At the 2023 Annual Meeting, the House of Delegates referred Resolution 007, “Independent Medical Evaluation,” to the Board of Trustees. Resolution 007 specifically asked:

That our American Medical Association study and report back at the 2024 Annual Meeting on the Independent Medical Evaluation (IME) process and recommend standards and safeguards to protect injured and disabled patients. (Directive to Take Action)

The resolution was referred to the Board of Trustees for decision in September 2023. At that meeting, the Board of Trustees reviewed the Management report and decided to complete the study, as outlined in the report.

The following study, presented as an informational report, examines IME standards, processes and procedures that impact the rights of examinees and physicians throughout the IME process, as set forth in the resolution. Topics discussed include professional qualifications, ethics, objectivity, safety, and access.

Despite their widespread use, IME processes and approaches can significantly vary across different jurisdictions, which may impact the rights and responsibilities of examinees and physicians. Examining specific jurisdictional regulation protocols such as codes of ethics, educational requirements and licensure protocols are beyond the purview of this report.

PURPOSE AND DEFINITION OF INDEPENDENT MEDICAL EVALUATIONS (IME)

In general, an IME is “a usually one-time evaluation performed by an independent medical examiner who is not treating the patient or claimant, to answer questions posed by the party requesting the IME”.

The most common purpose of an IME is to provide a timely, impartial, and objective assessment of an examinee’s medical condition to determine appropriate diagnoses, causality, the extent of injuries or disabilities, and need for accommodation. This is often required in the context of legal or insurance matters. Unless a limited scope IME is stipulated by the requesting party or refused by the examinee, an IME includes the essential element of a medical assessment, specific to the defined scope of the requested evaluation, including history, examination, and review of relevant records and diagnostic studies.

The goal of the IME physician is to provide an unbiased, evidence-based assessment regarding the individual’s medical status, including the nature and extent of injuries or disabilities. During an IME, the examinee’s relevant medical history, current condition, test results, functional status, and any relevant medical records are assessed. The AMA Guides to the Evaluation of Permanent Impairment (AMA Guides) provide a reliable measurement framework for assessing permanent impairment and are required in many jurisdictions. An impairment rating may be a component of
the IME, which is defined as a “consensus-derived percentage estimate of loss of activity, which
reflects severity of impairment for a given health condition, and the degree of associated limitations
in term of Activities of Daily Living (ADLs)”.

While IMEs and corresponding processes vary among different contexts and jurisdictions, one
commonality is that there is no patient-physician relationship, and many jurisdictions avoid using
the term “patient” in the context of IMEs because this can be construed to establish a patient-
physician relationship. Instead, the term “examinee” is used.

Common Scenarios for IMEs

The applications and requirements of an IME can differ significantly based on different scenarios.
For example, in workers’ compensation, IMEs commonly evaluate the nature and extent of
occupational-related injuries, care-related issues and authorizations, physical work capabilities, and
causality. For insurance claims, particularly those involving personal injury, bodily injury, and
automobile accidents, IMEs can verify the legitimacy and extent of the alleged injuries and medical
status. In many jurisdictions, an injured party’s failure to comply with insurer requests for an IME
or a claim investigation to support a claims determination may be grounds for a denial of the claim
and benefits. Additionally, IMEs are utilized in legal disputes or tort litigation involving alleged
bodily, physical, mental, or other injury claims. Petitioner filings, court or other findings may result
in an IME order to obtain an objective assessment of injuries, disabilities, and/or other issues.

PROFESSIONAL QUALIFICATIONS FOR INDEPENDENT MEDICAL EVALUATORS

The selection of the medical professional with the appropriate qualifications is a fundamental
aspect that can determine the examination's thoroughness and impact the outcome of claims,
benefits, and legal disputes. Judges or juries critically assess the qualifications and expertise of the
physician to ensure that their evaluation is reliable and based on sound medical judgment. The
presence of established standards and resources for IME training and certification underscores the
importance of having skilled, ethical, and unbiased medical professionals conduct these
examinations within their scope of practice.

