

Your Independent Medical Evaluation

Whenever you place your mental or physical impairment at issue with the expectation of receiving disability compensation, the disability insurer (or other responsible party i.e. worker's compensation) has a right to have a physician of its own choice examine you. Although the procedural rules governing IME's vary among federal and state jurisdictions, several general requirements are universal. Some disability policies have contractual provisions requiring you to submit to an IME, if requested, others do not.

The disability insurer must give you reasonable notice of the time, place, and name of the IME examiner as well as the scope of the evaluation. You have the right to be reimbursed for mileage to and from the place of the evaluation, and the insurer must reimburse the examining physician for the evaluation report. The IME physician is required to provide a copy of the report to you, or, your attorney within a reasonable time after the examination.

In exchange, you are required to provide copies of all medical office treatment notes, lab reports, consultations etc. from each physician who has examined or treated you for the impairment you are now claiming. In addition, most disability companies will also ask you for a signed authorization so that other information may be obtained before your IME date. I realize this may seem as though your privacy is being invaded, but patient/doctor privilege with respect to the condition causing you to stop working is generally considered to be waived at the time you make application for disability compensation.

The IME physician may be subpoenaed to give testimony under oath during a deposition, and may be cross-examined at trial if your claim is litigated at a later date. Therefore, it is extremely important to be prepared for the IME and understand the objectives of the examiner.

A **disability** "Independent Medical Evaluation" is a physical examination by a medical doctor chosen by your disability insurer for the purpose of providing credible written medical documentation which can be used by the disability insurer at any time to support a termination of benefits.

In theory, IME's are intended to "clarify" very complex medical restrictions and limitations. However, in actual practice, the independent medical evaluation is a "risk management" tool paid for by the disability insurer which "rubber stamps" a future decision to deny your claim.

Denial decisions made by the disability insurer do not happen over night. Your claim for benefits is "risk managed," a term I refer to as "stacking the deck." The disability insurer refers your claim through a very complex internal review system whereby each medical and/or vocational resource provides a written document explaining all of the reasons why that resource believes you can work and are not disabled. Each in-house resource lends their certification credential—nurses are RN's, vocational specialists are CRC's (Certified Rehabilitation Counselors), and of course physicians are always "Board Certified" in their specialty.

Most disability insurance providers maintain a master list of "IME Physician Network" participants. These IME physicians perform hundreds of medical evaluations each year for the insurance industry, and make doing so a large part of their practice. Their bias in favor of the insurance company is well known. The regular fee charged for performing these IME's range from \$1,200 to \$5,000 for detailed two day neuropsychiatric exams. If a physician is asked to give testimony at trial, the bill charged to the insurance company, doubles, or even triples. The "business" of performing several hundreds of insurance IME's proves to be very lucrative for the

physician. You do the math. For some specialties, performing IME examinations can be more profitable than clinical services!

The problem is, these insurance industry physicians are not “independent medical examiners” by any sense of definition, and can actually add to the controversy of medical impairment by drawing conclusions, writing reports, and providing testimony that is clearly biased in favor of the insurance company. In addition, after long periods of time, the IME physician becomes extremely knowledgeable of the disability lingo, and assumes the role of the disability claims specialist, or vocational consultant, and documents statements in his/her report about your occupation and how you do not meet the definition of disability in your policy.

The IME physician often becomes the “devil’s advocate” who renders opinions and conclusions outside of his or her medical expertise. IME physicians may also assume the role of a disability claims investigator, paid by the insurance company, to provide documentation adverse to you and your claim.

Therefore, it is important to remember IME physicians are not concerned with your medical well being, and themselves have a clearly defined agenda and strategy to assist the insurance company with what appears to be, credible, objective medical opinion contrary to that of your primary care physician.

Their role is to attack the credibility of the insured by assuming every claim for benefits is a fraud that must be exposed. Therefore, the claimant is dishonest. It is a great deal easier to attack *your* credibility, and the judgment of your physician than it is to ascertain medical restrictions and limitations preventing you from returning to work. In doing so, the conclusion could be favorable to YOU and that would be adverse to the insurance company.

