

Independent Medical Evaluations and Depositions for Workers' Compensation: A Physician's Perspective

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KEYWORDS: Disability Evaluation, Occupational/ industrial medicine, Practice management, Workers' compensation, Independent medical evaluation (IME)

INTRODUCTION

Workers' compensation plays an important role in the protection of workers injured in the course of employment. Physicians, judges, attorneys and others each contribute to the modern system of assessment and compensation for injuries, whose earliest roots can be traced back to before the modern era. In ancient Sumeria (present day Iraq), for example, the loss of a thumb was equivalent to the loss of half of a finger. Similar systems of compensation were recorded in ancient Egypt, Greece, Rome and China.¹ Modern systems of workers' compensation were established in Prussia, evolved in Great Britain, and were introduced in the United States (US) in the early 1900s; each of the 48 states in the continental US had passed workers' compensation laws by 1948.² Social Security Disability Insurance was established in 1956, amending the Social Security Act of 1935 to include benefits for disabled persons. The Americans with Disabilities Act (ADA) became law in 1991 and required employers to make reasonable accommodations for injured workers.³

Physicians play a complex role in workers' compensation and may be employed by the injured worker's employer, an insurance company, an attorney representing the worker, or the Court. One aspect of patient evaluation is the Independent Medical Evaluation (IME), defined as the medical evaluation of a person not previously treated by the clinician. This examination may be performed by a physician for patients (subjects) with work-related complaints and/or injuries. The subject of the IME – the injured worker – often has little input or choice in the selection of the physician examiner.

While the terms independent medical evaluation and impartial medical examination are often used interchangeably, this is not accurate. The Commonwealth of Massachusetts notes that an *Independent* Medical Evaluation is paid for by a 3rd party, often the insurer, while an *Impartial* medical examiner has no allegiance to either the subject or their insurer and is considered a "judge's expert".⁴

THE INDEPENDENT MEDICAL EXAMINATION: RESPONSIBILITIES TO THE INJURED WORKER AND THE 3RD PARTY

Prior to the independent medical examination, the physician thoroughly reviews a file that includes medical reports pertaining to the claim. Upon greeting the subject, the examiner should disclose that he/she has been asked to evaluate the injured worker as it pertains to the claim of injury, and that this interaction is not considered a physician-patient relationship. After the examination, a report is completed that includes the review of the medical file, the history taken on the date of the examination and the findings of the physical examination. This report concludes with medical opinions regarding whether an impairment or injury did or does exist, whether the impairment(s) is causally related to the subject's employment, the extent of any residual disability or handicap, and whether the subject has reached a point of maximum medical improvement. In some cases, a permanent impairment rating may be rendered.

Once the IME report is filed with the Workers' Compensation Court, attorneys for the injured worker and his/her employer (or the employer's insurance carrier) may request further testimony from the physician via a legal deposition. If the IME is requested (and paid for) by the employer or its insurance carrier, the injured worker may question whether the conclusions rendered in the report are biased in favor of the entity paying for the IME. This can result in an uncomfortable, if not adversarial, interaction between the IME examiner and the injured worker.

The American Medical Association (AMA) "*Work-related IME/Code of Medical Ethics Opinion 1.2.6*"⁵ states that the IME physician must:

- a) Disclose the nature of the relationship before gathering information from the patient (subject): that the physician (examiner) is an agent of the insurer or 3rd party.
- b) Explain the physician's role as an objective assessor of the patient's (subject's) health and or disability, noting the difference between the usual patient-physician interaction.
- c) Protect the patient's (subject's) personal health information in keeping with professional standards of confidentiality.

d) Inform the patient (subject) of incidental findings during the examination. When appropriate, suggest and/or provide assistance in securing follow-up care.

This last item (d) blurs the role of the “independent evaluator” and indicates that the IME physician actually has responsibility in securing medical care for the injured worker. For example, if an IME physician examined a subject for a work-related low-back injury and noted incidental findings of peripheral vascular disease and possible skin cancer, per AMA doctrine the IME physician should notify the subject of these incidental findings and assist in securing follow-up care as needed. Providing “assistance in securing follow-up care” might be considered establishing a physician-patient relationship, in contrast to section (b) of these guidelines.

RESPONSIBILITIES OF THE IME EXAMINER TO THE COURT

In addition to a review of medical records, interview and physical examination within the scope of one’s medical specialty and the timely production of a legible report, the IME physician must be available for medical deposition if required. Some IME examiners feel that their role ceases after the first three items and may not wish to be involved in a deposition, viewing it as tantamount to navigating a legal minefield. This perception may be due to a fundamental difference between the “medical model” and the “legal model” as it pertains to the deposition.⁶ Physicians are trained in the medical model, where an opinion is based on scientific fact and practitioners work in a collaborative arrangement with other clinicians. The physician is often viewed as a “Solomonic authority”, where his/her opinion is unquestioned. In contrast, the legal model is an adversarial system where, “Truth is best ascertained by witnessing the combat of minds. Each side will attack the other’s position” to find the truth.⁶ When an attorney questions or challenges a physician’s competence, expertise or authority as part of the legal model, it may place the IME physician in an uncomfortable position.

