

Your Independent Medical Evaluation

(Employers and disability insurers may disagree with me concerning the motives, philosophy and objectives of being asked to submit to an IME. I will graciously concede that not all policyholders or insurance companies operate in the same manner; however, I think all would agree disability insurers probably are not paying between \$2,500-\$6,000 for a medical evaluation to "continue to pay" a disability claim. There is always a vested interest on the part of an insurance company to obtain credible documentation for the purpose of supporting a claimant's ability to perform work at some level.)

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, social security) has a right to have a physician of its own choice examine you. Although the procedural rules governing IME's vary among state jurisdictions, several general requirements are universal. Some disability policies have contractual provisions requiring you to submit to an IME, "as often as is reasonable", or "when the claim is pending", 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. However, if your claim is being investigated by the insurance company, it is not required to provide you with a copy unless your claim has been denied.

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 effect, an IME signed by a physician is a "rubber stamp" of approval for a business decision (already made) to deny your claim.

In theory, IME's are intended to "clarify" very complex medical restrictions and limitations which in turn decide disability. Social Security requires them, but sparingly. Worker's Compensation uses IME's to determine a percentage of full-body disability in order to gauge disability.

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. (Some companies outsource a network of physicians used to perform defense insurance exams.) 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.**

An IME physician is limited in comments to his/her medical specialty. For example, an IME physician who does a write-up about what a "Financial Planner" can and cannot do, has overstepped his medical specialty. The IME physician often becomes the "devil's advocate" by rendering opinions and conclusions outside of his or her own 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. You are not their patient. They have no legal right to offer you opinions as to your future care.

Their role is to attack the credibility of the insured by assuming every claim for benefits is a fraud that must be exposed. Therefore, it is assumed the claimant is dishonest. It is a great deal easier to attack *your* credibility, and the judgment of your physician(s) 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. Although the disability insurer is charged to decide matters decidedly in your favor, they often do not, and therefore breach their fiduciary responsibilities.

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. (ALHC) 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.

Recently, a major insurance company was fined \$15 million dollars by a 47 state insurance commissioner investigative committee for abuses relating to the documentation and evaluation of IME’s. (Among other issues.) There is no doubt but that disability insurers need to change the process and motivation for the examination.

This write-up 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 in 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.
2. 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, and then be quiet. Never volunteer or offer additional information other than what is asked.** Frankly, this can be very difficult for some claimants, but you must resist the temptation to “tell the story of your life.” Be quiet. Answer only the questions you are asked and nothing else.
3. Once you know the date and time of the evaluation, call your primary care physician and make an appointment with him/her preferably after the scheduled 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.
4. 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.
5. 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.

6. Prepare a list of all of the above and place it in your IME folder. When you are asked to provide specific information, just pull the sheet from the folder and give it to the IME physician. Never work from memory during a IME. No one can possibly tell the same story twice. Write it down.
7. Send a certified, return receipt requested notice to the disability insurer requesting a written reply to the following questions prior to the IME:

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?

How long has the IME physician been employed by the insurance company as an IME physician and what percentages of his decision reports have been favorable to the claimant?

8. Request a copy of the Curriculum Vitae of the IME physician prior to the evaluation.
9. Request copies of any published articles the IME physician has written on the topic of your particular diagnosis.
10. 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.
11. 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.
12. 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. Sometimes IME's are scheduled quickly. You should ask for at least a 30-day notice of the exam.
13. 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.

14. Beware of surveillance persons in the waiting room. One particular insurance company, in a letter addressed to the IME physician preceding the exam, asked the doctor to “watch” you in the waiting room and document things such as opening up doors, sitting waiting for the evaluation, walking within the facility, etc. Sometimes the IME physician may drop something on purpose to see if you bend to pick it up. Remain observant and watchful of everything you do when entering the offices of an IME physician. Stay seated and don’t walk around.
15. 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”, or “my whole body hurts” the doctor will suspect you are magnifying the symptoms. (Fibromyalgia doesn’t hurt all over anyway. It hurts in 18 very specific “tender” or “trigger point locations on the body.”)

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, and 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.

In general, IME physicians consider "Waddell Signs" useful in physical assessment of a patient. A "Waddell" test is positive if the patient demonstrates inconsistent or nonanatomical physical signs in three or more of the five tests.