IME physicians are provided with all the medical information you previously sent to your claims examiner, plus the copies of the in-house medical write-ups done by the insurance company physicians. ***Therefore, the IME physician already knows the “opinion” of the insurance company concerning your ability to work before you arrive for the evaluation.*** It seems reasonable to conclude the IME physician may have already formed an opinion concerning your impairment, especially when the insurance company also provides non-medical information such as the amount of your monthly benefit. The higher it is, the more persuaded the IME physician may be to document his/her medical conclusion in accordance with the insurance company’s agenda of terminating your claim.

Lately, disability insurers have required claims handlers to study and obtain industry credentials such as HIA (Health Insurance Associate) or other relevant disability claims titles.

Documentation, written by well-credentialed specialists is added to your claim piece by piece, and is done to ***give the appearance*** of fairness and objectivity when in fact the claim is being prepared step-by-step for denial. Disability claims are very rarely denied in short, closed periods of time. It takes willful effort and a lot of work to legally document the reasons why ***everyone employed by the insurance company*** believes you are not impaired and entitled to benefits. It takes a long time to “stack the deck” (your file) in favor of denying you the benefits to which you are entitled.

As previously mentioned, IME examinations are one of many “risk” activities used by the disability insurer to attack the credibility of you and your primary care providers. The internal decision to request an IME is not made by just one individual, but a series of people—nurses, doctors, managers, consultants and claims examiners. Everyone working on your claim knows the intended reason for the IME is to document a future denial, but the exam is positioned very differently with you since the company needs your cooperation. You are more likely to give it if

you are under the impression the insurance company is requesting the evaluation to “award” benefits and not “deny” them.

This booklet is intended to offer suggestions for managing a request from your disability insurer for an Independent Medical Evaluation. Although the insurance company may convince you it is in control of the process, the suggestions that follow will assist you in making sure the IME is as fair and objective as it can be, given the fact that your disability insurer is looking to create supportive documentation to deny your claim. It is probable if you are not prepared for the evaluation, your claim may be denied or seriously damaged. Although the following suggestions won’t guarantee a continuation of your benefits, *knowing the* process is certainly an important step protecting your rights.

The IME Process—Preparing Yourself

1. Most likely you will receive a call from your claims examiner asking you to submit to an Independent Medical Evaluation. During this same call, the claims handler will conduct what is referred to as “**an in-depth phone interview.**” The purpose of the phone interrogation is to obtain facts and comments from you which may be used after the evaluation to show you are inconsistent with your responses. What you say to the claims handler and what you tell the IME doctor should be the same. For example, if you tell the claims handler you can’t use your hands or carry heavy objects, don’t lift a large bag and drive an RV the day of the IME. Always use common sense. Remember, the disability insurer may have arranged a “tag” surveillance the day before, the day of, and the day after your IME. Whatever you tell the claims examiner about your physical capacity should be the same as what you tell the IME physician, and should also be the same as any observed activity should the company surveil you just before the exam. Keep in mind when speaking with the insurance company to answer only the questions asked, then be quiet. Never volunteer or offer additional information other than what is asked.
2. Once you know the date and time of the evaluation, call your primary care physician and make an appointment with him/her just after the IME. Inform your primary care physician at that time that your disability insurer has asked you to submit to an IME. This second examination serves two purposes: 1) it provides documentation of your physical condition by your physician *on the same day* as the IME exam, and 2) sometimes the IME physician may be a little rough and cause you to swell or have pain. These physical symptoms will be documented by your physician as well. Tell your physician if you have pain, swelling, or any other physical symptoms as a result of the IME. The documentation of your own doctor may be extremely important when pointing out inconsistent and unreasonable conclusions made by the IME physician.
3. You should meet with your attorney, if you have one, in advance to go over all of your prior medical records and history of your present illness. One way in which the IME physician may draw suspicion to your claim is to “catch” you in inconsistencies when you talk about your prior medical history. A simple lapse of memory by not mentioning a particular doctor, or lab test you had in the past is sufficient for the IME doctor to conclude you are trying to hide something and your claim is fraudulent. No prior physician visit or treatment should be left out of your history, as you will certainly be asked about it at the beginning of the exam. You should be prepared either by your attorney, or by studying your own medical records, well in advance of your IME date. Refresh yourself with the following information: chronological medical history; a statement of the nature and extent of disability; the date you first stopped working and why; how your disability has affected your activities of daily living (toileting, transferring, meal preparation, dressing and undressing, preparation of meals etc.);

