

## **Preparing Patients for “Independent Medical Examination”**

Any Chiropractor treating patients who are pursuing personal injury (negligence) or workers compensation claims realize that their patients may be asked to undergo an **“independent medical examination”**. The Wisconsin Statutes allow the insurance company defending against such claims to obtain their own medical examination. Specifically, **Wisconsin Statute §804.10** allows for such examinations in personal injury a claim; while **Wisconsin Statute §102.13** permits such examinations of patients with worker compensation claims. These types of examinations are usually only performed when there are **claims of permanent injury or questions relating to the reasonableness or necessity of prior treatment**.

In most situations, **these examinations are far from “independent”** in nature. Insurance companies repeatedly use the same group of physicians who typically provide opinions favorable to the insurance company. These physicians are often well compensated for their opinions. As a consequence of this absence of true independence, lawyers representing your patients will often refer to the examinations as “insurance medical examination” or **“defense medical examination”**.

There are several “strategies” which the treating doctor may wish to consider when a patients undergoes the “defense medical examination” (hereinafter, “DME”):

**(1) Encourage your patient to obtain advise from a lawyer before participating in the examination.** The statutes contain a number of conditions which must be met before the examination can occur. An experienced attorney can determine whether each of those terms have been met. There are also legal resources available to patients which will allow them to prepare for the type of questioning which often occurs during the DME. Unfortunately, Wisconsin Law does not allow a patient to videotape, transcribe, or record the events which occur during the examination unless legal counsel have agreed to such arrangements or a Court Order is obtained in advance of the examination.

Since these examinations cannot be accurately reproduced, this office often encourages clients/patients to make written notes after the examination as to the actual length of the examination, major activities which occurred during the examination, important questions asked during the examination, and tests performed during the examination.

**(2) Consider attending the examination.** In both types of claims, the treating physician is allowed to attend the examination with his patient. Unfortunately, the examinations can be lengthy and the doctor is not compensated for his time unless prior arrangements are made with the patient or patient's counsel. It should be noted that any chiropractor attending the examination may be compelled to testify as a witness at a future hearing.

Some law offices will suggest that a patient consider attending the examination with a friend or close family member if their doctor is unavailable. Often, the examiner will not object to such a party being present. That party can then become a helpful witness at a later time if there is a dispute between the examiner and the patient as to the events which occurred during the DME.

It should also be noted that there are Wisconsin cases where the patient's own attorney has been allowed to attend the DME. Generally, attorneys are not allowed to attend the examination unless adequate justification is provided in a motion filed before the DME.

**(3) Request that the patient provide you with a copy of the DME Report.** The Statute require that the patient and/or legal counsel receive a written copy of the results from a DME. It is important for the treating doctor to have a copy of the report for future reference. Any notable problems with the report should be brought to the patients' lawyers attention rather than directly to the insurance company or the examiner.

**(4) Consider scheduling a patient appointment immediately following DME.** In most cases, the DME report will not contain any significant or favorable examination findings. In such situations, it is often beneficial to schedule your patient's next appointment on the day of or immediately following the DME. As another alternative, the patient may be seen by a third, more neutral practitioner for an evaluation. During

that appointment, a thorough examination should be performed to establish clear differences in the patient's condition as found during the DME and by the patient's own treating physician. These conflicting findings will create additional argument for rejecting the results from the DME.

**(5) Remind Patients that there is no “Physician/ Patient Privilege” during a DME.** Because of the lack of true “independence” during a DME, patients should be reminded that the examiner may ask a number of critical questions relating to past medical history and facts involving the underlying accident. Although many of the questions may have little to do with the patient's physical condition, examiners are given a wide range of discretion during the DME. Patients should be reminded that anything told to the physician can and may be revealed to third parties since there is a loss of privileged communication with the examiner. The patient should also be reminded that they are not required to complete any questionnaires, surveys, or other written forms; but merely present themselves for a physical examinations. If in doubt about answering questions, the patient may wish to tell the examiner to consult previous medical records or contact the patients' counsel for further information.

The results of a DME can be critical to the outcome of a personal injury or workers compensation claim. The doctors should always be aware that legal “advice” involving issues of this nature should not be given to the patient. However, this article addresses various matters which may assist in the chiropractors understanding of the DME process as that process may ultimately have an effect on the chiropractor's reimbursement for patient treatment.

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