

## Personal Injury Lawyer Advice on Michigan “Independent” Medical Exams

Published October 18th, 2010 by Steven M. Gursten

After every auto accident injury lawsuit is filed, an independent medical exam (IME) is almost always required by auto insurance companies and personal injury defense law firms. IME doctors are hired to do one time “examinations” of the injured plaintiffs, write reports and testify.

These IME doctors make vast amounts of money, testifying 99 percent of the time on behalf of the defense. They almost always minimize the personal injuries or damages to the plaintiff based upon one-time, 15-minute exams.

If these issues of bias are not exposed, then a jury may actually mitigate the damages and compensation that your client deserves, especially when many IME doctors write typically nasty reports ripping apart injured clients and saying there is nothing wrong with them.

If you are a Michigan personal injury lawyer, there isn't a whole lot you can do about this either. IMEs are a big part of how defendants and insurance companies defend lawsuits here. But since this state has no bad faith or punitive damages to protect car accident victims, these IME doctors are, if anything, more outlandish than in most other states. And after *McCormick v. Carrier*, the main insurance company defense strategy seems to be to turn to IMEs now more aggressively than ever - so they can find “nothing wrong” with seriously injured accident victims.

There are important lessons here for all personal injury attorneys. First, most IME doctors are routinely asked how often they testify and how much they make. This information is important to show bias. These doctors know it, and instead of answering truthfully, the usual response is an “I don't know.” This is almost always a lie, but rarely do personal injury attorneys aggressively follow up to get this information.

It is up to the personal injury attorney to get this information by issuing subpoenas for 1099s and other payments from the various auto insurance companies and defense lawyers and law firms that hire these notorious IME doctors.

As an example, some years ago, a notorious defense neurologist told me under cross-examination that he had “no idea” how much money he was making performing defense exams and IMEs for various insurance companies. After our deposition, I issued subpoenas to the doctor. It turned out he was making \$500,000 a year, just performing these one-time exams on behalf of defendants in personal injury lawsuits.

When doctors refuse to comply with mandatory federal court discovery and disclose how often they testify and for which side in a lawsuit, then we have a serious problem. It is up to personal injury attorneys to explain just how unfair these one-time, partisan insurance defense doctors can be in wrecking innocent people's one chance to a fair and just [car accident lawsuit](#).

## **One hope remains for restoring fairness - OFIR, act now on the Rule 500.2522**

Perhaps finally realizing that Michigan auto insurers have been abusing the IME process, the Michigan Office of Financial and Insurance Regulation (OFIR) has proposed updated (although still very modest) IME rules to better protect Michigan residents from insurance company abuse.

The rules are currently under review by OFIR.

Under proposed rule 500.2252, an independent medical examiner must have either the same or a higher level of education, certification or board certification as the health professional treating an auto accident victim; AND an IME doctor must devote a **majority** of his or her professional time to treating patients.

From now on, these independent medical examiners would "have to prove that over half of their expertise is devoted to medical treatment."

Unfortunately, this is where it gets ugly. The Michigan Office of Financial and Insurance Regulation tabled the rule changes in December 2009 to allow for more comment and revision (Read: lobbying). As of now, the status quo still exists until OFIR presents the revised rule change. The OFIR tells us that state attorneys are moving forward with the rules, however, it could not give a date as to when they should be finalized.

Rule 500.2252(d) requiring actual clinical practice has the most teeth of all of the new standards. Plus, the case law interpreting the similar provision in the medical malpractice context may be quite helpful in using the new administrative rule to challenge questionable IMEs.

When dealing with IMEs in depositions and at trial, your best approach is to investigate the doctor's payments from insurance companies and defense law firms and be prepared with knowledge of how the defense will use these exams against your client. For more detailed information on how personal injury lawyers can increase the Value of Michigan Auto Accident Cases visit

<http://www.michiganautolaw.com/michiganlawyers/autocasevalue.php>.

There is also a comprehensive **Attorney Guide for Lawyers** on Pursuing Auto Accident Injury Claims in Michigan at

<http://www.michiganautolaw.com/michiganlawyers/index.php>.

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