

STATE OF WISCONSIN



Department of Workforce Development

# Independent Medical Exams and Denying Claims

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# Section 102.13

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- Legal framework providing the injured worker's employer or the worker's compensation insurer with the right to send injured workers to independent medical exams or to have the injured worker's medical records reviewed by a provider of their choice.



# IME and MRR

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- A non-treating medical provider of the **insurance company's** (IC's) or employer's choice opines on several possible issues at any point in the claim.
  - **Independent Medical Exam** (IME) – A non-treating provider examines the injured worker (IW).
  - **Medical Records Review** (MRR) – A non-treating provider reviews the injured worker's medical records.



# Who Is Qualified to Examine an Injured Worker?

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- According to Section 102.13
  - Physicians
  - Chiropractors
  - Psychologists
  - Podiatrists
  - Dentists\*
  - Physician assistants
  - Advanced practice registered nurses
  - Audiologists



# Independent Medical Exam Timing

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- You may arrange for an **IME** at **ANY** time during the life of the claim.
- Common points:
  - Denying the claim
  - Questioning the length or type of treatment
  - Challenging the treating doctor's PPD rating



# Independent Medical Exam Letter

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- The Independent Medical Exam letter must include 6 things. The first 3 are
  - **Proposed** date, time, place of exam, and area of specialty of the IME provider
  - Procedure for **changing** the proposed date, time, and place of exam
  - IW's right to receive the IME report as soon as the insurance carrier receives it



# Independent Medical Exam Letter

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- The Independent Medical Exam letter must also include these 3 rights:
  - The **Injured Worker's** (IW) right to have their provider present
  - IW's right to have a translator present
  - IW's right to have an observer of their choice present
    - The observer may not interfere with the exam or ask questions.
    - The IW does not have to notify anyone ahead of time if an observer is coming to the exam.



# Expenses

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- All expenses for the IME must be paid to the IW **ahead** of time.
  - Transportation
  - Wage loss (full wage amount, not the TTD rate)
  - Meals or hotel rooms at state rate if necessary



# Benefit Payments Once the IME Is Ordered

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- Until the IME or MRR report regarding an accepted claim is sent to you, you do not have a basis to stop paying benefits.
  - If the IME supports the injured worker, any temporary benefits that were unpaid or paid late may be subject to a 10% delay penalty.
  - If the claim goes to litigation, your failure to pay may become an issue.



# What If the Injured Worker No Shows?

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- **The Insurance Carrier CANNOT simply stop benefits.**
- Contact DWD WC and send copies of IME letters and proof of pre-payment of expenses. An **Administrative Law Judge** (ALJ) will review and, if appropriate, write a letter to compel the IW to attend.



# What If the Injured Worker No Shows?

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- Factors the ALJ will consider:
  - Reasonableness of the injured worker's excuse
  - Distance to exam
  - Were ALL rules followed in the exam letter to the injured worker?



# IMEs and Claim Closure

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- An Independent Medical Exam or a Medical Records Review provider's opinion **CANNOT** close a claim by itself.



# Definitions

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- A **treating** provider must opine End of Healing and address **Permanent Partial Disability** (PPD) to close a claim.
- An IME doctor cannot, by definition, be a treating provider.
- Therefore, the IME doctor's opinion cannot close a claim.



# An IME May Opine There Is No Claim

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- If the IME doctor opines that **no work injury** occurred **or** if an FMR is not necessary, per 80.02(2)(e)(4) Wis. Admin. Code, **and** the **insurance company** (IC) submits a position letter adopting IME's position, **then** DWD WC can close the claim in our database.



# How Much Is Denied?

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- When an IME opines that the IW is at **End of Healing** (EOH) and there is no PPD, it is **NOT** the same as saying the claim is denied.
  - The claim is only denied **after** the date of end of healing.
  - If three (3) weeks or less of temporary disability was paid, it may be possible to close without a final medical report from the treating doctor. If more than three (3) weeks of temporary disability was paid, we need a final medical report.



# Mistake of Fact

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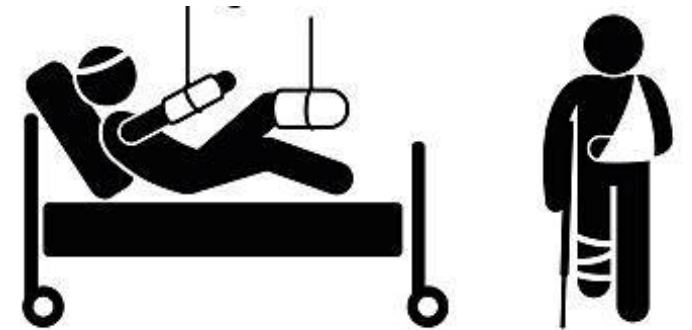
- If the IC has made payments covering a period of time after the IME opines end of healing, the IC can claim the payments were made by Mistake of Fact.
- **Example:**
  - DOI: 1/1/21
  - TTD paid from 1/2/21 to 4/1/21
  - IME sets EOH for 3/15/21
  - Only TTD from 3/15/21 to 4/1/21 is mistake of fact.



