

REPORT OF THE BOARD OF TRUSTEES

B of T Report 32-A-24

Subject: Independent Medical Evaluation

Presented by: Willie Underwood III, MD, MSc, MPH, Chair

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

3
4 That our American Medical Association study and report back at the 2024 Annual Meeting on
5 the Independent Medical Evaluation (IME) process and recommend standards and safeguards
6 to protect injured and disabled patients. (Directive to Take Action)

7
8 The resolution was referred to the Board of Trustees for decision in September 2023. At that
9 meeting, the Board of Trustees reviewed the Management report and decided to complete the
10 study, as outlined in the report.

11
12 The following study, presented as an informational report, examines IME standards, processes and
13 procedures that impact the rights of examinees and physicians throughout the IME process, as set
14 forth in the resolution. Topics discussed include professional qualifications, ethics, objectivity,
15 safety, and access.

16
17 Despite their widespread use, IME processes and approaches can significantly vary across different
18 jurisdictions, which may impact the rights and responsibilities of examinees and physicians.
19 Examining specific jurisdictional regulation protocols such as codes of ethics, educational
20 requirements and licensure protocols are beyond the purview of this report.

21 22 PURPOSE AND DEFINITION OF INDEPENDENT MEDICAL EVALUATIONS (IME)

23
24 In general, an IME is “a usually one-time evaluation performed by an independent medical
25 examiner who is not treating the patient or claimant, to answer questions posed by the party
26 requesting the IME”.¹ The most common purpose of an IME is to provide a timely, impartial, and
27 objective assessment of an examinee’s medical condition to determine appropriate diagnoses,
28 causality, the extent of injuries or disabilities, and need for accommodation. This is often required
29 in the context of legal or insurance matters. Unless a limited scope IME is stipulated by the
30 requesting party or refused by the examinee, an IME includes the essential element of a medical
31 assessment, specific to the defined scope of the requested evaluation, including history,
32 examination, and review of relevant records and diagnostic studies.³

33
34 The goal of the IME physician is to provide an unbiased, evidence-based assessment regarding the
35 individual's medical status, including the nature and extent of injuries or disabilities. During an
36 IME, the examinee’s relevant medical history, current condition, test results, functional status, and
37 any relevant medical records are assessed. The *AMA Guides to the Evaluation of Permanent*
38 *Impairment* (AMA Guides) provide a reliable measurement framework for assessing permanent
39 impairment and are required in many jurisdictions.^{1,2} An impairment rating may be a component of

1 the IME, which is defined as a “consensus-derived percentage estimate of loss of activity, which
2 reflects severity of impairment for a given health condition, and the degree of associated limitations
3 in term of Activities of Daily Living (ADLs)”.¹ The AMA Guides Editorial Panel ensures the AMA
4 Guides are up to date with the latest evidence-based medicine and science.

5
6 While IMEs and corresponding processes vary among different contexts and jurisdictions, one
7 commonality is that there is no patient-physician relationship, and many jurisdictions avoid using
8 the term “patient” in the context of IMEs because this can be construed to establish a patient-
9 physician relationship. Instead, the term “examinee” is used.^{1,3,4}

10 11 *Common Scenarios for IMEs*

12
13 The applications and requirements of an IME can differ significantly based on different scenarios.
14 For example, in workers' compensation, IMEs commonly evaluate the nature and extent of
15 occupational-related injuries, care-related issues and authorizations, physical work capabilities, and
16 causality. For insurance claims, particularly those involving personal injury, bodily injury, and
17 automobile accidents, IMEs can verify the legitimacy and extent of the alleged injuries and medical
18 status. In many jurisdictions, an injured party’s failure to comply with insurer requests for an IME
19 or a claim investigation to support a claims determination may be grounds for a denial of the claim
20 and benefits. Additionally, IMEs are utilized in legal disputes or tort litigation involving alleged
21 bodily, physical, mental, or other injury claims. Petitioner filings, court or other findings may result
22 in an IME order to obtain an objective assessment of injuries, disabilities, and/or other issues.