The IME physician is an expert witness. An expert witness opinion is admissible in court if based upon whether the science (a) has been tested, (b) has been subjected to peer review and publication, (c) has potential for error, with determination of the error rate, (d) has a standard controlling its operation, and (e) has widespread acceptance within the medical community.

PREPARING FOR A DEPOSITION

The IME physician should review all records prior to the deposition. The chart or notes should be organized for easy retrieval during the deposition and the IME physician must be familiar with the subject’s history and exam findings. If a jurisdiction has established treatment protocols, the physician should note whether these protocols have been followed.⁷

Pertinent medical literature should be reviewed. As a medical expert within his/her field, the IME physician should be familiar with terminology, validity of exam or test results, and new or alternative treatment options.

The AMA Guides to the Evaluation of Permanent Impairment were established in 1971 as a means of assessing a permanent impairment with a relative value system, an evolution of the ancient Sumerian system. An impairment rating should only be assigned if the injured worker has reached a point of Maximum Medical Improvement (MMI).⁸ The IME physician should be able to cite training that he/she has received in the use of the Guides.

An attorney may challenge or contest the IME report based upon a) an item of medical history or physical examination, b) a laboratory finding that was reported (or not documented) in the IME report, c) the IME physician’s credentials as an expert witness, and/or d) information discovered since the IME was performed that may alter its conclusions.

IME depositions in the Workers’ Compensation system can often be arranged at a time and location that is suitable to the IME examiner. Individuals present at a deposition include the IME physician, a court reporter, and attorneys representing two parties, generally the injured worker and the Workers’ Compensation insurance carrier. No judge or jury is present at a deposition. At the initiation of the deposition, the court reporter will ask the physician to pledge an oath that the testimony given is complete and truthful. During the deposition, attorneys have the right to review materials used by the IME physician, including notes, medical records, laboratory reports and imaging studies. The IME physician is permitted to meet with the attorney for the requesting party prior to deposition.⁹

DOS AND DON'TS FOR A DEPOSITION

- Do remain calm and thoughtful. If a question is ambiguous, ask that it be repeated (or read back by the court reporter), or that a multi-part question be broken down to its individual components.
- Be truthful: if you don’t know an answer or you can’t remember a detail of the exam, say so. If an opinion is requested that is outside of your specialty or area of expertise, say so.

- Do restrict your answer to the question that was asked. Don't go off on a tangent or offer an opinion if it was not requested. Avoid giving opinions on medical conditions or impairments that are outside of your specialty or area of expertise.
- Don't interrupt the attorney(s)' objections. A question may be withdrawn or phrased differently after the objection is raised, and that might affect your answer.

STAYING COOL IN THE HOT SEAT

Attorneys have many techniques to throw the IME physician off his/her game, analogous to the tactics used (crowd noise, waving signs, etc.) to distract a basketball player attempting a free throw in a crowded arena.¹⁰ The IME physician may be asked how often he or she has worked for a particular attorney or insurance company, how many IME examinations they have performed, or what percentage of their practice includes performing IMEs, all in an effort to discredit the IME examiner and/or suggest that his/her medical opinion and integrity are "for hire". Physicians may consider these techniques as a personal affront to their professional abilities and stature.

The IME physician might consider that for some litigators, a deposition is an extension of their experience on a high school debate team. A talented lawyer can effectively argue either side of a case. Even if an attorney is aggressive with the line of questioning, the doctor should not take the lawyer's actions personally.

CONCLUSIONS

- Be prepared. Review all medical records and perform a thorough history and physical examination before producing your report.
- If a deposition is required, keep calm and be professional. Avoid being argumentative.
- Don't regard an aggressive line of questioning by an attorney as a personal attack.

References

1. Guyton GP. A Brief History of Workers' Compensation. *Iowa Orthop J.* 1999;19; 106-110.
2. Ranavaya MI, Rondinelli RD. The major US disability and compensation systems: origins and historical overview. In Rondinelli RD, Katz RT. *Impairment rating and disability evaluation.* Philadelphia. WB Saunders, 2000; pps. 3-16.
3. Burriesci JJ. Historical Summary of Workers' Compensation Laws. State of Connecticut OLR Research Report. 2001; 2001-R-0261.
4. www.mass.gov/service-details/impartial-medical-exam-v-independent-medical-exam#
5. American Medical Association. *Work-Related & Independent Medical Examinations.* ama-assn.org/delivery-care-ethics/work-related-independent-medical-examinations
6. Katz RT, Freeman RZ, Bonfiglio RP. Medical legal testimony and the expert witness. In Rondinelli RD, Katz RT. *Impairment rating and disability evaluation.* Philadelphia. WB Saunders, 2000; pps. 303-314.
7. Healey GE, Aveno MH. *Professional Guide for Attorneys, Physicians and Other Healthcare Providers.* Rhode Island Workers' Compensation Court. 2003.
8. Rondinelli RD. *Guides to the Evaluation of Permanent Impairment, 6th Edition.* Chicago. American Medical Association, 2009.
9. Shepard S. *Coping with Depositions: Tips for Physicians.* <https://www.the-doctors.com/articles/coping-with-depositions-tips-for-physicians/>
10. Kreuter EA. Staying cool in the deposition hot seat. <https://www.fraud-magazine.com/article.aspx?id=4295000496>

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