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## **WORKERS' COMPENSATION SYSTEMS: THE PROBLEM WITH INDEPENDENT MEDICAL EXAMS**

After a worker is examined by his or her own doctor, insurance companies are allowed to order “an ostensibly neutral exam by a doctor they select and pay for” called “independent medical examiners (“IME”).” However, as part of a recent three-part series, the *New York Times* reviewed “case files and medical records and interviews with participants” that “indicate that the exam reports are routinely tilted to benefit insurers by minimizing or dismissing injuries.”<sup>1</sup>

### **THERE IS EXTREME ANTI-WORKER BIAS AND INCOMPETENCE AMONG IME EXAMINERS**

- Many independent medical examiners, sometimes semi-retired doctors who are, “impaired by their age and frailties” and with no special training, often examine worker compensation patients through appointment set up by brokers who work for insurance companies. “Basically if you haven’t murdered anyone and you have a medical license, you get certified,” said Dr. Alan Zimmerman, 75, a Queens orthopedic surgeon who does the exams. “It’s clearly a nice way to semiretire.”
- “The calibrations of disability can be arbitrary. Few doctors are trained to gauge how injuries restrict a person’s particular work capability. Some workers with frightful injuries are judged 75 percent disabled.”<sup>2</sup>
- One doctor who examined a driver for a plumbing company clearly diagnosed the worker with injuries to his neck and back. But he later submitted a report to the Workers’ Compensation Board that “cleared the driver for work” finding “no recent injury at all.” He told the *New York Times*, “If you did a truly pure report, you’d be out on your ears and the insurers wouldn’t pay for it. You have to give them what they want, or you’re in Florida. That’s the game, baby.”
- In 2004, a study found that the Central New York Occupational Health Clinic’s doctors almost never agreed with independent medical examiners on the disability of their patients.<sup>3</sup>

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<sup>1</sup> Kleinfield, N.R. and Greenhouse, Steven, “For Injured Workers, a Costly Legal Swap,” *New York Times*, March 31, 2009; Kleinfield, N.R. “Exams of Injured Workers Fuel Mutual Mistrust,” *New York Times*, April 1, 2009; Greenhouse, Steven, “In Workplace Injury System, Ill Will on All Sides,” *New York Times*, April 2, 2009. This fact sheet based primarily on “Exams of Injured Workers Fuel Mutual Mistrust.”

<sup>2</sup> Kleinfield, N.R. and Greenhouse, Steven, “For Injured Workers, a Costly Legal Swap,” *New York Times*, March 31, 2009.

- The chairman of the Workers' Compensation Board, "said that he found the disparities in medical opinions shocking" but was unsure what would rectify the problems

#### IME DOCTORS SOMETIMES NEVER LOOK AT THE PATIENT OR BARELY EXAMINE THEM

- "“You go in and sit there for a few minutes — and out comes a six-page detailed exam that he never did,” said Dr. Stephen M. Levin, co-director of the occupational and environmental medicine unit at Mount Sinai Medical Center, who has been picked as the interim medical director at the compensation board. “There are some noble things you can do in medicine without treating. This ain’t one of them.””
- Santos Padilla, an injured worker saw an independent medical examiner in 2006, but the Workers' Compensation Board received a report signed by a completely different doctor who never saw Mr. Padilla.
- Shu-Ying Xu, a home health aide hurt her back and neck while trying to prevent a patient from falling. She was examined by an independent medical examiner for only two minutes who had not asked her any questions. In the examiner's report he erroneously stated that she spoke English (she does not) and that she was not taking any medications (she takes nine). His report also concluded that her injury was mild and that she could continue working. The Social Security Administration had already concluded that she is entirely disabled. A workers' compensation judge eventually ruled that Ms. Xu should continue to receive benefits.

#### DISHONEST IME DECISIONS CAN BE DEVASTATING FOR WORKERS

- “The examiners' opinions can empower an insurer to slash benefits, withhold medical treatment or stall a case. Workers say that psychologically, there is something particularly damaging about being dishonestly evaluated by a medical professional. ‘I was in so much pain and felt so hopeless for so long,’ said Carol Houlder, a substance abuse counselor who waited a year for surgery on her injured ankle to be approved. ‘Doctors see you’re in pain and say you’re not. How do they call themselves doctors?’”
- Sometimes a worker's attorney or a judge is able to dismiss an illegitimate IME opinion, but “even when the opinions are discounted, resolution can take months, years, even decades, and many workers, tired of the ordeal of five, six, seven exams, eventually give up.”

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<sup>3</sup> Lax MB, Manetti FA, Klein RA. “Medical Evaluation of Work-Related Illness: Evaluations by a Treating Occupational Medicine Specialist and by Independent Medical Examiners Compared,” *International Journal of Occupational and Environmental Health*, January–March, 2004. p 1-12