The Defense Medical Exam

By Frank R. Kearney

At any time after a workers' compensation claim is filed, not just during the litigation phase, the employer or insurance company can schedule a medical examination with a doctor of their choosing. Insurance companies call these IMEs (Independent Medical Examinations) but you shouldn't. In practice, there is nothing independent about these exams. These physicians typically examine many, many injured workers for the same insurance companies over and over. In addition, many times they charge the insurance carrier five hundred dollars per examination, as opposed to eighty-five dollars they would actually charge a patient coming for treatment. They then generate a lengthy report that is sent to the insurance company or its attorney. There is no doctor-patient privilege, and the claimant is not there for any therapeutic or medical reason.

I call these "litigation exams" or "insurance medical exams" because that is what they are – a defense examination for litigation .

There are a handful of physicians in Washington, D.C. (and I suspect in every community) who earn an extremely good living performing these examinations for insurance companies. You can imagine the "opinions" that most

of these doctors generate. They may say that the injured worker was never hurt, or the injury was unrelated to his or her employment, or the condition he or she currently suffers from was not related to the injury, or the injury caused only a temporary aggravation of some underlying condition, or the injury is not as bad as the claimant and his or her physician believe, or that the claimant can return to work, et cetera. Sometimes the reports look virtually identical – only the name of the injured worker seems to change.

Depending on the doctor chosen by the insurance company, the entire exam may last only a few minutes. I always advise my clients to write down the time they go into see the doctor, and the time that they're with the doctor, and the time that the doctor spends speaking with them and actually examining them. Typically, this is only a few minutes. Nonetheless, a five minute exam can result in a five page single-spaced report by this physician that the carrier can use to stop or deny benefits. In my experience, the more desperate the carrier, the more notorious the litigation or insurance doctor they will go to for an exam.

As with anything in life, there are exceptions to this rule. Occasionally, an insurance company will hire a legitimate physician to evaluate an injured worker, and that physician will take the time to conduct a thorough examination that can actually be helpful in future treatment decisions. Regrettably, these legitimate

examinations are few and far between. Many times the insurance companies are much more interested in limiting or denying benefits and the amount of money they have to pay, instead of offering legitimate treatment options.

The general rule in the District is that a defense or litigation examination can be conducted once every six months in any given specialty. If there is a change in the injured worker's condition, for example, there is a recommendation for surgery, the insurance company has the right to an examination before the six-month period. In addition, if a claimant is seeing several specialists, such as an orthopedic surgeon, a neurosurgeon, and a pain management specialist, the carrier could have one examination per specialty approximately every six months. There are no hard and fast guidelines on that issue, but that is the general practice.

Unfortunately, injured workers who are not represented by an experienced attorney get taken advantage of by insurance companies. Many times, they will tell an injured worker that he or she must attend multiple examinations with physicians in the same specialty over a short period of time. This simply allows the insurance company to obtain more and more evidence that they will ultimately use to deny or limit an injured worker's benefits.

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