



IMEs vs. Record Reviews During COVID-19

By Sean M. Abernathy

With non-essential medical treatment and procedures canceled due to COVID-19, Worker's Compensation litigation has been significantly affected. Specifically, independent medical examinations (IME) have been either canceled or postponed to a much later date. As a result, vendors are offering record reviews in lieu of an in-person IME. While this may be an appealable option, employers and insurers should carefully consider all aspects of a claim prior to making any quick decision.

Pursuant to Minn. Stat. §176.155, Subd. 1, an injured employee must submit to an examination by an employer or insurer's physician if requested at any reasonable time upon the employer or insurer's request. This examination produces detailed IME report by the examining physician. An IME report is an invaluable tool that allows employers and insurers to present an expert medical opinion in support of their defenses to a workers' compensation claim.

A record review report is a narrative report prepared by an expert physician after reviewing an employee's medical records and/or other factual records such as employment records. Unlike an IME, the physician does not conduct a physical examination of the employee prior to rendering their opinions and drafting the report.

Both IMEs and record reviews have their advantages and disadvantages. IMEs are governed by statute under Minn. Stat. §176.155. Thus, an employer and insurer can generally enforce their right to obtain an IME should an employee refuse to attend or fail to attend after proper notice. Refusal to attend an IME can jeopardize the employee's entitlement to compensation benefits. IMEs are generally considered the "gold standard" for medical evidence presented by an employer and insurer. When filed in a timely manner, IME reports are also generally admitted into evidence at hearing despite any objection from opposing counsel.

IMEs, however, do have some disadvantages. For example, the employer and insurer must pay reasonable travel, meal and/or lodging expenses incurred by an employee to attend an examination. An employee is also entitled to reimbursement for lost wages associated with attendance. Finally, absent extraordinary circumstances, an examination must generally occur within 150 miles of the employee's residence.

The primary benefit of a record review is speed. A medical expert can review a collection of medical records and provide a narrative opinion faster without the need for an in-person examination. Scheduling in-person examinations can be difficult based on availability. An expert who is otherwise unavailable for an IME may have availability to prepare a record review. Record review reports are also not subject to any statutory filing deadline.

While the lack of an in-person examination makes record reviews faster, it is the absence of an examination that makes a record review the most vulnerable to attack. The argument is often made that record reviews are less credible than an IME report. The expert must base their opinion solely on the medical records available. Issues such as symptom magnification, malingering and/or non-organic symptom distribution may be more difficult to detect without the benefit of a physical examination.

There are many issues to consider when choosing between an IME and a record review. Ultimately, the decision will likely depend on the particular facts of the claim. Some cases may necessitate an extension of the filing deadline so an IME may be pursued at a later date. On the other hand, if time is of the essence, a record review may suffice. Regardless of the circumstance, please do not hesitate to contact me or any Brown & Carlson attorney to discuss the relevant issues and formulate a plan that best fits your particular case.

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