restrictions and limitations given by all treating physicians,; and a complete description of your treatment plan discussed previously with your physician. Only when you are thoroughly prepared for discussing your medical history, can you avoid the “traps” of giving an inaccurate or inconsistent medical history. Skilled IME physicians will literally “pounce” on every omitted detail no matter how insignificant it may seem.

4. Send a certified, return receipt requested notice to the disability insurer requesting a written reply to the following questions:
 - 1) What percentage of the IME physician’s practice is devoted to diagnosing and treating patients who are totally disabled from the same condition you now have? 2) How long has the IME physician been employed by the insurance company as an IME physician and what percentage of his decision reports have been favorable to the claimant? 3) Request a copy of the Curriculum Vitae of the IME physician. 4) Request copies of any published articles the IME physician has written on the topic of your particular diagnosis. 5) Ask for a written statement explaining the basis for selecting this particular IME physician over others to conduct the exam. This question is especially important if you are being asked to travel a long distance to attend the exam when other well qualified physicians are within your own geographical area. Look up the IME physician on the Internet and verify his credentials.
 - 6) Request copies of the IME report be forwarded to both you and your primary care physician. Remember to send this letter, certified, return receipt requested. In the case of mental or nervous conditions state in the letter it is permitted to send the report directly to you. Some insurance companies send such reports to your psychiatrist or counselor rather than to you.
5. Request a continuance of the date (if appropriate) to allow you and your primary care physician sufficient time to examine the credentials of the designated IME physician.
6. Never attend an independent medical evaluation alone. On the day of the exam, do not engage in any substantial activity. Remain ever cognizant of the fact the insurance company may have requested surveillance. Leave your house accompanied by someone who can assist you during the exam, ask questions for you, and/or take notes of procedures during the exam. If you are required to wear braces, wear them to the exam. If you use a cane, bring it with you, and use it. Bring a camera with you and take a picture of any swollen body part at the IME doctor’s office. For example, one person attended an IME with a swollen hand, so she lifted up the hand next to the IME doctor’s certificate on the wall, and took a picture. Later, the IME doctor wrote in his report that “there was no swelling”, but the claimant’s picture said it all. Ask your companion to take accurate notes and to observe how the IME physician treats you during the examination. Take someone with you who is fairly assertive and who would not have a problem asking for a break if you become tired, or need something to drink. Your companion is there to be protective of your personal needs during the exam, and document what took place.
7. IME physicians use certain exams to trick you. One such test is referred to as Waddell’s signs, used by IME physicians to identify psychological factors in patients claiming back problems from trauma, chronic pain and fibromyalgia. So-called “false positives” on these indicators are often at the root of adverse decisions documented by the IME physician. The IME physician will perform a hands-on examination for each test, looking for you to say “it hurts” when in fact it is impossible, given nerve or sensory distribution for it to really cause pain. In other words, the IME physician “tricks you” into saying it

hurts when it really shouldn't, given the injury or diagnosis you have. I'm going to try and explain these Waddell signs in layman's language so that you will understand them.

Tenderness-- the doctor will lightly touch or pinch your skin over a wide area beyond the normal distribution of the sensory nerves. If you say these light touches are sensitive and tender, superficially, the IME physician will suspect exaggeration. If you say you have pain when deeply touched over a wide area beyond the area of an injury or joint, the doctor will suspect exaggeration. Usually pain is only evident in the localized area of the injury. If you have fibromyalgia and say you have pain "everywhere", the doctor will suspect your reactions.