23 24 PROFESSIONAL QUALIFICATIONS FOR INDEPENDENT MEDICAL EVALUATORS

25
26 The selection of the medical professional with the appropriate qualifications is a fundamental
27 aspect that can determine the examination's thoroughness and impact the outcome of claims,
28 benefits, and legal disputes. Judges or juries critically assess the qualifications and expertise of the
29 physician to ensure that their evaluation is reliable and based on sound medical judgment. The
30 presence of established standards and resources for IME training and certification underscores the
31 importance of having skilled, ethical, and unbiased medical professionals conduct these
32 examinations within their scope of practice.

33
34 Jurisdictional regulations or protocols may include specific criteria for physician qualifications.
35 The following qualifications are commonly recommended across most jurisdictions:

- 36
37
- 38 • Unrestricted license to practice medicine in the jurisdiction.
 - 39 • Relevant board-certification in a specialty recognized by the American Board of Medical
40 Specialties.
 - 41 • Competency in report-writing and the ability to provide deposition and expert testimony
42 are essential. These skills ensure that the physician can effectively communicate their
43 medical findings and rationale in legal or insurance contexts.
 - 44 • Professional history should be free from adverse events that could compromise their
45 credibility or impartiality in performing an IME.

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

47 48 *Objectivity and Bias*

49
50 The IME process should be objective, independent and unbiased with the substantiation of findings
51 and recommendations based upon available information and evidence.^{3,4} Physician transparency in

1 reporting and testimony can reinforce impartiality. Having IMEs performed in a timely manner in
2 an appropriately situated and appointed environment is in the best interest of the examinee and
3 involved parties. However, there may be conflicts of interest to consider.

4
5 The *AMA Code of Ethics*^{5,6} addresses the ethical considerations for physicians employed by
6 businesses or insurance companies, as well as independent medical examiners assessing health or
7 disability. The IME physician may obtain personal information about patients outside an ongoing
8 patient-physician relationship, such as assessments for employers or insurers. It is also important to
9 obtain written consent, as required by law, to provide disclosure to third parties.⁶

10
11 While practicing in these roles, physicians have dual responsibilities to both the patient and the
12 employer or third party. However, there is also the additional duty to uphold the obligations of a
13 medical professional. Therefore, the following should be considered:⁵

- 14
- 15 • Disclose the nature of the relationship with the employer or third party before gathering
- 16 health information from the patient.
- 17 • Explain that the goal is to assess the patient's health or disability independently and
- 18 objectively, distinguishing it from the traditional fiduciary role of a physician.
- 19 • Protect patients' personal health information according to professional confidentiality
- 20 standards.
- 21 • Inform the patient about significant findings during the examination, suggesting follow-up
- 22 care from a qualified physician when appropriate.
- 23

24 PROTECTIONS FOR THE EXAMINEE

25 *Informed Consent*

26
27
28 It is important for examinees to understand their jurisdictionally specific rights and the potential
29 implications of the examination's findings on their claims or legal cases. This information should
30 be communicated to the examinee via the informed consent process. The examiner must explain
31 that there is no physician-patient relationship involved and the evaluation is not a traditional
32 medical evaluation conducted by their treating physician.^{3,4} Additionally, the examinee must advise
33 the examiner immediately if any problems are encountered during the evaluation and a report will
34 be provided to the requesting client.

35
36 Additional best practices for the informed consent process are as follows:⁴

- 37
- 38 • Discuss the importance of the examinee's reading and signing of a written informed
- 39 consent with the examinee prior to the evaluation.
- 40 • Establish the ground rules for the performance of the service.
- 41 • Provide the opportunity for the examinee to understand the rationale for the IME, who is
- 42 requesting the evaluation, and where the report will be sent.
- 43 • Ensure the examinee understands what the IME provider can and cannot do.
- 44 • Acknowledge that the examinee understands that there will be no physician-patient
- 45 relationship established.
- 46 • Confirm that there will not be a discussion regarding diagnoses nor any recommendations
- 47 for treatment.
- 48 • Indicate that the examinee is consenting to having their history taken and that an
- 49 examination will occur.
- 50 • Clearly state that the IME physician is independent and that any opinions developed are
- 51 given irrespective of anyone else involved in the claim (a third-party evaluation).

- 1 • State that there is an understanding that the results of the evaluation (the report) will only
2 be given to the requesting party (unless there is a jurisdictional rule that requires something
3 else).
- 4 • Spend an appropriate amount of time on the informed consent process to ensure that the
5 IME physician can answer questions or clarify points that are not well understood.

