

# Why an Independent Medical Examination is Anything But Independent

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## Understanding What a Independent Medical Exam Is

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***“The term independent leads people to believe that these doctors are somehow disconnected from the lawsuit and are providing an opinion that is not determined by their financial relationship or interest. In reality, the facts are quite the opposite and the examination is anything but independent”***

During the course of a lawsuit where someone claims physical or mental injuries, such as a broken arm resulting from a car accident, the defendant has the right to have you examined by a doctor or doctors of their choosing. The purpose of the examination is to determine the full extent of your injuries and to prepare the doctor for his possible testimony at a trial. The examination is titled as “Independent” despite the fact that the doctor works for and is paid by the defendant’s insurance company. The term “Independent” leads people to believe that these doctors are somehow disconnected from the lawsuit and are providing an opinion that is not determined by their financial relationship or interest. In reality, the facts are quite the opposite and the examination is anything but independent.

At an IME, now sometimes called an Insurance Medical Examination, a physician selected by the defendant’s attorney is paid a fee to examine you. The examinations are sometimes arranged through a 3rd party service that specializes in procuring doctors willing to perform IME’s and testify at trial, if necessary.

The relationship between you and the doctor that examines you is very different from that with your doctor. You are not a patient. The rules governing an IME make it clear that there is no traditional doctor-patient relationship. The doctor will not diagnose anything that is wrong with you and he will not recommend any type of medical treatment. If he fails to diagnose something that is seriously wrong with you, the doctor would not be liable for malpractice. His responsibility is very limited, even avoiding liability if he physically injures you during the examination.

Usually, the doctor will have received copies of your medical records as well as some of the documents that have been filed in your case before the examination. In most cases, the documents that they have received are incomplete and normally do not include copies of any MRI films or x-rays that you may have had. The doctor is not allowed to take new x-rays or MRI’s of you at the examination. The courts have held

that such testing is considered invasive and exposes you to unnecessary doses of radiation.

When you arrive at an IME, the doctor's staff usually makes a photocopy of your driver's license, to prove that you were the person actually examined. The doctor or his assistant will then take your basic history before you are placed in an examination room. Depending on the doctor, the time that you are required to wait could be a few minutes to a couple of hours. Most times, you will be in the waiting room with other plaintiffs waiting to see the doctor as some doctors conduct numerous examinations on the same day. Certain insurance companies and the doctors that they have selected are notorious for making plaintiff's wait as a way of dissuading them from proceeding any further with their cases.

Once the doctor sees you, the examination may take anywhere from 5 minutes to 30 minutes. Some doctors are thorough; others perform a short examination and develop their opinion through your possibly incomplete medical records. Regardless of how long they examine you, they are limited to this one examination. Despite what could be years of treatment by your own doctors, the IME doctor will base a medical opinion as to the extent of your injuries based on this one examination. Who is in a better position to form an opinion about your medical treatment – a doctor who has examined you one time for 15 minutes or your treating doctor that has seen you dozens of times since your accident?

Sometimes, the doctor that examines you will do so at a location that is different from their regular offices. This is done so that the doctor would be difficult to find if your own attorney wants him to testify at your trial based upon his opinion of your injuries. Sometimes, the doctors that have been chosen by the defendant have testified numerous times for a particular law firm. A transcript of that doctor's testimony exists and most times, the doctor may be caught being inconsistent in his

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opinion between this case and a case he testified in earlier. Sometimes, doctors will testify for the plaintiff in one case and for a defendant in another. He may have testified about the same injuries for both the plaintiff and defendant and given two different opinions. It's easy to see how a doctor that has testified for both a plaintiff and defendant can be compromised when questioned by your attorney at trial.

At a trial a few years ago, an insurance company doctor testified that she made over \$1,000,000.00 in one year from examining patients and testifying at trial. Besides the huge financial interest this doctor had in examining plaintiffs for the insurance company, this doctor also calmly testified that during this time she worked for the insurance company, she did not see one of her own patients. At that point, she was a professional witness and dependent upon her relationship with the insurance company that paid her. Her ability to give a truly independent opinion was compromised based upon her financial interest and reliance upon her relationship with the insurance company.

In a new twist, in order to avoid having the doctor testify at trial that he was paid by the defendant's attorney for his testimony, 3<sup>rd</sup>-party companies are now entering the game. These companies act as middle-men, insulating the doctors from having direct contact with the insurance companies and their attorneys. These companies run like a business, which means that the bottom line is all that counts. In my opinion, ethics suffer and the doctor's findings are tied to money and don't truly reflect your injuries. In fact, at a recent trial, the instruction sheet that the company sends to the doctors was introduced as evidence. The instructions advise the examining doctors to be less than honest and forthcoming, requesting them to hold back certain information. If a lawyer advised a doctor to proceed in such a way, the attorney would most certainly be brought up on disciplinary charges. However, insurance companies continue to be allowed to act in such an unethical manner.

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What's the most obvious reason why such examinations are not "Independent"? If a doctor wishes to continue testifying for a particular law firm or insurance company, you can be rest assured that his or her opinion will more than likely be favorable to the entity that pays them. If the doctor's opinion is consistently contrary to the position the insurance company is holding, it's safe to say that the doctor will no longer be selected for examinations. For some doctors, IME's are a valuable source of income upon which they rely. If their opinion of your injury could go either way, which side do you think they fall on? Clearly it will be on the insurance company's side, which makes the opinion anything but independent.

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# About the Author

*Frank J. Dito Jr., Esq.*

Frank J. Dito, Jr. is a partner in the Staten Island, New York law firm of Decker, Decker, Dito & Internicola, LLP where he practices Personal injury Law. For over 11 years, Frank has been helping people who have been injured in car, truck and motorcycle accidents. He has experience negotiating with insurance companies and trying car accident injury and death cases. Frank also helps people who have been injured in slips and falls, by dangerous products, and because of medical malpractice. Frank also practices in the field of workers' compensation, helping injured workers recover financial and medical benefits for the work related injuries.

Frank is a member of the New York State Trial Lawyers Institute and the Association of Trial Lawyers of America, an organization devoted to protecting individual rights and preserving the civil jury system in America. Frank is a member of the Million Dollar Advocates Forum, an exclusive group of trial attorneys that have achieved a verdict, award or settlement in the amount of One Million Dollars or more.

Mr. Dito is licensed to practice law and regularly handles cases throughout New York State, practicing extensively in Staten Island and Brooklyn. He is a member of the Richmond County and Brooklyn Bar Associations.



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