Simulation Tests-- If the doctor presses down on your head while you are standing (axial loading), and you report low back pain, the doctor will say you are exaggerating. If the doctor rotates your shoulders and pelvis at the same time while standing, and you are complaining of low back pain, the doctor will say you are exaggerating.

Distraction Tests-- On occasion when the IME physician finds something wrong, he/she may distract you, performing another test of the same area without telling you why. If you have a negative reaction, or don't give a full effort, the doctor will suspect exaggeration. An example of this is to ask the patient to raise one leg against resistance while lying down. If your opposite leg does not press down, for leverage, then the doctor suspects you are not giving full effort for the purpose of exaggeration. Sometimes, the IME physicians will just walk away from you supposedly to write something down in your chart, then quickly ask you a question. If you "turn your head" in his direction when you told him you couldn't do that because of pain, the doctor will suspect all of your complaints. In most instances, the doctor has already examined you for movement in that area, causing you to believe the exam was completed.

Regional Disturbances-- If you complain of excessive weakness, such as the giving way of muscles within a particular group, the doctor will say you are exaggerating. Likewise, if you claim numbness, tingling or pain over an area outside of the distribution where the nerves from the spine lead down the leg into the toes, the doctor may suspect exaggeration. This is especially true for fibromyalgia and chronic fatigue claim.

Overreaction-- If you cringe, grimace or otherwise show unnatural responses to sensory, motor or reflex tests (all of the above), the doctor may suspect exaggeration.

8. Remember the IME physician is not examining you to give you medical advice. He/she will not discuss treatment options with you, nor will he recommend appropriate treatment for your impairment. An IME physician will generally not give you an opportunity to explain what is really disabling you, and will ask only questions requiring a "yes" or "no" answer. It is very human and natural, once you are committed to an IME exam, to *want* to be believed, and acknowledge the doctor examining you is acting in your best interests. However, once you thoroughly understand the IME physician's role is to represent the insurance company and not you, then you can present yourself appropriately during the exam. Technically, you are patient with a medical problem and you may feel the need to ask the IME physician medical questions about your impairment. It is unlikely the IME physician will tell you anything substantial as an answer.

Types of Independent Medical Evaluations

The Neuropsychological Tests

One of the most over-used IME's is the Neuropsych exam. A Neuropsych exam uses scientifically validated tests to evaluate brain functions from simple motor performance to complex reasoning and problem solving. The results of these tests are then compared with normative standards. While CT scans, MRI's, EEG's and PET scans identify structural, physical, and metabolic conditions of the brain, the neuropsychological examination is the only way to formally assess brain *function*.

Most Neuropsych tests examine the following:

Attention & processing speed

Motor performance

Sensory Acuity

Working memory

Learning & memory

Abstract thinking

Mood & Temperament

Intelligence

Language

Calculation

Vision analysis

Problem solving

Judgment

Executive functions

A Forensic Neuropsychological Evaluation involves the application of neuropsych assessment methods to evaluate criminal or suspected claimants. Essential parts of this type of exam include tests to identify response bias and malingering. The MMPI-2 (Minnesota Multiphasic Personality Inventory) is a well-known test designed to identify malingering, and is often requested by the insurance physicians. Other common tests include the Beck Depression or Anxiety Scales which provide a quick assessment of symptoms related to depression or anxiety; the Bender Visual Motor Gestalt test, evaluates visual-perceptual and visual-motor functioning and possible signs of brain dysfunction, emotional problems, and developmental maturity; and Dementia Rating scale, provides measurement of attention, initiation, construction, conceptualization, and memory to assess cognitive status in older adults with cortical impairment; Halstead Category test, measures concept learning, flexibility of thinking and openness to learning. It is considered a good measure of overall brain function. There are many, many other tests available to neurologists who generally select a unique combination of tests for each individual based on their diagnosis and history.