16. 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.
17. Contact your local Attorney General's office and ask about your rights to record or videotape the IME in your state. Ask the AG to provide you with a photocopy of the law dealing with one-party or two-party recording. Each state is different. If you are allowed to record the IME in your state without the physician knowing you are doing so, do it. Please check the laws in your state first.

Careful...

1. Never contact the IME physician directly unless specifically instructed to do so in case of a cancellation. You must, to use an accounting term, remain "an arms length" away from the IME physician. Disability insurers have the right to discontinue the IME with a physician if they are contacted by you in any way. You do not have the right to call the offices of the IME physician or request any information from them. If you choose to contact the IME physician you risk having to start all over with another physician assigned by the insurance company.
2. Don't just fail to show up. If you need to reschedule the IME call the claims specialist and explain why you need to reschedule. You should do this way ahead of time and not the actual day of the IME. **The disability insurer will consider it adverse to you if you cancel the IME on the same day and ask that it be rescheduled.** Consider your ability to attend the exam well in advance. Make every effort to attend the IME when it has been scheduled. Insurance companies take a very dim view of cancelled IME's at the last minute.
3. Be ever-mindful of possible surveillance around the time of the IME. Surveillance teams actually go into the reception rooms where you wait and watch you. When they leave, they follow. If you spot surveillance activity, I recommend you "blow their cover." If you feel comfortable to, go up to them and say, "I notice you have been following and watching me. If you are representing an insurance company, I request that you stop your activity immediately. I will report you to the local police." When you "blow the cover" of an insurance surveillance, it stops immediately. Any report written is no longer any good to the insurance company once you know you are being watched.

4. Prepare a folder and a copy of your medical history with a bulleted list. When asked questions take the paper and give it to the IME doctor. Don't answer the question, "What is a typical day like for you?" Do not be overly optimistic about your work capacity in the future.
5. If an IME physician is overly rude, or actually physically hurts you during an exam, you can ask to stop and request an ambulance. No IME physician wants to have an insurance patient hauled out of his office in an ambulance because he/she hurt you. If the IME physician is rude, document it if you haven't been recording the conversation.
6. Don't keep calling the insurance company to ask about the evaluation report. If the insurance company is still evaluating your claim, they won't give you a copy. A disability insurer is only required to give you a copy as part of your Administrative Record after the claim is denied. Some companies will give you a copy nonetheless. Psyche IME's are sent to your therapist or psychiatrist and are not as a general rule sent directly to you.
7. **Don't talk too much.** Most people tell insurance companies way too much information. It's human nature to defend yourself, but not good for an insurance claim. Answer the questions honestly and truthfully, but then be quiet. You really need to exercise control over the amount of time you speak during an IME.. Depending on your personality, this could require some effort. Be quiet.
8. Don't fall into the Waddell Sign trap and over exaggerate your pain. Be honest about where it hurts.

IME Summary

Remember that it takes actual documentation (pieces of paper placed in your file) to support a claim denial. An IME report is just one such type of document used to "rubber stamp" a prior business decision to deny your claim. **The more documents placed in your file saying you can work, the more credible the claim denial becomes.**

This is why IME's rarely support continued disability – the decision to deny the claim has already been made by the disability insurer's business interests (consultants, managers, directors and VP's), although they will adamantly tell you that's not the case. In most instances the disability insurer has been busy gathering "documents" from internal medical and vocational resources which also support a claim denial. The IME report is the LAST in a long series of documents claiming you have work capacity so the disability insurer can "credibly" say the claim should be denied.

It's also big business. IME physicians make thousands of dollars each year by performing IMEs for insurance companies. It is often more profitable than having a clinical practice. Some IME physicians are given incentive bonuses for writing timely, favorable reports. This is why it is important to be prepared for an IME and do everything you can to control the process in your favor.

IME Q & A

The insurance company called me to attend an IME in about a week. What should I do?

Inform the insurance company in writing you are unavailable on that date and need to have at least a 30 day notice.

Is video taping the IME a good idea?