# Verify What the IME Opinion Covers

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- Many IMEs are specialists and only give opinions on the areas of their expertise.
  - An ortho may defer to a neurologist for the nerve injury.
  - A neurologist may defer to a psychologist for a PTSD opinion.
- Know what body parts are addressed.



# When 0% PPD Isn't 0%

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- Sometimes when the IME opines that there is no PPD rating, you will get a worksheet from us informing you that there **is** PPD.
  - The rating comes from the **examination evidence** in the **IME doctor's report**.
  - If the IME doctor's opinion doesn't meet the regulatory requirements, we will revise the estimate to conform with DWD 80.32.



# Repeat IME

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- Expectation based on long practice that subsequent exams of the same injury/condition will be performed by the same IME provider
  - If the original IME provider can't perform the second exam, please provide us with your rationale for the change.



# Timing: The 30/90 Rule

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- To challenge a treating provider's rating **without needing to pay PPD** until you get the IME report, you must arrange the IME appointment and send the injured worker the **letter** about the IME within 30 days of receiving the treating provider's rating.
  - The report from the IME doctor must be in your hands and you must provide a position letter **within 90 days** of scheduling the appointment (**not** the day the appointment happens).
  - If both deadlines are met, you can wait to pay PPD.



# IME Outside the 30/90 Rule

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- If either deadline is missed, you must pay the due and accrued PPD based upon the treating doctor's rating until you have the IME in hand to tell you something different.
  - PPD begins to accrue during all periods when the injured worker is not receiving temporary disability.
  - The 30 days start when you owe PPD. If there is a statutory minimum (stat min) for a surgery, the 30 days start on the day after surgery or on the day after temporary disability ends.



# Example: Bob's Injury

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- **Injury:** Broken humerus
- **DOI:** 2/14/24
- **TTD:** from 2/15/24 to 3/15/24 – then back to light duty at full pay
- **FMR:** 8/15/24 – rating 85% at the shoulder
- **IC:** receives rating 8/17/24



# Bob's Injury

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- If an IME is set up and a letter is in the mail to Bob by 9/12/24, and you receive and act on the IME report before 11/14, you do not have to pay before receiving the IME report, even if the IME agrees with the 85% rating.



# Bob's Injury

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- If the letter telling Bob about the IME exam goes out 9/17/24 (31 days after receipt of the FMR), Bob is immediately owed all the PPD from the treating doctor's final medical report that has accrued from 3/16/24 (when TTD stopped) to the present. The payments must then continue until there is an IME in hand with a different opinion.



# Example: Linda's Injury

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- **Injury:** Torn ACL
- **DOI:** 2/14/24
- **TTD:** 2/15/24 to 2/29/24
- **RTW:** on light duty at same pay from 3/1/24 to 3/14/24.
- **Surgery:** 3/15/24 – ACL repair
- **TTD:** 3/15/24 to 3/30/24 – then return to light duty at full pay.
- **IC:** receives the FMR 3/15/25 with a rating of 25%
- **IC:** arranges for IME and sends notice to Linda by **4/1/25**.
- How much does the IC owe?



# Linda's Injury

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- IC did not challenge the ACL repair, which carries a 10% stat min rating, in time. To challenge the stat min, the IME would need to be set up within 30 days of the day after surgery or the day after temporary disability ended.
- The IC **did** challenge the additional 15% in time.
- Stat min for ACL is 42.5 weeks.
- Benefits accrued from 3/1/24 to 3/14/24 and from 3/31/24 to 3/15/25. Total of 52 weeks.



# Linda's Injury

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- If the stat min 42.5 weeks has been paid and you are within the 30/90 rule deadlines, you don't have to pay on the additional 15% until you receive the **IME** report.
- If IC missed the deadlines and notified Linda more than 30 days after receiving the FMR or received the IME report more than 90 days after the **IME** appointment was set, the IC owes any PPD that has accrued and must continue paying PPD until they have the IME opinion in hand.



# The Risk of Waiting for the IME Report

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- What if you miss the 30-day deadline and decide to wait for the IME report to start paying?
  - If the IME report supports **all** or **any** of the PPD, the amount that is due and accrued when you do start paying will be subject to the 10% late penalty.
- **Best Practice**
  - If you **know** you are conceding **some** of the PPD, do not wait to pay it.



# Position Letters and Reports

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- We will **not assume** you are choosing to follow the IME opinion.
  - If there is no position letter, we will average the ratings given by the IME and the treating provider.
- Send us ALL reports and addenda by the IME doctor.
  - If you are **following** the opinion of a MRR report, you must provide a copy of the report to the department **and** to the injured worker.



# Denial Letters

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- You must send a **formal letter via mail to the injured worker.**
  - Denials should not be made only by phone, email, or text message.
  - The denial letter is the tool the injured worker uses to access other insurance benefits.
- Send a letter to the claimant and a copy to us.
  - Be clear about **what** is being denied.
  - Be clear about **why** it is being denied.
  - Be clear about the **date** the denial starts.



# Denials

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- Be sure **the denial letter** includes information about the injured worker's appeal rights and the department's contact information.

## **Department of Workforce Development**

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# Questions?

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