Neuropsych examination results are interpreted by the disability in-house neurologist, neuropsychologist, or psychologist. The neuropsych battery of tests are subject to interpretation, and of course, insurance physicians often interpret the results in favor of the insurance company. Neuropsych IME's should not be used for all impairments, but because of the possible subjective nature of the interpretation, disability insurers frequently request these exams indiscriminately to achieve results favorable to the company. Neuropsych exams should not be used in cases where the diagnosis is depression or other mental and nervous disease. Some tests may be applied in a psychological IME, but using a neuropsych exam alone to determine Axis I-IV diagnosis may not be appropriate.

Test raw data, the actual tests themselves, should never be placed in disability files, nor should it be requested or provided to anyone who is not qualified to interpret such results. On many occasions, claims handlers request the raw data and place it in the claims file only to be reviewed by an RN or another unqualified medical resource. This practice is inappropriate. Only the medical directors should request the actual raw data and once received it should be kept in a special file with access to only those with medical credentials to interpret results. The results of neuropsych exams range 90% in favor of the insurance company.

Functional Capacities Examinations

Although Functional Capacities Examinations should be the most common type of evaluation, they are not. In my experience, the results of FCE's range 40% to 60% in favor of the claimant. But realistically, for structural injuries of the hands, bones, feet, back, cardiac, chronic pain and fatigue, the FCE, administered by a qualified occupational physician produces the most objective, verifiable, and accurate results.

Functional Capacities Evaluations include physical tests to determine how much weight you can lift or carry; your ability to use hands and feet i.e. pinch strength, grip, fine manipulation; ability to climb stairs, lift overhead, crawl, bend, stoop; physical endurance, i.e. ability to work consistently and give full physical effort; and of course

determine your functional capacity by defining your physical ability as either: sedentary, light, medium or heavy capacity. The FCE may result in a rating of full body disability usually expressed as a percentage. The insurance company will ask the FCE physician to give you restrictions and limitations (things you may not do at all, and activates you may only perform at a certain level or duration). The IME physician will state whether he/she believes you made a full effort on the exam. As stated earlier these evaluations are more reasonable and produce better results for both the insurance company and for the claimant.

Psychiatric and Psychological Tests

Although some of the tests used in the battery of neuropsych tests can be used in a psych IME, some tests are unique. The conclusion or outcome of these tests is to give you a rating in each of the Axis diagnosis scales, and a GAF, a global assessment of functioning rating.

GAF Ratings are expressed as 45/70 which means you now have a GAF of 45 but within the last six months, it was 70.

Here is the GAF Scale.

100	Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms.
91	
90	Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members).
81	
80	If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork).
71	
70	Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.
61	
60	Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).
51	
50	Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).
41	

- 40 | **Some impairment in reality testing or communication** (e.g., speech is at times illogical, obscure, or irrelevant) **OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood** (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).
- 31 |
- 30 | **Behavior is considerably influenced by delusions or hallucinations OR serious impairment, in communication or judgment** (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) **OR inability to function in almost all areas** (e.g., stays in bed all day, no job, home, or friends)
- 21 |
- 20 | **Some danger of hurting self or others** (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement) **OR occasionally fails to maintain minimal personal hygiene** (e.g., smears feces) **OR gross impairment in communication** (e.g., largely incoherent or mute).
- 11 |
- 10 | **Persistent danger of severely hurting self or others** (e.g., recurrent violence) **OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.**
- 1 |
- 0 | Inadequate information.

Try to find yourself on this scale. Most people live their lives normally somewhere between 61-80. We all have bad days. Below 60 is usually considered to be somewhat impairing. Interpretation of the GAF scale is again made by the insurance company. Ratings from 41-50 are often seen by in-house psychiatrists as “functional” even though the general medical community considers a rating at that level to be impairing.

Axis diagnosis are as follows:

Axis I—Clinical primary diagnosis.

Axis II—Personality definition.

Axis III—Physiological-Any organic problems that may be present.

Axis IV—Social. Loss of a loved one, sexual abuse, divorce, career changes etc.

