

IME Vs. Second Opinion

Timing and How Best to Achieve The Best Results

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Types Of Exams

What is the Difference Between:

- Independent Medical Exam
- Impartial Exam
- Second Opinion Exam

IME – Independent Medical Exam

The statutory right established under MGL Chapter 152, Section 45 for the Insurer or Insured to have the injured employee examined by a registered physician* of their choosing.

Purpose: This exam gives the Insurer the opportunity to question/confirm the:

- Diagnosis
- The treatment to date
- The level of objective findings
- Level of disability
- The credibility of the Employees' symptoms and physical complaints

*This physician does not “treat” the Employee.

Is it really an Independent Exam?

Section 45

Section 45. After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if requested by the insurer or insured, submit to an examination by a registered physician, furnished and paid for by the insurer or the insured. The employee may have a physician provided and paid for by himself present at the examination. If a physician provided by the employee is not present at the examination, it shall be the duty of the insurer to file with the division a copy of the report of its examining physician or physicians if and when such report is to be used as the basis of any order by the division. If the employee refuses to submit to the examination or in any way obstructs it, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. The employee's right to compensation shall also be suspended during any period the employee refuses the insurer's written request that the employee be evaluated by a vocational rehabilitation specialist within the department. This written request may occur only once every six months.

If the injured employee, at the request of the insurer or the division undergoes medical examination or treatment such employee shall be reimbursed by the insurer for reasonable travel expense incidental thereto and for any loss of wages as a result thereof in like manner as though he were disabled under the provisions of this chapter. Such payments shall not be construed as an admission of liability by the insurer in those cases where the liability has not been assumed by it. If the amount of such reimbursement is not agreed upon by the parties, it may be determined by a hearing as provided under section twelve.

Impartial Exam/Section 11A Exam

“The Administrative Judge’s Doctor”

This exam is utilized whenever there is any claim or complaint involving a dispute over medical issues which are the subject of an Appeal of a Conference Order

The parties shall agree upon an Impartial Medical Examiner from the roster to examine the employee and submit such choice to the Administrative Judge, or said Administrative Judge shall appoint such Examiner from the roster . . . Such Impartial Physician’s report shall constitute Prima Facie evidence of the matter contained therein.

This physician does not treat the injured employee.

*The Impartial Examiner’s report is **very** important regarding the direction the litigation will go.

Section 11A

Section 11A. (1) With the assistance of the medical consultant to the commissioner and the administrative judges, the senior judge shall periodically review and update a roster of impartial medical examiners who are certified specialists in various medical fields and who are willing to make prompt reports and be deposed as hereinafter provided. The department shall establish criteria for being named to and remaining on said roster.

(2) When any claim or complaint involving a dispute over medical issues is the subject of an appeal of a conference order pursuant to section ten A, the parties shall agree upon an impartial medical examiner from the roster to examine the employee and submit such choice to the administrative judge assigned to the case within ten calendar days of filing the appeal, or said administrative judge shall appoint such examiner from the roster. The insurer or any claimant represented by counsel who files such appeal shall also submit a fee equal to the average weekly wage in the commonwealth at the time of the appeal to defray the cost of the medical examination under this section within ten days of filing said appeal; provided, however, that where more than one party appeals, the fee shall be divided equally among all appealing parties; provided, further, that such amount paid by a claimant shall be refunded by the insurer to any claimant who prevails at the hearing.

The impartial medical examiner, so agreed upon or appointed, shall examine the employee and make a report at least one week prior to the beginning of the hearing, which shall be sent to each party. No hearing shall be commenced sooner than one week after such report has been received by the parties. The report of the impartial medical examiner shall, where feasible, contain a determination of the following: (i) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature, and (iii) whether or not within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment. Such report shall also indicate the examiner's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any. Such impartial physician's report shall constitute prima facie evidence of the matters contained therein.

Section 11A (Cont.)

