree of medical certainty"\* .... probability\* "On a more probable/likely than not basis."\* "based on the foregoing"\* "I base this on the following"\* Avoid net opinions\* State reasons in bullet format\* List the diagnoses and if acute, chronic, degenerative or pre-existing\* Analyse Dx, mechanism, Dx at time of injury, pre existing status and clinical history\* Reasons for apportionment\* Reasons for MMI\* No pot shots\* Causationo Current Dxo Mechanism of injuryo Dx at time of injuryo Pre Existing statuso Clinical Hx\* Apportionment % = (New impairment-previous impairment)/New Impairment \* 100%\* In WC, most aggravations are compensable as new injures\* Give bases for prognosis\* MMI: "Further recovery and restoration of function can no longer be anticipated to a reasonable degree of medical certainty."\* MMI: "Unlikely to change substantially in the next year, with or without medical treatment."\* Have a reason for arbitrary dates you set\* Determine permanent impairment after MMI\* Get training in the AMA GuidesWork Capacity and Disability Pitfallso Comment on ability to do a job if not know about the jobo Doing Ax that injures the examineeo Commenting when not qualified to do soo Written job description will not be 100% accurateo Don't misuse Dictionaryo Not having sufficient understanding of the ADLs\* Work capacity: defined in the book I summarisedo Note the injury but also the education and job history\* Can have a disability for a specific work activity but not for other areas of lifePast and Present Care Requirements Pitfallso Pot shotso Estimating costso Saying others have unnecessarily treated the employeoo Second guessing a colleague: can get sued\* Can recommend a list of future care\* State if particularly asked to opine on standard of care\* Do not be biased against a certain category of care giversSymptom magnification, fraud, malingering and objective support for subjective findingso Fraud is a legal termo Malingering is defined in DSM IV, with more than just the definitiono It is impossible to know for certain how much pain someone is ino You can be accused of trying to trick the patient\* Do not stat more than you need

to-----11. Making Your Report Powerful, Persuasive and Understandable\* Document inconsistencies but avoid opining on reliability\* You are paid to provide an opinion, not hide one\* Don't speculate on the results of examinations you can not perform\* Not: complete recovery, but: prior usual and customary activities\* "I disagree with the treating physician's opinion that..."-----

12. Damaging Extraneous Language and Information that Should Not Be Included in IME ReportsThe examiner sometimes discusses the case at hand before a report is issued. This is perfectly legitimate, but, do not document them in the IME report unless they are relevent.-----

15. Catching Mistakes Before they Catch You\* The guides give the examiner a fair amount of latitude\* Have someone else proofread you reports-----

16. Defeating Counsel's Tactics\* Be truthful\* Avoid giving ammunition\* Be calm\* Make concessions where appropriate\* Well reasoned opinion\* Be prepared to defend oneself\* If you have a serious skeleton in the closet, get another line of work\* Do not publish anything or say anything publicly that will contradict the opinion you state in the report\* Get precise medication doses and timing so you can estimate the effect they would have had-----17. Trick and Difficult Cross Examination Questions for Independent Medical Examiners\* Missing credentials such as ABIME certification\* Requests to cite supporting literature - I continue to read about the disorder as well as others\* Asking what the effect on concentration of the pain is\* Some people are consummate liars and some are terrible truth tellers\* The examiner states the facts based on the history and does not attempt to tell if someone is telling the truth\* Do not make the fact finder0 of 0 people found the following review helpful. Five StarsBy J P SpiersGreat reference

Physicians who perform IMEs, write IME reports, and defend them at depositions, hearings, or trials now have a new, customized, invaluable resource - the text Writing and Defending Your IME Report: The Comprehensive Guide. The text provides physicians with everything they need to write better and more defensible IME reports. In addition, it teaches physicians how to defend their IME reports. Also see imedirectory.com

"Bristling with detailed examples, model reports and chilling illustrations of devastating cross-examination" -- Thomas G. Gutheil, M.D. "This book is worth its weight in gold and will easily pay for itself many times over" -- Steven Feinberg, M.D. "This is the IME guide I have been waiting for! My confidence level in writing IME reports has increased immensely" -- James A. Eckert, D.C. About the Author Steven Babitsky, Esq., is the President of SEAK, Inc. He was a workers compensation trial attorney for twenty years and is the former managing partner of the firm Kistin, Babitsky, Latimer Beitman. He is the founder of the National Organization of Social Security Claimants Representatives, the co-founder of the American Board of Independent Medical Examiners, and the creator of the AMA Guides Newsletter. Mr. Babitsky is the co-author of the texts *Understanding the AMA Guides in Workers Compensation*, *Litigating Stress Cases in Workers Compensation*, *Cross-Examination: The Comprehensive Guide for Experts*, *Writing and Defending Your Expert Report: The Step-by-Step Guide with Models*, *How to Excel During Cross-Examination: Techniques for Experts That Work*, *The Comprehensive Forensic Services Manual: The Essential Resources for All Experts*, and *How to Excel During Depositions: Techniques for Experts That Work*. Attorney Babitsky is the co-developer of the "How to Be an Effective Medical Witness" seminar, the seminar leader for the National Expert Witness and Litigation Seminar and the annual IME Summit, and the scriptwriter for the videos "How to Be an Effective Medical Witness" and "The Expert Medical Deposition: How to Be an Effective and Ethical Witness." Mr. Babitsky is the co-producer of the videotapes "How to Use the AMA Guides, Fourth Edition." He trains hundreds of physicians every year. James J. Mangraviti, Jr., Esq., has trained hundreds of physicians across the United States and Canada. He is a former trial lawyer with experience in defense and plaintiff personal injury law and insurance law. He currently serves as Vice President and General Counsel of SEAK, Inc. Mr. Mangraviti received his BA degree in mathematics summa cum laude from Boston College and his JD degree cum laude from Boston College Law School. His publications include the texts *SEAK Law School for Physicians*, *Law School for the Safety and Health Professional*, *The Independent Medical Examination Report: A Step-by-Step Guide with Models*, *The Successful Physician Negotiator: How to Get What You Deserve*, *Understanding the AMA Guides in Workers Compensation*, *Litigating Stress Cases in Workers Compensation*, *Cross-Examination: The Comprehensive Guide for Experts*, *Writing and Defending Your Expert Report: The Step-by-Step Guide with Models*, *How to Excel During Cross-Examination: Techniques for Experts That Work*, *The Comprehensive Forensic Services Manual: The Essential Resources for All Experts*, and *How to Excel During Depositions: Techniques for Experts That Work*. He trains hundreds of physicians each year. J. Mark Melhorn, MD, FAAOS, FAADEP, FACS, is an occupational orthopaedic physician who specializes in the hands and upper extremities. He received his BS from McPherson College and his MD from the University of Kansas. Dr. Melhorn is board certified in orthopedic surgery with added qualifications in surgery of the hand. In addition to his practice of orthopaedics at The Hand Center in Wichita, Kansas, Dr. Melhorn is a Clinical Assistant Professor, Section of Orthopaedics, Department of Surgery, University of Kansas School of Medicine Wichita. He has authored over 150 articles, chapters, and publications about his research of workplace injuries and illnesses; return-to-work options; impairment and disability; and prevention of musculoskeletal pain in the workplace. He has lectured extensively to physicians, employers, insurers, administrators, and legislators on industrial, musculoskeletal, upper extremity disorders, and prevention of musculoskeletal pain (MSD) in the workplace. He is currently the Chairman for the American Academy of Orthopaedic Surgeons continuing education course on "Occupational Orthopaedics and Workers Compensation: A Multidisciplinary Perspective"