



BRAIN INJURY ASSOCIATION OF NEW JERSEY

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Helpline: 1-800-669-4323

No Brain Injury is
Too Mild to Ignore,
or Too Severe to
Lose Hope

Independent Medical Examinations (IME)

By Nathan D. Zasler, MD, FAAPM&R, FAADEP, DAAPM, CIME

Question: I currently am involved in litigation regarding a concussion sustained in a motor vehicle crash. I am being sent for a so-called "IME." Please explain what exactly this is, and what kinds of things should or should not occur within the framework of such an exam.

Answer: Thanks for your question. As someone who has sustained a brain injury and is involved in the legal process, your life invariably becomes an "open book." Clearly, there are agenda differences not only between clinicians who perform independent medical examinations (IMEs), but certainly between clinicians and attorneys. I think, oftentimes, this is forgotten in the context of IMEs. Bluntly put, your attorney's job is to represent you as best as possible and procure the most money for both of you in the process. It is the defense attorney's job to ensure that you receive the least possible amount of money. The true independent medical examiner's job is to provide an unbiased opinion regarding what your impairments are-as related specifically to the injury in question.

An IME is a medical examination performed by a physician not involved in the care of the individual who sustained the injury for the purpose of providing information about the person and his/her injury to a third party. In the strictest sense of the phrase, the examination should be impartial, unbiased and objective. Unfortunately, there are many clinicians who perform IMEs and provide biased opinions; that is, they tend to "lean" to the side that hires them. If one is following the "traditional" ethical guidelines of performing an IME, there is no physician/patient relationship established. That said, the relationship is that of examiner and examinee. In this context, as opposed to the physician/patient relationship, there is no physician/patient privilege (i.e., meaning anything you say can be brought up later in court).

As both a Fellow American Academy of Disability Evaluating Physician and a Certified Independent Examiner, it is my strong belief that assessment should include a comprehensive history and physical. In general, this history and the assessment should consider pre-injury-, injury- and post-injury-related issues. The assessment should be both holistic and functionally oriented.

A good IME typically will require several hours of an examiner's time. Personally, I generally will take a full work day to perform an IME on a person with acquired brain injury (ABI), assuming that he/she is higher functioning. The examination includes paperwork, testing, interviewing and a physical examination. Assuming the requesting party asks for a written report, this report should be quite comprehensive in nature. A good IME



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report should include introductory information; reasons for referral; basis of opinions relative to the records reviewed and person interviewed; history of present illness; past medical history; allergies; current, relevant and past medications for the condition in question; psychosocial, family, educational, military service and legal history-including other workers' compensation-related injuries as relevant-vocational history; physical examination; and behavioral and mental status testing.

Taking a history via interview is crucial to understanding not only a baseline level of function for the individual but also to make comments regarding the causal relationship of the injury in question to the current set of symptoms. Additional parts of the report typically include commentary of whether or not the examinee is stationary with regard to his/her sequelae from injury-related sequela. Often, this is termed "maximum medical improvement" or MMI. Prognosis, in general, also should be discussed from a neurologic, medical and orthopedic standpoint. Certainly, functional prognosis may be seen in a different light than a true "medical mode" prognosis and this also should be discussed-particularly in the psychiatric/rehabilitation medicine evaluation.

Typically, another area that is included as a separate section in an IME is comments regarding causality and apportionment. That is, how much of the current symptoms one is experiencing are truly related to the injury in question (so-called causality). Apportionment deals with how much of a current impairment actually is related to the event in question. For example, if someone had a headache before the injury and that headache was exacerbated by the injury, one would have to make some comments as to what percent or part of the current condition was injury related. It also is clearly important to discuss vocational status and prognosis. Typically, a selection dealing with general and/or specific impressions also is included. In conclusion, most practitioners also make recommendation for treatment, although sending someone for treatment is not appropriate in the context of an IME, as this puts one in an awkward ethical position germane to being seen potentially as a "treating" physician. If one follows the typical parameters of how an IME is conducted, the examining physician should not share his/her opinions with the examinee at the conclusion of the examination. These opinions are to be conveyed only to the requesting party.

Ideally, as an examinee, you want to try and have as much control over the environment of the examination as possible. Although most examiners-including myself-find audiotaping or videotaping intrusive, this does provide a historical record of the examination that may be useful to your attorney. I think, in fairness to the process, the recording should be made available as soon as possible to all parties involved in the litigation, including the examiner. Ideally, you want to be seen by an examiner who



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has a reputation of being fair and participating in relatively equal amounts of plaintiff- and defense-oriented work. A significant lean in either direction certainly may bring into question the validity of the opinions generated by that examiner.

I also would note that there are a number of certification training and continuing education courses now being offered in the area of impairment and disability assessment, as well as independent medical examinations. One needs to look closely at the quality of these, as some are more "weighty" and significant than others.

In my opinion, it is difficult to find a "fair" and "unbiased" examiner. I highly recommend that you document what you can remember about your examination immediately afterward so that there is a written record of your recollection of events during the examination. For example, I often have had my own clients undergo IMEs where the physician literally spent 30 minutes with them for the entire examination. Additionally, knowing what was done during the examination, as far as questions asked, and maybe more importantly, what was done, can be just as significant. Another example I find quite commonplace is individuals who are seen for post-traumatic headache in the context of an IME and were never examined by a practitioner relative to palpation of their head/neck or shoulder during their IME.

Unfortunately, the medicolegal process often does not guarantee an unbiased IME. In my experience, justice is not always served. Be aware that with litigation, your life becomes an open book. It is a difficult process for all involved, attorneys, claimants and independent medical examiners. The process often can become quite adversarial. The more you as a litigant realize this, the better. Hopefully with further training relative to ethics and IME content, practitioners will be better able to meet the needs of providing unbiased and comprehensive IMEs in cases like your own.

*Nathan D. Zasler, MD, FAAPM&R, FAADEP, DAAPM, CIME, is an internationally respected specialist in brain injury care and rehabilitation. Dr. Zasler is medical director of the Concussion Care Centre of Virginia, Ltd. and is involved with several brain injury rehabilitation programs in the Richmond, Virginia area, including Tree of Life, LLC, a living assistance program for persons with ABI. Dr. Zasler has lectured and written extensively on neurologic issues with over 500 lectures and publications, including two edited textbooks. Dr. Zasler is a member of numerous editorial boards and is editor-in-chief of the international scientific publication *Neurorehabilitation: An Interdisciplinary Journal*. He is active in numerous national and international organizations including serving on the Board of Governors of the International Brain Injury Association (IBIA). He is also grant reviewer for several federal agencies and serves on*



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the Advisory Board for the Department of Head Injury Program. His main areas of interest include low-level neurologic states after brain injury, post-concussive disorders and neuromedical issues in acquired brain injury.

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*Additional information can be found at: Helpline: 1.800.669.6443
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