

The Proliferation of IME Abuse

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This article is not about sex. But the words "prostitute" and "whore" are used in conjunction with discussions about independent medical exams so often that laymen might get confused. Are these terms justified? The answer is a qualified maybe.

The chiropractic profession has been a relative latecomer to the world of independent medical examinations. The medical community and ancillary care facilities have dealt with these issues for several years. Thus, there should be a great body of knowledge for the chiropractic profession to utilize. Unfortunately, the knowledge which has been developed by the medical profession was developed in an entirely different era. It may not apply at all to the situations we see today. Once again, we must plow our own ground.

Having been involved in injury litigation, chiropractic litigation and counseling, medical malpractice and the defense of chiropractic malpractice claims for several years, our firm has seen the reasonable use and overzealous abuse of independent medical examinations involving chiropractic at all levels. Naturally, by the time those issues come to our attention, they are more in the stage of abuse rather than reasonable utilization. In other words, we get the complaints when the IMEs are unfairly performed.

Valid reasons for utilizing IMEs abound. Third party payers have long demanded IMEs in medical cases where the bills routinely run into the tens of thousand of dollars. Only recently have those same reviews been applied to chiropractic cases in which only a few hundred dollars were at stake. However, the fact that fewer dollars are involved has not had any effect on the aggressiveness of those performing the IME. Further, the number of IMEs which are being performed on chiropractic claims is significant in and of itself. It may not seem important to the individual chiropractor if one claim is cut by \$100. It becomes significant if all of his claims are cut by \$100.

By the same token, it is not particularly significant to the insurance company if the company is overcharged by \$100 on a chiropractic claim. However, it becomes significant if it is overcharged by \$100 on every chiropractic claim. Certainly, abuse is not rampant within the chiropractic profession in terms of either charging or utilization. However, it has been known to exist. It is an entirely valid and proper function of a third party payer to audit claims in order to guard against abuse.

In addition, third party payers may also have a very significant interest in obtaining appropriate treatment and a favorable prognosis for the patient when the insurance carrier may be liable for significant future disability payments. Thus, the insurance carrier may be interested in seeing that everything possible is done to alleviate the need for future medical care as the result of illness or accident.

Other obvious necessities for independent medical evaluations exist in the work place -- preemployment screening, ergonomic analysis of the work place in relation to specified injuries, and other preventative implications. As a result of the needs of employers and insurance carriers for IMEs, various organizations who offer IME services have sprung up around the country.

International Chiropractic Consultants with offices in Myrtle Beach and in the Kansas City area; Professional Evaluation Services; Intracorp and IHC out of Atlanta, Georgia; and National Chiropractic Review Service are names that readily come to mind.

In addition to the "for profit" consulting firms, other consultant organizations have developed as well. The most notable and most vocal of these associations has been the Congress of Chiropractic Consultants. The proliferation of chiropractic physicians into the area of consultation work or performance of IMEs is similar to what has been previously seen in the medical field with the Academy of Disability Evaluating Physicians.

By and large, the early response to complaints regarding overutilization or other abuses were handled by individual state licensing boards or state chiropractic associations through peer review committees. With the onslaught of independent evaluators, many of those state peer review committees have fallen by the wayside. Many of them simply collapsed under the threat of antitrust litigation. While some still flourish and prosper as a service to the profession and the patient, some of those do so only because they are keyed into state statutory schemes regarding malpractice, workers' compensation or other governmental requirements.

With the injection of the "for profit" reviewers, came the reaction of the profession. As could be expected, it was virtually all negative. Those who had claims reviewed would promptly file complaints with state licensing boards. Other states have taken action to certify the reviewer before they will be allowed to practice in that state. Other states such as New York have, in the past, taken measures to prohibit independent evaluations without being licensed in that particular state. Other states have taken the approach that the independent evaluation could not be done unless the evaluator actually examined the patient.

