

Third-Party Litigation

Form 6.7 DOCUMENT PREPARING THE CLIENT FOR A MEDICAL EXAMINATION

GUIDELINES FOR INDEPENDENT MEDICAL EXAMINATIONS

You have been scheduled to see _____ whose office is located at _____, on _____ at _____. This examination has been scheduled at the request of the defendant who has the right to do so under Court rules. This physician will be called to testify for the defendant at your trial. The examination findings will be admissible into evidence, as well as any relevant statements you make to the examining physician, e.g., how the accident happened or the nature and extent of your condition.

An Independent Medical Examination (IME) has been scheduled by the defense attorney and/or insurance company. Some physicians perform IMEs on a regular basis and may believe that people in litigation tend to exaggerate or magnify symptoms. Some doctors will testify that the results of their examinations indicate that the injured person is malingering and/or pretending. On the other hand, some doctors are straightforward and honest and will render an objective opinion.

The doctor performing the IME is listening to everything you say and watching everything you do. That includes how you walk around the office, and even how you may enter and exit the doctor's office. There are some dos and don'ts that will apply to your conduct at the time of this appointment:

THE THINGS THAT YOU SHOULD DO ARE:

1. Arrive on time and be patient if you have to wait.
2. Bring with you any X-rays or medical records that the physician has requested that you bring. If he has requested none, then you are not required to bring any. In all likelihood, the attorney representing the person that caused the accident has already sent your medical records and a copy of your deposition to the doctor before your examination.
3. When describing how the accident happened, your injuries and current physical condition, you must state it in a manner that is consistent with previous testimony you have given in a deposition and/or statements that you have previously made. Inconsistencies will be used against you at the time of trial. If you are asked about your injuries from the accident, be sure to tell the doctor all the injuries you sustained.
4. Do not volunteer information, as the insurance company has hired this physician and it will be used against you. Simply answer the physician's questions as directly, honestly and accurately as you can.
5. Be courteous. If you become angry or argumentative, his opinion will be influenced adversely to your case.
6. Be honest, pleasant and cooperative with the doctor.
7. **Be concerned and polite.**
8. If the doctor asks you about your job, give the doctor an accurate history of your job

responsibilities. Be specific about your job in terms of lifting, bending, stooping, walking, etc., and any difficulties you have had or are experiencing at work as a result of the accident.

9. If you have a relevant past medical history, please disclose it. In other words, if the doctor asks you if you had a previous injury of any type, be straightforward and honest, because the defense attorney may subpoena your prior medical records.

10. You should be aware that sometimes a doctor will perform the same test on you a number of times. The doctor may be trying to determine if you complain of pain inconsistently. An inconsistent response may give the doctor a foundation to offer the opinion that you are trying to magnify or exaggerate your pain.

11. Make a record of what has occurred immediately following the examination, but out of the presence of the physician, his staff or others, such as in your car or as soon as you get home. It should include:

- (a) a notation as to the exact time you arrived at the office;
- (b) whether the doctor or some other person took the history of the event and other information from you;
- (c) whether you had to fill out a form (include a summary of the information contained on the form);
- (d) record the exact time that you are taken into the examination room;
- (e) record the time the physician came into the room and note the name, if you can, of anyone else in the examination room during the exam;
- (f) note procedures done by the doctor during the examination;
- (g) note the time that the examination ended and the length of the examination in terms of minutes. (Often, physicians write reports and testify that they spent hours with the patient, when, in fact, the patient was in the doctor's office for many hours, but only saw the doctor for a few minutes.);
- (h) record any statements made by the doctor relative to the nature and extent of your condition;
- (i) indicate all tests conducted by the doctor, such as range of motion, reflexes, x-rays, thermograms, CT scans, MRI scans and/or all such tests which were conducted by others and reviewed in your presence; and,
- (j) any comments the physician made about your condition or its cause;
- (k) anything else you believe to be important.

Lastly, the most important thing to remember when you attend an Independent Medical Examination is to be honest and straightforward with the doctor.

Third-Party Litigation

THE THINGS YOU SHOULD NOT DO ARE:

- (a) Do not try to outsmart the doctor. You cannot match the doctor's medical knowledge.
- (b) Do not offer any negative comments about the defendant, the defendants' insurance company or the defendants' attorney.
- (c) Do not jump on and off the doctor's examination table.
- (d) Do not exaggerate your problems.
- (e) Do not moan, groan, wince or grimace in pain every time the doctor touches you. No matter how lightly or heavily the doctor may touch you or press upon you, be natural and be yourself.
- (f) Do not ask the doctor for medication or pain pills.
- (g) Do not talk to the doctor about the insurance company, the defense attorneys or the insurance adjuster.
- (h) Do not discuss with the doctor any settlement negotiations or the amount of lost wages.
- (i) Do not discuss with the doctor what you believe you deserve as a settlement in your case or how you plan to spend any settlement proceeds.
- (j) Do not become angry or argumentative during the examination;
- (k) Do not refuse to answer questions relative to how you were injured, the nature and extent of your injuries, whether or not you've worked and the types of activities you are currently engaged in;
- (l) Do not engage the physician in idle conversation -- often times, such idle conversations find their way into the physician's report;
- (m) Do not question the doctor's credentials or credibility -- that is the job of the lawyer at the time of trial;
- (n) Do not use medical or legal terms while conversing with the doctor -- this makes you look like a professional plaintiff and will leave a bad impression with the jury at the time of trial; and,
- (o) guess or estimate when asked questions by the physician -- If you do, you may well say something that is inconsistent with your prior testimony, statements and/or medical records. If you do not know the answer to a question, it is perfectly alright to say you do not know.

12 Be aware of your physical limitations. Do not allow the doctor to force you to perform movements that produce pain. Be consistent about your physical limitations. **Example:** Do not tell him you can't bend and then bend to take off your shoes. Additionally, upon entering the examination room, the physician may ask you how you are doing today, and when one is presented with that question we have a tendency to say,

“Okay,” or “Fine,” when that is really not the case. If you get asked such a question, tell the doctor how you really feel, but don’t exaggerate.

It is the defendant's right to compel such an examination and to use it as he deems appropriate. If you follow the above guidelines, you will have fully given the defendant the right to have you examined while preserving and protecting your right to challenge the physician's opinions at trial.