In my experience, Psychological Test results range 50%-50% with about even results in favor of and against the claimant. Again, the results of this type of IME are “interpreted” by the insurance company and it may be necessary for you to obtain your own physician’s opinion of the results.

Next Steps

Once the IME results are forwarded to the insurance company, it is reviewed by in-house physicians who “rubber stamps” the tests as either valid or not valid. These reviewing physicians rarely offer medical opinions at this point since their only role is to lend credentials to the IME by commenting whether the exam was “good” or “bad.”

When the insurance company physician has reviewed the report, the claim file is returned to the claims examiner who will then send a copy of the IME report to your primary care physician with a request for an opinion. For most claimants, the IME conclusion report is **adverse** to the claimant, and the opinion of the primary care physician is **favorable** to the claimant. Therefore, there remains no consensus of medical opinion regarding your impairment and the extent of your disability. Your file goes back to the drawing board, so to speak, to the insurance company physician for a decision, which is what the disability insurer wanted in the first place. What is different is that your file now contains what appears to be a

creditable effort on the part of the insurance company to obtain an “independent opinion” of your ability to do work. *Is it really an independent medical opinion?* No it isn't. *Is it a fair and unbiased review?* Not at all. *Who makes the final decision as to the liability of your claim?* The disability insurer. ***Not one thing has changed with regard to your file except for the appearance of credibility, and the addition of yet another document supporting the agenda of the insurance company to deny your claim.***

Independent Medical Evaluations are not necessarily a bad thing in every case. The insured often pays for an IME and submits the result to the insurance company. If the disability insurer is interested in fulfilling its fiduciary responsibilities, the IME report should be considered in the liability decision. Unfortunately, most disability insurers consider only medical information IT solicits and pays for. When correctly used, the IME should be given equal weight with the recommendations of the primary care physician, and other information obtained from the claimant before making a final decision to pay or deny a claim for benefits. However, this is rarely done in the claims process. IME's can clarify complex restrictions and limitations and open the door for win-win situations with regard to return to work and disability. When a disability insurer places its financial interests above those of industry standards of care, and/or fails to consider the interests of the insured at least equal to its own, the disability industry as a whole suffers.

Conclusion—Tips

1. Prepare for the evaluation in advance. Know your medical history and be consistent when telling your history to the IME physician.
2. Make an appointment to discuss your medical history with your attorney. Let your physician know you have been asked to submit to an IME, and make an appointment to be examined by him/her on the same day.
3. Take someone with you to the exam who can speak for you and take accurate notes of the procedures. Take pictures of any swelling or obvious physical marks in the IME physician's office.
4. Do not attempt to exaggerate symptoms or over react when touched or prodded.
5. Be cognizant of the fact the IME physician is neither your advocate or medical doctor. Do not ask medical questions about your treatment, and answer only the questions you are asked. Do not contribute information beyond the scope of the examination. In other words, during the IME exam, don't discuss the problems of your life.
6. Send the insurance company a request for credentials and other information about the IME physician. Also, request a copy of the report within a reasonable time after the examination.
7. Be mindful you may be surveilled by an insurance investigator. Wear braces, use canes, or other therapeutic devices as instructed by your physician. Limit your activities on the day before, the day of and the day after your IME examination. Look for strangers on your street, or neighborhood.
8. Ask for a copy of the in-house physician's report on the IME. The insurance company may or may not give it to you, but ask anyway.
9. Stay calm, and if the IME physician hurts you, say so. No physician likes to have a patient carried out of his office on a stretcher. If the IME physician manipulates you, or physically hurts you to the point of pain, ask for an ambulance to be called.

10. After the exam, go home, relax, and be positive. These exams often have an emotional effect of making you feel guilty, or defeated. Never allow an insurance company to have that much power over you. You showed up for the exam, you did your best, you were honest, and that is the best anyone can do under these circumstances. Whatever conclusion the insurance draws from the IME report, has nothing to do with you, or how you presented yourself during the exam.

Best of luck with your evaluation. If you have any other questions, your attorney or other trusted resource will be able to help you.