

The Role of the Legal Nurse Consultant in Independent Medical Exams

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When dealing with a medically related case, whether it is a workers compensation, personal injury, disability, medical malpractice, divorce or custody case or criminal case, the claimant's medical condition often needs clarification. One of the most useful tools, available to all parties, for this purpose is the independent medical exam (IME). Since an IME can "make or break" a case, they should be performed by impartial physicians, who have never been involved in the direct care of the client/claimant. Unfortunately, some physicians may be bias toward the side that is paying their bill; therefore, it may be to your advantage to send someone with your client to be his or her advocate.

There are many reasons that an IME may be needed. The most common reason is to obtain a second opinion. You may need a physician to evaluate the appropriateness of the initial care, substantiate the cause of injury, provide a prognosis or make recommendations for future treatment. IMEs are also ordered by the insurance company if the treatment plan is vague, absent or does not meet the client's/claimant's needs. In work related and personal injury cases, IMEs are used to assess causation, evaluate pre-existing conditions, evaluate a client's disability, estimate the length of time out of work or determine the extent of impairment. They are also used to evaluate the client's ability to perform ordinary activities, identify their limitations, evaluate their physical and mental capabilities, identify adaptive skills and recommend modifications to their work environment. IMEs may also be requested by the client/claimant if they feel they have not received appropriate care from their current physician or insurance company.

A legal nurse consultant (LNC) is an ideal person to accompany your client to their exam. You and your LNC can negotiate their role in this process. Your LNC can be the most helpful to you and your client, if they are able to review the entire set of medical records pertaining to the accident or injury, pre-existing medical records and records of subsequent care, although this review is not a necessity. Physician's reports, expert witness and consulting expert reports should also be reviewed if available. These can later be compared to the IME physician's report to look for discrepancies and inconsistencies. Before the IME, you may also wish for your LNC to review applicable literature or research regarding your client's diagnosis and prognosis.

Your LNC can help to educate and prepare your client regarding the exam and it's scope. This may be done currently by your office staff, but by allowing your LNC to prepare your client, your staff can focus on other legal matters. Nurses have an extensive background in patient education and are accustomed to explaining medical procedures and tests in terms the patient can understand. They can explain what to expect during the exam, tests and procedures, do's and don'ts for the exam and answer any questions your client may have. This will help to decrease their anxiety and apprehension and allow for more reliable testing. Your LNC can also help your client to understand that they should only give "facts" about their condition or accident to the examining doctor and not "details". This concept may be difficult for your client to understand without some education on this topic.

One of the many benefits of having your LNC present during the IME is that they can act as your client's advocate in your absence, making sure your instructions regarding paper work, limitations of the exam, etc. are adhered to by the examining physician.

During the exam, your LNC can take either a passive or more active role. If functioning as a passive observer during the exam, your LNC would take copious notes or audiotape the exam, and summarize their observations in a report. As a registered nurse, your LNC has years of experience assessing patients in the clinical setting. This knowledge makes them more aware of tests that are performed incorrectly or if relevant tests are omitted altogether. In lieu of the passive observer role, you may want your LNC to take a more active role, making suggestions to the physician, such as the focus of the exam or tests to be administered. This will ensure that the physician performs a more thorough and extensive exam.

After the exam, your LNC will help to assist your client to understand the recommendations made by the physician, then discuss what occurred during the exam with the attorney, and prepare a report. Some attorneys may prefer to only receive the audiotape of the exam but no report. This is totally up to the requesting attorney.

If a report is requested, your LNC will record their observations in a timeline format. These observations include:

- The specific questions asked and their answers during the history taking,
- The specific testing done and results,
- The amount of time taken for each part of the exam,
- The time spent on the examination of each body part in question,
- Any indications or statements of pain during testing,
- The physician's attitude,
- Nonverbal communication,
- The environment,
- Distractions,
- Any breaks or interruptions, and
- Other observations that they feel are pertinent to the exam.

This information may be important to the outcome of the exam and may not be reflected in the physician's report.

Your LNC may also help to evaluate the examining physician's report, looking for discrepancies and inconsistencies with what they observed, as well as, assist the attorney in preparing for the deposition of the examining physician. Your LNC is in a position to assist with demonstrative evidence, such as comparing and contrasting the reports of treating physicians, expert witnesses and the IME physician. It might be to your advantage to have your LNC testify in deposition or trial as to their notes and observations during the exam, especially if there are discrepancies between what they observed, the examining physician's report, and other medical records.

Legal Nurse Consultants are uniquely qualified to attend the IME of your clients because of their education, clinical experience and patient interactive skills. The presence of a LNC will increase the likelihood that your client is treated fairly and that the exam will proceed according to your instructions. Their observations of the exam may be used to dispute the IME physician's report and may assist you to reach the best outcome for your clients.

Resources for further information:

Cocchiarella, Linda (Editor) and Andersson, Gunnar, B.J. *The AMA Guide to the Evaluation of Permanent Impairment*, 5th ed., American Medical Association, April 2000.

Iyer, Patrica, "The Malingering Plaintiff", *Journal of Legal Nurse Consulting*, January 2002, 1:3.

Main, C.J. and Waddell, G., "Behavioral Responses to Examination: A Reappraisal of the Interpretation of Nonorganic Signs." *SPINE* 1998:23, 2367-71.

Sbordone, R.J., Saul, R.E., *Neuropsychology for Health Care Professionals and Attorneys*, 2nd ed., Delray Beach, FL: St. Lucie Press, 1991.

Waddell, G., McCullough, J.A., Kummell, E. and Venner, R.M. "Nonorganic Physical Signs in Low Back Pain." *SPINE*, 1980:5, 117-125.

Videos:

"Preparing for Your Compulsory Medical Exam". To order go to the Wisconsin Bar Association's web site at <http://www.wisbar.org/video/cliented.html#3>

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