

Title: Is It Malpractice To Send My Client, Alone, To an “Independent Medical Exam”?

Facts: Lawyer represents client in a personal injury lawsuit. Defendant requests a so-called “Independent Medical Exam”, or more properly described, Defense Medical Exam (“DME”).

Questions:

1. Is it malpractice to send client, alone and without representation, to deposition with defense counsel?
2. Is it malpractice to send client, alone and without representation, to be interviewed by an investigator for defense counsel (investigator is permitted to tape record and take notes during interview, but client and client’s counsel are not permitted to obtain a copy of the tape recording or notes)?
3. Is it malpractice to send client, alone and without representation, to so-called “IME”?

Answers:

1. Yes.
2. Yes.
3. Yes, qualified.

Discussion:

If on the off chance that questions 1 and 2 above do not rise to the level of malpractice, both practices should be discouraged by competent counsel. The answer to question 3 is qualified because some courts in Oregon do not allow attorneys to represent their clients at the interrogation and examination of DMEs. Courts in Oregon have held that the attorney for the client cannot represent or attend the DME (the client is forced to go alone); cannot have the examination recorded (only the defense doctor gets to tape record the examination); and cannot object to improper questions of the defense doctor no matter that the question is irrelevant, improper and demeaning.

Thus, while sending your client to a DME alone may not be wise, many attorneys have no choice but to send their client to DMEs unrepresented.

As an aside, this author believes that the above also applies to “PIP” DMEs. In an effort to increase bottom line profits, virtually every insurance company in Oregon treats PIP DMEs and third party post-litigation DMEs the same. First-party policyholders seeking PIP benefits are the enemy. The objective of the PIP DME is to cut off benefits now. It makes little difference whether it is an insurance company’s policyholder or a third party. The objective is to damage the policyholder’s claim, influence the treating doctor to cut-off medical treatment (they are not

being paid, and move the policyholder from obtaining benefits under the liability policy to a private HMO carrier or medical insurance carrier).

Insurance companies have perpetuated this cut-off of valid PIP benefits under the guise of “cost-containment” or “fraud prevention”. Under the guise of saving money for policyholders, insurance companies have amassed an extraordinary profit center by denying valid PIP benefits. This profit center has been amassed at very little cost. Frankly, there is no substantial downside for an insurance carrier to deny valid PIP benefits. The auto insurance industry has copied the “HMO model” of denying benefits, and the “HMO model” has been wildly successful.

It should be noted that these insurance company practices have taken place in what is supposed to be a “regulated” environment. Insurance companies and consumers are supposed to be protected by regulations.

Some consider PIP actions and PIP issues not significant. But, is it really

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