Generally, no. The existence of a known videotape is discoverable. This means it could be required to be produced to a defense attorney if the claim goes to court. Video tapes or CD's are a "two edged sword" in that they can be used in your favor, or, they can be used against you. I don't know too many claimants who are so well-versed on the system, insurance laws, and ERISA that they know exactly what they should say, or not say, at any given moment. Video tapes can be used in your favor, but if you do or say something wrong, the insurance company will be sure to use it against you. Do you want to take that chance?

What do I do if the IME physician is rough and hurts me during the examination?

Tell the physician right away that you are in pain and terminate the evaluation. If you are severely hurt, ask the IME physician to call an ambulance.

Am I allowed to take breaks during the exam?

If the evaluation is lasting more than 30 minutes you are entitled to take a break whenever you need to.

Am I entitled to a copy of the IME report?

No. You are entitled to a copy of the IME report as part of your Administrative Record only if your claim is subsequently denied under the ERISA statutes. On occasion, the disability insurer will voluntarily give it to you to "help you understand why your claim has been denied." You can ask for it, but don't insist you are entitled to it. You are not. The insurance company may agree to send the finished report directly to your physician. Ask your doctor to let you know when the report arrives in his/her office.

Types of Independent Medical Evaluations

The Neuropsychological Tests

One of the most over-used IME's is the Neuropsychological Evaluation Test. A Neuropsych exam uses scientifically validated tests to evaluate brain functions, cognitive abilities, and depression from simple motor performance to complex reasoning, cognition, and the ability to solve problems. The results of these tests are then compared with normative standards, which are then interpreted by the physician administering the tests. 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**.

Neuropsychic tests are performed over a period of 1-2 days with a qualified Neurologist, or Neuropsychologist. The claimant is asked to take a series of tests called the "raw data". (Raw data from neuropsychic tests is prohibited from being transferred to anyone other than those who are qualified to evaluate the results.)

The tests are scored and the rating is compared to a set of normative standards which are then "interpreted" by the physician doing the evaluation. The test itself is grueling and time consuming. Neuropsychic tests are generally requested by the insurance company when the claimant reports cognitive dysfunction, memory problems, inability to concentrate, and varying degrees of depression.

Most Neuropsychic tests examine the following:

Attention & processing speed Intelligence

Motor performance Language

Sensory Acuity Calculation

Working memory Vision analysis

Learning & memory Problem solving

Abstract thinking Judgment

Mood & Temperament Executive functions

Forensic psychologists are

IME "detectives".

A Forensic Neuropsychological Evaluation involves the application of Neuropsychic assessment methods to evaluate criminal or suspected malingering of claimants. Essential parts of this type of exam include tests to identify response bias and malingering. The MMPI-II (Minnesota Multiphasic Personality Inventory) is a well-known test designed to identify malingering, and is often requested by the in-house 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. Neuropsychic examination results are interpreted by the disability in-house Neurologist, Neuropsychologist, or Psychologist. The Neuropsychic battery of tests are subject to interpretation, and of course, insurance physicians receive bonus incentives to interpret the results in favor of the insurance company.

Neuropsychic 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. Neuropsychic exams should not be used in cases where the diagnosis is depression or other mental and nervous disease without the review of a Psychiatrist or Psychologist. Some tests may be

applied in a psychological IME, but using a Neuropsych exam alone to determine DSM-IV diagnosis may not be appropriate.

In the case of CVA (cardiovascular accident or stroke) Neuropsych tests are usually done by the neurologist shortly after, perhaps within six weeks and then again one year later. Permanent cognitive impairment may not be evident for long periods of time. If the one year Neuropsych exam is not completed, the insurance company may request an IME and review the two exams to determine if there has been any improvement. This is a normal part of the process for those with CVA, but it is preferable to obtain the Neuropsych exam by your own Neurologist rather than submit to an insurance company IME at a later date.

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 95% in favor of the insurance company.

Disability insurers manipulate the entire process of the neuropsych exam from beginning to end. If the disability insurer is made aware your physician ordered you to have a Neuropsych exam, it will request a copy of the “raw data” and have one of their internal physicians evaluate the results in favor of the insurance company. **Very rarely, will the insurance physicians agree with any Neuropsych report you have obtained on your own. In fact, there is evidence to suggest disability insurers often disagree with their own IME physicians and request the raw data to interpret it in such as way as it supports a claim denial.**

Please don't read over the fact that disability insurers rarely, if ever accept the results of the original written evaluative report, even their own, if it doesn't support a claim denial. Since the opportunity exists to “interpret and evaluate” the raw data, it can be “manipulated” to say just about anything you want, within reason.