Jurisdictional regulations or protocols may include specific criteria for physician qualifications.
The following qualifications are commonly recommended across most jurisdictions:

• Unrestricted license to practice medicine in the jurisdiction.
• Relevant board-certification in a specialty recognized by the American Board of Medical
  Specialties.
• Competency in report-writing and the ability to provide deposition and expert testimony
  are essential. These skills ensure that the physician can effectively communicate their
  medical findings and rationale in legal or insurance contexts.
• Professional history should be free from adverse events that could compromise their
  credibility or impartiality in performing an IME.

Specialized credentials or certification may be required on a jurisdictional-specific basis.

Objectivity and Bias

The IME process should be objective, independent and unbiased with the substantiation of findings
and recommendations based upon available information and evidence. Physician transparency in
reporting and testimony can reinforce impartiality. Having IMEs performed in a timely manner in
an appropriately situated and appointed environment is in the best interest of the examinee and
involved parties. However, there may be conflicts of interest to consider.

The AMA Code of Ethics\(^5,6\) addresses the ethical considerations for physicians employed by
businesses or insurance companies, as well as independent medical examiners assessing health or
disability. The IME physician may obtain personal information about patients outside an ongoing
patient-physician relationship, such as assessments for employers or insurers. It is also important to
obtain written consent, as required by law, to provide disclosure to third parties.\(^6\)

While practicing in these roles, physicians have dual responsibilities to both the patient and the
employer or third party. However, there is also the additional duty to uphold the obligations of a
medical professional. Therefore, the following should be considered:\(^5\)

- Disclose the nature of the relationship with the employer or third party before gathering
  health information from the patient.
- Explain that the goal is to assess the patient's health or disability independently and
  objectively, distinguishing it from the traditional fiduciary role of a physician.
- Protect patients' personal health information according to professional confidentiality
  standards.
- Inform the patient about significant findings during the examination, suggesting follow-up
  care from a qualified physician when appropriate.

PROTECTIONS FOR THE EXAMINEE

**Informed Consent**

It is important for examinees to understand their jurisdictionally specific rights and the potential
implications of the examination's findings on their claims or legal cases. This information should
be communicated to the examinee via the informed consent process. The examiner must explain
that there is no physician-patient relationship involved and the evaluation is not a traditional
medical evaluation conducted by their treating physician.\(^3,4\) Additionally, the examinee must advise
the examiner immediately if any problems are encountered during the evaluation and a report will
be provided to the requesting client.

Additional best practices for the informed consent process are as follows:\(^4\)

- Discuss the importance of the examinee’s reading and signing of a written informed
  consent with the examinee prior to the evaluation.
- Establish the ground rules for the performance of the service.
- Provide the opportunity for the examinee to understand the rationale for the IME, who is
  requesting the evaluation, and where the report will be sent.
- Ensure the examinee understands what the IME provider can and cannot do.
- Acknowledge that the examinee understands that there will be no physician-patient
  relationship established.
- Confirm that there will not be a discussion regarding diagnoses nor any recommendations
  for treatment.
- Indicate that the examinee is consenting to having their history taken and that an
  examination will occur.
- Clearly state that the IME physician is independent and that any opinions developed are
given irrespective of anyone else involved in the claim (a third-party evaluation).
• State that there is an understanding that the results of the evaluation (the report) will only be given to the requesting party (unless there is a jurisdictional rule that requires something else).

• Spend an appropriate amount of time on the informed consent process to ensure that the IME physician can answer questions or clarify points that are not well understood.

IME Report Access

An examinee may have the right to access their IME report, but the process and ease of access can vary based on jurisdiction, the specific policies of the requesting entity (such as an insurance company or employer), and the purpose of the IME. There might be a specific timeframe within which the IME report must be requested or provided.

