

What is an Independent Medical Examination?

Independent medical examination (IME) is a fancy term for being examined by a doctor when you are involved in some kind of claim or lawsuit where your physical or mental condition or an injury is in dispute. You may be required submit to an IME when you are pursuing a:

- Personal injury lawsuit (as plaintiff);
- New York No-Fault insurance claim (from a motor vehicle accident);
- Worker's Compensation claim; or,
- Disability insurance benefits claim.

There are several things you should know about the IME. The “other side” – usually an insurance company – selects the doctor. Usually, the doctor has a medical specialty in the area where the hurt person is claiming injury. So a claim for a fractured arm or leg should mean you see an orthopedist; an eye injury, an ophthalmologist; broken teeth, a dentist; and so on. You may be asked to undergo more than one IME visit, by doctors with different specialties. After you are examined the IME doctor will write a report that will be sent to the insurance company or law firm that hired him or her. Usually a copy is then sent to your attorney.

IMEs are not really “independent.” The doctor examining you is paid by the insurance company and he or she knows that a continued flow of insurance company business depends on making findings and writing reports that minimize your claim – for the greater good and benefit of the company paying the bill. This can lead to outrages like reports indicating extra tests with negative results that were never even performed in the office or the patient complaining about aches and pains or limitations/restrictions and the IME doctor agreeing with that person but then writing a report that omits that information. The IME report may even read like it was someone else with different injuries who was examined.

Remember, an IME doctor is not trying to help the injured accident victim get better or cured. An IME doctor is hired to punch holes in a claimant's or plaintiff's case.

What to expect and how to behave at an IME examination.

Arrive a little early. You may be asked to fill out a medical history form.

Don't be hostile to the IME doctor; be cooperative. The doctor will ask questions about the accident. Keep your answers short and sweet. You should bring a pad and pen and note how long the exam takes and what tests are performed on you. Make this information available to your attorney afterwards.

You may want to bring notes with you to the IME with a list of symptoms – what hurts

you and when and your physical or mental limitations, what medical tests you have had with positive results, and what medications you're taking and why.

During the IME, tell the doctor if it hurts. If something doesn't hurt, don't lie. The doctor will usually know and you may damage your case or claim.

You do not have to submit to invasive tests such as x-rays or take any injections.

Watch for tricks. The doctor may drop something to see if you can bend down and pick it up. Also, you will be observed getting on and off the examination table. You may be subject to videotape surveillance by the insurance company – so if you walk into the IME using a cane or crutch, make darn certain that you're using the cane or crutch when you leave.

In case you're curious. IME examinations under No-Fault or disability insurance come from your actual insurance policy which always provides that you have to cooperate with the insurance company in its investigation of your claim.

In a personal injury or accident lawsuit, the injured plaintiff always puts his or her medical condition into issue by seeking damages. The defense is entitled to have an IME to enable it to defend against the plaintiff's claim of injury. This right is set forth in New York's statutory (written) law at Civil Practice Law and Rules Section 3121(a), which states:

Notice of examination. After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical, mental or blood examination by a designated physician, or to produce for such examination his agent, employee or the person in his custody or under his legal control.

This right is also found in New York's Court Rules, 22 NYCRR 202.17(a), which states:

At any time after joinder of issue and service of a bill of particulars, the party to be examined or any other party may serve on all other parties a notice fixing the time and place of examination.

If you have specific questions, be sure to check with your attorney.

From: New York attorney Gary E. Rosenberg (personal injury and accident attorney and lawyer; serving Brooklyn Queens Bronx)