Functional Capacities Examinations

Functional Capacities Evaluations (FCE) are often the most requested IME even though FCEs were are not intended to evaluate disabilities for private insurers. In my experience, the results of FCE's range 60% to 90% against the insured. From an insurance point of view, for structural injuries of the hands, bones, feet, back, the FCE administered by a qualified occupational physician produces the most objective, verifiable, and accurate results. Or, so the story goes.

Originally, the intended purpose of a Functional Capacities Evaluation is to provide Worker's Compensation with impairment body ratings expressed as a % percentage of full-body disability. The FCE is specifically designed to rate work related back and neck injuries, not those disabilities resulting from impairments such as those common for fibromyalgia, chronic pain, MS, SLE, or RSD.

The tests used in an FCE are limited to objective body ratings resulting in conclusive statements as to whether an individual can lift, climb, walk, kneel. These types of exams are useless in evaluating a claimant's ability to "sustain work" for an 8-hour day, for example. Unless the claimant is asked to do an FCE for more than one day, the results are nothing more than a quick photo shot of someone's ability to perform physical work for a few hours.

For the insured, however, the FCE produces mixed results, and there are many indicators in the test which can be interpreted and manipulated in favor of the disability insurer. For most individuals with private disability insurance an FCE is a disaster waiting to happen.

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.

Individuals should never consent to a Functional Capacities Evaluation without the permission of their primary care physician. It may be your impairment is such that a physical capacities evaluation will cause you physical harm. **This is why most disability insurers are required to obtain a prescription from your doctor in order to require you to submit to an FCE.**

You should always check with your doctor to make sure he has signed a prescription allowing you to have the examination. This is significant for those with back and/or muscle injuries as well as those who have limited stamina to perform the completed test. **Prescriptions written for a FCE by anyone other than your primary care physician, such as a prior insurance IME physician are inappropriately obtained.** You should object strenuously to this prescription, and refuse to submit to the evaluation until a prescription is written by your primary care physician.

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 of the DSM-IV, 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 a copy of the Global Assessment of Functioning Scale used by mental health providers to evaluate your functioning and report to the insurance company:

- 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**
 91 **many positive qualities. No symptoms.**
- 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**
 81 **everyday problems or concerns** (*e.g.*, an occasional argument with family
 members).
- 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**
 71 **functioning** (*e.g.*, temporarily falling behind in schoolwork).
- 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,**
 61 **has some meaningful interpersonal relationships.**
- 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
 31 frequently beats up younger children, is defiant at home, and is failing at school).
- 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**
 21 **function in almost all areas** (*e.g.*, stays in bed all day, no job, home, or friends)
- 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**
 11 **impairment in communication** (*e.g.*, largely incoherent or mute).
- 10 **Persistent danger of severely hurting self or others** (*e.g.*, recurrent
 | violence) **OR persistent inability to maintain minimal personal hygiene**
 1 **OR serious suicidal act with clear expectation of death.**
- 0 Inadequate information.

Here is additional information to help you understand the Axis Diagnosis Ratings

Axis I	Clinical Diagnosis
Axis II	Personality Characteristics
Axis III	Physiological—Any organic problems that may be present
Axis IV	Social—Loss of a loved one, sexual abuse, divorce, career changes

Axis V Global Assessment of Functioning (GAF)

GAF ratings of 50 and below are considered to be impairing by the insurance company. The insurance companies will treat psychological tests the same as neuropsych tests in that the results can be interpreted. In general, a claimant will be asked to submit to a neuropsych test first, and then the results are forwarded to a forensic psychiatrist or psychologist for interpretation.

EXERTIONAL STANDARDS USED BY THE US DEPARTMENT OF LABOR

SEDENTARY

Exerting up to 10 pounds of force occasionally and/or negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

LIGHT

Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Even though the weight lifted may be only a negligible amount, a job should be treated as Light Work if:

1. It requires walking or standing to a significant degree;
2. It requires sitting most of the time, but entails pushing and/or pulling of arm or leg controls; and/or
3. When the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

MEDIUM

Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. (Exerting force means lifting.)