As is to be expected, no one approach has been universally accepted. Further, no single approach has been universally effective. One thing that has become clear throughout the country is that in those areas where no control or oversight has been established, the terms "whore" and "prostitute" are utilized much more frequently. However, it is entirely possible that the reason those appellations are not used more vigorously is that while many people complain about IME abuse when it is used on them or their profession, many otherwise independent chiropractic physicians are willing, if not eager, to do these evaluations -- for a price. Another chiropractic publication recently published an article indicating that 20 ACA delegates around the country were contacted by that publication representing itself to be an insurance company. Only five of the delegates told the caller that they did not perform such services. However, the remaining 75% provided letters of application supplying their credentials. Some even indicated they were "anxious" to perform the services even though they had no idea who the fictitious insurance carrier was, nor did they have a good handle on the design for such services.

What we have been discussing thus far are not really independent medical evaluations, but paper reviews. It is in the area of paper reviews that the greatest potential for abuse exists. It is much more difficult and expensive for the insurance company to get the patient in to see the reviewing physician. Similarly, there is always the possibility that the reviewing physician might find the treating physician's care appropriate. However, in the area of the paper review, the records of any physician will leave something to be desired. The reviewer almost always never signs his name. In many cases, the reviewing company will not even reveal the names of the reviewing chiropractic physicians or even whether they exist. Intracorp is a prime example.

Rare, but interest deviations from the paper review do exist. For example, several years ago one insurance company is reported to have flown Dr. William Fisher from the Kansas City area to Boulder, Colorado for the expressed purpose of examining a patient who resided in Boulder. The

insurance company rented office space from another chiropractic physician for the purpose of performing the examination. Of course, the motives of the insurance company cannot be determined, but as stated above, this practice is curious at best.

In response to some questionable practices and even more questionable claims review procedures, some reputable reviewers have appeared on the scene. Once such company is C Corp Professionals in Boulder, Colorado. Dr. K. G. Rude of Boulder indicates that they now have over 100 chiropractic physicians performing services in six states. While their reviews are primarily paper reviews, the purpose of the organization is to stress proper care for the patient. The organization is designed to teach chiropractic physicians how to keep proper records so they will not be destroyed by the claims review process. In addition to teaching the courses and intensive one day seminars, the organization will, for a fee, review your documentation prior to you sending your file to the insurance company for review. C Corp Professionals will tell you of your deficiencies, if any, before your claim is cut.

In addition to many claims being cut by paper reviews and abuses by the insurance industry, much of the review process which is currently going on is really not necessary. The bulk of the IME paper claims review process is simply to review the claim, state that overutilization or overcharging has occurred, and recommend that the claim be cut. In addition to the traditional publication of Fee Facts, now, out of Atlanta, Georgia, comes Procedure and Utilization Facts. This publication now publishes an up-to-date utilization guide. The guide covers duration and number of visits. For example, for diagnosis 847.0, the duration of the condition should be from 16 to 24 weeks and between 34 to 42 visits during that time period. There is also a section called "Complicating Factors." For example, the same diagnosis with ligament instability would generate an additional duration of 6 to 12 weeks, with an additional utilization of 6 to 12 visits. In other words, the insurance industry doesn't really need the proliferation of chiropractic physicians who are willing to perform IMEs. The only information they are really after is now put out in one "handy dandy" little publication.

But in order to at least maintain an air of respectability, the industry will continue with evaluations. In order to combat abuses of the IME process, your legal advisors in each state will continue to experiment with different legislative proposals to restrict the abuses. In addition, lawyers willing to take on litigation in these areas will continue to ask questions such as:

- What percentage of chiropractic claims does the insurance carrier have reviewed?
- What percentage of the average claim is cut by the IME?
- What percentage of the original cut is normally reinstated through litigation, including workers' compensation and jury trials?
- Why is the name of the evaluator not published on the review?
- Why is a registered nurse used to sign the utilization review?
- Why were the complete records of the physician under review never requested prior to the IME?
- Does the carrier ever perform actual independent medical evaluations by chiropractic physicians or only paper reviews?

These and other questions are being posed to carriers and those who perform IMEs around the country while you are reading this article. The questions are being posed in litigation directed at IME abuse, as well as an individual workers' compensation and other injury claims which may have nothing to do with chiropractic. Until good legislative solutions are found, IMEs will continue. The abuse will continue. The litigation will continue. Why do you think those attorneys smile when you tell them about these problems?