Examinees should be encouraged to inquire about the request process or seek assistance from their legal representative to understand their rights and the best approach to obtain the IME report. These rights are often outlined in health information privacy laws or regulations concerning workers' compensation and personal injury cases. For IMEs conducted as part of an insurance claim or workers' compensation case, the report is typically part of the claim file. In the context of legal disputes, IME reports may become part of the discovery process, allowing the examinee or their attorney to access the report as part of the case proceedings.

Third-Party Observation

Some jurisdictions may have specific regulations or guidelines that address whether third-party observers are allowed during IMEs. Examinees and their representatives should clarify the rules and policies regarding third-party observers in advance. This might involve consulting with legal counsel, reviewing the request for the IME, and directly communicating with the requesting organization, insurance company, or physician coordinating the examination.

The presence of a third-party observer raises issues of patient privacy, confidentiality, and integrity of the examination process, and research shows that it will bias the evaluation to the extent that in most cases, the results are invalid.\textsuperscript{4,7} If a third party is allowed because of jurisdictional rule, the individual undergoing the IME and the third party should agree to confidentiality terms. Any observer will need to agree to not interfere with the examination.

PROTECTIONS FOR PHYSICIANS

The IME physician may be asked to render an opinion based upon incomplete information, inadequate records, a limited in person evaluation, or an examinee who is uncooperative or misrepresenting their true status for potential secondary gain. The examiner may be requested to report on the nature and extent of alleged, documented or observed injuries, and function based upon the available information and findings, within a reasonable degree of certainty.

Despite challenges that may arise during an IME, the evaluating physician’s goal remains to provide an unbiased, objective opinion regarding the examinee’s medical and/or physical status.

When possible, physicians should identify and request additional records and information if needed to objectively provide their report. Indicating that conclusive findings cannot be rendered with the available information may be necessary in some circumstances.

In addition to examinee rights, the following list outlines best practices for minimizing professional risks for physicians conducting IMEs:
• Detailed record-keeping of the IME process, findings, and the basis for conclusions to safeguard against potential disputes or allegations of misconduct. Documentation should be clear, factual, and free of any speculation.

• Safeguarding all IME-related documents and records, including during transport.

• Clear, professional communication with all parties involved. This includes the ability to explain medical terms and findings in layman's terms, which can reduce misunderstandings and conflicts.

• Only performing IMEs in their respective area of specialty and board certification. If an examination or interpretation of findings falls outside expertise, consult with other specialists.

• Having appropriate professional liability insurance that covers IMEs to provide financial and legal protection in case legal claims arise.

• Staying informed about the latest developments and any changes in laws or guidelines related to IMEs to avoid practices that may cause exposure to liability.

• Seeking advice, when in doubt, on complex issues related to IMEs from legal professionals or a professional association.

• Identifying, disclosing and avoiding conflicts of interest, such as evaluating family members.

• Taking precautions disclosing information to third parties, limiting it to the minimum necessary for the intended purpose and remove individually identifying information before releasing aggregate data or statistical health information.

STRUCTURAL BARRIERS IMPACTING PHYSICIANS AND EXAMINEES

There is a national shortage of qualified physicians to meet the market demands for IMEs and associated timely report submissions. The shortage impacts timely decision making and authorization of care and subsequent appeals, creating an extra burden on examinees. The shift towards health care delivery consolidation and away from independent practice further contributes to the difficulty of scheduling and administering IMEs. Interstate and compact licensing affording physicians the right to perform IMEs beyond the boundaries of their jurisdiction could increase the pool of available qualified physicians to perform IMEs and promote access to care.

CONCLUSION

It is important for physicians to implement standards and safeguards when performing IMEs to protect examinees, themselves, and all other involved parties. Regulations, professional requirements, and protocols for IMEs differ both by jurisdiction and context in which the IME is being sought. However, despite myriad differences across jurisdictions, this report outlines numerous best practices for conducting IMEs that can enhance the quality of the examinee experience, as well as the scientific and evaluative rigor of the evaluating physician within this vital process. Additionally, critical elements like a thorough informed consent process, clear communication with the patient, and practicing within one’s clinical expertise are some of the methods that can be deployed to protect both the IME physician and the examinee.
REFERENCES