HEAVY

Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.

VERY HEAVY

Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects.

“Occasionally” means activity or condition exists up to 1/3 of the time in an 8 hour day (2.57 hours in an 8 hour day)

“Frequently” means activity or condition exists from 1/3 to 2/3 of the time in an 8 hour day. (5.33 hours in an 8 hour day)

“Constantly” means activity or condition exists more than 2/3 of time in an 8 hour day. (More than 5.33 hours in an 8 hour day)

These exertional standards are used to communicate your physical capacity for work. All occupations can be defined as exerting a certain level of physical activity. For example, the occupation of Secretary is considered by the Dictionary of Occupational Titles (published by the US Department of Labor) as “Sedentary” in functional capacity.

For ERISA claims, the problem is that the physical level you may actually be performing on your job is not the same functional level accepted in the national economy for the same occupation. For example, let’s take the job of legal secretary. In a particular office, a secretary may be required to lift, and carry heavy law briefs and books up to 20-25 lbs, and is required to travel to different law firm locations and courthouses. Although the actual job is probably more “Light” in functional capacity, in the national economy the occupation of secretary is defined as “Sedentary”. Now, the insurance company has what it refers to as “a job versus occ dilemma.”

For most ERISA group LTD plans, the insurance company insures your **occupation**, not your **job**.¹ This is probably one of the most difficult concepts for group LTD claimants to grasp: You may *not* be able to do your job, but you *can* do your occupation. Simply put, all disability insurers insure your occupation as it is performed by all other individuals in the national economy rather than how you are actually doing it **FOR YOUR EMPLOYER**.

In my experience, most employees have not been told about the job versus occupation issue, and therefore it is believed by most that they are protected financially if unable to do their **JOB**. Not so. You are only protected if you are unable to perform your occupation as it is generally performed in the national economy.

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.

Nothing 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.

IME Checklist

- ↳ Prepare for the evaluation in advance. Prepare a written document listing your medical history and place it in a folder. Do not write the "story of your life." Just list your medical history, dates of diagnosis, physicians treating you, and hospitalizations. Also, put a copy of your social security disability award letter if you have been awarded benefits, in the folder as well as the most recent medical records from each of your doctors. This folder will be given to the IME physician the date of the examination.
- ↳ 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 of the exam. This is very important. You need to make sure there is a record of your physical condition, given by your primary care physician on the same day you are examined by the IME doctor.
- ↳ 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.
- ↳ Do not attempt to exaggerate symptoms or over react when touched or prodded.
- ↳ 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.
- ↳ Wear hand/arm braces and use any rehabilitative assistant devices like canes, walkers etc. at least two days before the exam, the day of, and two days after the exam. Be watchful and mindful you are likely to be under surveillance for these days as well. Look for strangers in your neighborhood or unfamiliar cars following you during that time period. If you are on good terms with your neighbors, ask

them to alert you if they are contacted by anyone out of the ordinary. Insurance companies frequently use a ruse whereby they call you on the telephone and tell you they want to deliver some sort of mail or package. Be careful of strange phone calls.

- ↪ 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.
- ↪ 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 and get your request on the record. If you are impaired due to a mental or nervous disease, insurance companies will send the IME report to your psychiatrist or therapist, but not to you directly. This is normal, but ask your doctor to obtain it for you.
- ↪ 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, and go to the hospital to be checked out.
- ↪ 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.
- ↪ If you were asked to submit to a Neuropsychiatry Examination, ask your Neurologist or Psychologist to request a copy of the raw data from the examining IME physician. Remember, a neuropsychiatry IME consists of a battery of tests (raw data) which are compared to normative standards, and then are interpreted. You want to make sure YOUR physician has a chance to "interpret" the results along with the IME physician. Neuropsychological organizations prohibit the sending of raw data to persons not qualified to interpret it, so your raw data results will never be sent to you, and certainly should never be sent to a claims handler or placed in your disability file. However, your Neurologist or Neuropsychiatrist may request and receive the data.

