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To IME Or Not To IME: Must A Carrier Show Good Cause To Compel An Independent Medical Exam (IME) In First Party No-Fault PIP Auto Cases?

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In a common scenario surrounding auto accident claims, a carrier requests that a claimant seeking first party no-fault PIP benefits undergo an IME to determine causation of injuries. This reasonably addresses the carrier's concern that the claimant's own physician may be somewhat biased towards the claimant in assessing the extent of the injuries.

However, if the claimants do not voluntarily wish to attend an independent medical examination, could they be compelled to do so in certain circumstances? If the insured person refuses to attend the examination, a highly questionable PIP claim may never be cut off. If the carrier wishes to compel, they must typically assign the matter to counsel to seek court intervention.

Part E of most personal auto policies contain an ISO-approved provision that an insured must submit to an IME "as often as we [the carrier] reasonably require." This provision is often the basis for a Motion to Compel IME for an uncooperative claimant. Ultimately, if a claimant continues to refuse an IME, the carrier may have to deny coverage on the basis of lack of cooperation.

However, what appears to be on its face a matter of contractual right, may, on occasion, conflict with state statutes which only permit an IME in situations where the carrier first demonstrates "good cause shown" or a "reasonable basis" for the IME. These statutes typically require an insurer to petition the court and establish the "good-cause" for the court to issue an order compelling an IME.

Although in many instances a claims professional may be able to identify "good cause shown" or a "reasonable basis," there are occasions where an expert, *i.e.*, a trained medical professional, is required. Thus, a claims professional may not be able to conclusively establish good cause on the face of the claim.

Those states that require "good cause shown" as the basis for an IME put a claims professional in the unreasonable position of attempting to play doctor and justify medical causation issues to a judge without the benefit of the opinion of a trained IME physician who has examined the claimant.

Plaintiffs' attorneys in recent years have begun to utilize these no-fault/motor vehicle provisions to "push back" and challenge carriers' routine requests for IMEs on the basis that a carrier hasn't first identified any sort of good cause or basis for the IME.

These disputes may carry over into other first-party benefits, such as UM/UIM. For example, in litigation where the UIM carrier is a defendant in the lawsuit, they may want an additional IME over the one the tortfeasor had, or they may want multiple IMEs for multiple injuries.

This issue bears monitoring for any practitioner in this area of the law. Depending on how the various state courts come down on the issues, carriers will either want to beef up language in the provision mandating cooperation from claimants, or they will ignore and eventually stop using provisions that conflict with the law. Hopefully, courts will be reluctant to go against renegotiating a contract that both parties to an insurance contract have agreed to.

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