Failure of an employee to report to an impartial medical examiner agreed upon or appointed under this section or under section eight, after due notice and without cause, and failure to submit to such examiner all relevant medical records, medical reports, medical histories, and any other relevant information requested without good reason, shall constitute sufficient cause for suspension of benefits pursuant to section forty-five. The report of the impartial medical examiner shall be admitted into evidence at the hearing. Either party shall have the right to engage the impartial medical examiner to be deposed for purposes of cross examination. Notwithstanding any general or special law to the contrary, no additional medical reports or depositions of any physicians shall be allowed by right to any party; provided, however, that the administrative judge may, on his own initiative or upon a motion by a party, authorize the submission of additional medical testimony when such judge finds that said testimony is required due to the complexity of the medical issues involved or the inadequacy of the report submitted by the impartial medical examiner. The fact that the impartial examiner has not treated the employee shall not constitute sufficient reason for finding any report of an impartial medical examiner inadequate.

(3) The fee for the provision of a medical report by any impartial medical examiner engaged under this section shall be a reasonable amount approved by the commissioner, and shall be paid by the department to the physician promptly upon receipt of the report. The fee for the provision of a deposition by any impartial medical examiner engaged under this section shall be a reasonable amount approved by the commissioner, and shall be paid by the deposing party directly to the physician promptly upon receipt of the report; provided, however, that if the decision of the administrative judge is in favor of the employee, the cost of such deposition shall be added to the amount awarded to the employee and be paid by the insurer under the provisions of this chapter. In reviewing and updating said roster, the senior judge shall utilize the criteria developed by the health care services board pursuant to section thirteen.

Second Opinion Exam

A medical exam with a physician other than the one the Injured Employee has previously been seeing in order to get more information or to hear a differing point of view.

Reasons to Get a Second Opinion:

- Physician recommends surgery
- Physician diagnosed patient with a serious medical condition
- Physician recommends treatment for the patient other than what the patient believes is necessary
- Physician is not an expert/specialist in the area
- Physician will not accept the reimbursement rates offered by the Insurer

Section 30 “ . . . Where referred by the treating healthcare professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty”

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Michael P. Kelley currently serves as Senior Vice President and Director of Claims Operations at HUB International New England, a leading insurance brokerage firm, in a position held since May 2014.

HUB's dedicated claim staff advocates for their policyholders when claim complications occur; Michael and the team of claim professionals guide HUB's clients through the entire onerous and sometimes challenging claim process to efficiently manage the process to troubleshoot, as needed, to make it easier for their clients. Michael is based in HUB's Wilmington, MA, office. As the leader of the Claims Management Department, his duties include: claim advocacy, meetings with clients, adjusters, and loss inspectors; claims management; and settlement strategies. Michael assists, as needed, in the settlement negotiations at all levels with adjusters and carriers, ensuring that clients receive maximum payments on all first party claims as well as full benefits of all coverages provided under their policies.

Michael holds over 33 years of insurance industry experience, beginning his career with the American Mutual Insurance Companies in 1982. He was trained in all lines of claim investigation with a focus on both commercial and personal lines claims. He held various positions including Field Investigator, Claim Supervisor, Assistant Claim Manager and Regional Claim Manager. He became the Operations Manager for an independent consulting firm in 1993. He spent the next 20 years as the Vice President of Claims at the A.I.M. Mutual Insurance Companies. He is considered an expert in the area of workers' compensation claim handling, and is a frequent speaker on the worker's compensation claim process.

Michael holds both an Associate in Risk Management (ARM) and an Associate in Claims (AIC) designation from the Insurance Institute of America. He has been an instructor at the Insurance Library Association of Boston for the last ten years. He is a former member of the Workers' Compensation Rating and Inspection Bureau (WCRIB) Claim Committee, as well as the Board of Governors of the Insurance Fraud Bureau of Massachusetts. In 2015, the Governor of Massachusetts appointed him to be the Insurance Industry Representative on the Workers Compensation Advisory Council at the Department of Industrial Accidents. He has dedicated his career to improving the workers compensation system and reducing the impact of claims on both the employer and employee community.

Michael holds a Bachelor of Science degree in Business Management from Merrimack College where he majored in accounting.

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