Here is an example of a letter sent by the insurance company to the IME physician before the exam. This is what the IME physician is directed to do by your disability insurer. The example given is for someone with muscle, and back disorders.

Dear Dr. Pudding (IME Physician) :

Our insured, Mr. Robert Smith, is a 53-year old mechanic who presented a claim for disability on 7/2/2000, due to several different diagnoses. He suffers from myofascial pain, degenerative disc disease, mild S1 radiculopathy, and multiple psychological issues. Mr. Smith's monthly benefit is \$10,000 per month. **(Why is the insurance company telling the IME physician the amount of the monthly benefit?)**

In order to clarify the extent of our insured's impairment and how it prevents him from returning to his occupation, we believe a comprehensive evaluation is necessary. We are interested in your opinion regarding diagnosis, treatment options, and restrictions and limitations. We have enclosed medical data to assist you with your evaluation.

One of our in-house medical review specialists has formulated questions and issues for you to address in your report. Your report will be reviewed by one of our specialists when it is received. **(By this they mean in-house physician.)** Please carefully review the enclosed medical data **(all medical in the possession of the insurance company is sent to the IME physician for review)** and after examining the insured, address the following in your report:

Obtain a thorough history of Mr. Hurt's orthopedic problems. Include history of onset, previous treatment, results of treatment, and current physical complaints. Please localize and characterize pain and any maneuvers or activities that aggravate or relieve the pain. Include any significant medical history that you feel impacts our insured's problem.

Describe your physical findings, and include significant positive and negative findings to include: range of motion, muscle strength, length and circumference measurements, neurological deficits, reflexes, sensation of skin, circulation, pulse, and observed muscle spasm or atrophy.

Describe the results of any laboratory tests or x-rays you may have performed. List your diagnosis and indicate the objective findings to support each.

After review of the medical history and the professional/work history that details specific job duties, explain what our insured feels he is incapable of performing. Indicate how your exam compares with the prior medical records, diagnostic tests, and imaging reports that are enclosed.

Please list the restrictions and limitations that you feel our insured have that may impair his ability to perform his occupation. What are the objective findings that support these restrictions and limitations?

Please identify any additional diagnostic test you feel should be done to clarify our insured's ability to work. Please contact me at 555-5555-5555 to obtain authorization if you feel the tests can be done at the time of your evaluation.

List any further recommendations for treatment, therapy, surgery, etc. that you feel should be considered. Discuss the prognosis for each of the recommendations. Comment on any verbal statements or physical behaviors that were unusual, unexpected, or inconsistent with the condition claimed. If you feel there is a transient impairment due to surgery, incomplete rehabilitation, or work hardening, when do you feel the temporary impairment will be resolved?

Please respond to the following questions:

1. Are casual observations of activities outside the evaluation process (i.e. sitting while waiting for the evaluation, walking within the facility, opening doors, etc.) consistent with the similar activities that were part of the evaluation process?

2. Please assess our insured's functional performance, capacity, and describe his maximal tolerance, including frequency and duration of each activity. Did the insured give maximum effort?
3. Please comment on our insured's posture and compensatory movements that were present.
4. Is the insured's active ROM within normal limits? Within functional limits? Is there a discrepancy between active ROM and passive?
5. Were responses consistent throughout the evaluation? Does symptom magnification appear to be a factor?

We expect to receive your report within ten business days following the insured's evaluation. Please fax a copy of your typed report, with the hard copy to follow via regular mail. If you cannot comply with this time requirement, please notify us immediately, using the toll-free number.

Sincerely,
Claims Specialist Insurance Company

Well! This is why all disability claimants should make a real effort to prepare themselves for the IME.

If you have any questions concerning this IME article, please let me know and I'll add your question to the Q & A section. Also, please let me know if this information has been useful to you.

This information has been given to you as a service to help you better manage your disability claim. It is, however, proprietary information written by me, and owned by me. It cannot be copied, or transmitted to anyone other than yourself without my permission. Application for copyright has been made and therefore it cannot be reproduced in any way without my permission.

Linda Nee BA, HIA, ALHC, DIA, DHP, CMP
Disability Claims Consultant/Case Manager
Family and Small Business Mediation Services
Disability Claims Solutions