6 7 *IME Report Access*

8
9 An examinee may have the right to access their IME report, but the process and ease of access can
10 vary based on jurisdiction, the specific policies of the requesting entity (such as an insurance
11 company or employer), and the purpose of the IME. There might be a specific timeframe within
12 which the IME report must be requested or provided.

13
14 Examinees should be encouraged to inquire about the request process or seek assistance from their
15 legal representative to understand their rights and the best approach to obtain the IME report. These
16 rights are often outlined in health information privacy laws or regulations concerning workers'
17 compensation and personal injury cases. For IMEs conducted as part of an insurance claim or
18 workers' compensation case, the report is typically part of the claim file. In the context of legal
19 disputes, IME reports may become part of the discovery process, allowing the examinee or their
20 attorney to access the report as part of the case proceedings.

21 22 *Third-Party Observation*

23
24 Some jurisdictions may have specific regulations or guidelines that address whether third-party
25 observers are allowed during IMEs. Examinees and their representatives should clarify the rules
26 and policies regarding third-party observers in advance. This might involve consulting with legal
27 counsel, reviewing the request for the IME, and directly communicating with the requesting
28 organization, insurance company, or physician coordinating the examination.

29
30 The presence of a third-party observer raises issues of patient privacy, confidentiality, and integrity
31 of the examination process, and research shows that it will bias the evaluation to the extent that in
32 most cases, the results are invalid.^{4,7} If a third party is allowed because of jurisdictional rule, the
33 individual undergoing the IME and the third party should agree to confidentiality terms. Any
34 observer will need to agree to not interfere with the examination.

35 36 PROTECTIONS FOR PHYSICIANS

37
38 The IME physician may be asked to render an opinion based upon incomplete information,
39 inadequate records, a limited in person evaluation, or an examinee who is uncooperative or
40 misrepresenting their true status for potential secondary gain. The examiner may be requested to
41 report on the nature and extent of alleged, documented or observed injuries, and function based
42 upon the available information and findings, within a reasonable degree of certainty.

43
44 Despite challenges that may arise during an IME, the evaluating physician's goal remains to
45 provide an unbiased, objective opinion regarding the examinee's medical and/or physical status.
46 When possible, physicians should identify and request additional records and information if needed
47 to objectively provide their report. Indicating that conclusive findings cannot be rendered with the
48 available information may be necessary in some circumstances.

49
50 In addition to examinee rights, the following list outlines best practices for minimizing professional
51 risks for physicians conducting IMEs:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

- 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 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.⁶

STRUCTURAL BARRIERS IMPACTNG 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.

1 REFERENCES

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1. American Medical Association. *Guides to the Evaluation of Permanent Impairment*. 6th ed. 2023. Accessed March 10, 2024. <https://ama-guides.ama-assn.org/books/book/11/AMA-Guides-to-the-Evaluation-of-Permanent>
2. American Medical Association. AMA Guides Sixth 2023: Current medicine for permanent impairment ratings. Accessed, March 9, 2024. <https://www.ama-assn.org/delivering-care/ama-guides/ama-guides-sixth-2023-current-medicine-permanent-impairment-ratings>
3. Brigham C, Direnfeld LK, Feinberg S, Kertay L, Talmage JB. Independent Medical Evaluation Best Practices. *AMA Guides Newsletter*. 2017; 22 (5): 3–18.
4. Martin DW. Independent Medical Evaluations- A Practical Guide. Cham, Switzerland. Springer International Publishing AG; 2018.
5. American Medical Association. AMA Code of Medical Ethics. Chapter 1: Opinions on Patient-Physician Relationships, section 1.2, Special Issues in Patient-Physician Relationships, 1.2.6, Work-Related and Independent Medical Examinations. Accessed March 8, 2024. <https://www.ama-assn.org/system/files/code-of-medical-ethics-chapter-1.pdf>.
6. American Medical Association. AMA Code of Medical Ethics. Chapter 3: Privacy, Confidentiality & Medical Records, section 3.2, Special Issues in Patient-Physician Relationships, 3.2.3, Industry-Employed Physicians & Independent Medical Examiners. Accessed March 13, 2024. <https://code-medical-ethics.ama-assn.org/ethics-opinions/industry-employed-physicians-independent-medical-examiners>
7. Barth R. Observation compromises the credibility of an evaluation. *AMA Guides Newsletter*. 2007; 12(4): 1-3, 8-9.