

**PERFORMING IME'S UNDER CURRENT RULES:
APPROPRIATE IME LETTERS, ETHICS AND STANDARDS OF CONDUCT**

I. OVERVIEW

A. Definition of IME

An IME is defined as any medical examination including a physical capacity or work capacity evaluation or consultation that includes an examination that is requested by the insurer and completed by any medical service provider, other than the worker's attending physician or authorized nurse practitioner. The examination may be conducted by one or more providers with different specialty qualifications, generally done at one location and completed within a 72-hour period. If the providers are not at one location, the examination is to be completed within a 72-hour period and at locations reasonably convenient to the worker. OAR 436-010-0265(1).

B. Claims Examiner Certification Requirements

Claims examiners shall be certified by the insurer upon satisfactory completion of an examination which demonstrates the individual's familiarity with the workers' compensation statutes, ability to navigate the administrative rules, capability to perform claim processing activities and understanding of activities related to interactions with independent medical examination providers that includes:

Appropriate and ethical communication with independent medical examination providers,

Insurer's rights and responsibilities,

Injured worker's rights and responsibilities,

Independent medical examination provider's standard of conduct requirements,

IME complaint process and investigations by the WCD, and

Training specific to the requirements of ORS 656.325 and OAR 436-010. OAR 436-055-0070(1); OAR 436-055-0085.

C. IME Provider Requirements

Any medical service provider wishing to perform an IME or a Worker Requested Medical Examination under ORS 656.325(1)(e) and OAR 436-060-0147 for a workers' compensation claim, must meet the Director's criteria and be included on the list of authorized providers maintained by the Director of the Department of Consumer and Business Services under ORS 656.325. ORS 436-010-0265(13). See website at: <http://www4.cbs.state.or.us/ex/imd/reports/rpt/index.cfm?ProgID=C18001>.

II. APPROPRIATE AND ETHICAL COMMUNICATIONS WITH IME PROVIDERS

1. Avoid leading questions in IME cover letters. See attached example.
2. Do not include irrelevant information meant to sway the examiner's opinion regarding the character of the worker. If the worker has functional overlay, is malingering, etc., the physician should be able to identify this during the examination regardless of superfluous information.
3. Do not contact the provider after she examines the worker but before she issues her report. If you have questions regarding the report after receipt, you may follow-up with the examiner.
4. Be honest in all communications.
5. Never offer a fee for services dependent upon the IME provider writing a report favorable to the insurer.
6. Understand that the IME provider is expected to reach conclusions that are based on facts and sound medical knowledge and which are within the qualifications of the provider.

7. IME provider should only address conditions which the worker has claimed.

III. INSURERS' RIGHTS AND RESPONSIBILITIES

A. Three IME Limitation

The insurer may obtain three medical examinations of the worker by medical service providers of its choice for each opening of the claim. OAR 436-010-0260(1).

a. The examinations may be obtained prior to or after claim closure. Id.

b. As of July 1, 2006, the insurer must choose a provider from the Director's list. OAR 436-010-0265(1).

The list is available on the Director's website. See website at:

<http://www4.cbs.state.or.us/ex/imd/reports/rpt/index.cfm?ProgID=C18001>.

B. Obtaining More Than Three IMEs

1. Procedure. When the insurer wishes to obtain more than three IMEs, it must first notify and request authorization from the Director. It must follow the form and format in Bulletin 252, including but not limited to, the reasons for an additional IME, the conditions to be evaluated, dates, times, places and purposes of previous examinations, copies of previous IME notification letters to the worker, and any other information requested by the Director. A copy of the request must be sent to the worker and the worker's attorney. Insurers that fail to do this may be assessed a civil penalty. OAR 436-010-0265(2)(a).

2. Director Review. The Director will review the request and determine if additional information is necessary prior to issuing an order approving or disapproving the request. Upon receipt of a written request for additional information, the parties have 14 days to respond. If the parties do not provide the requested information, the Director will issue an order approving or disapproving the request based on available information. OAR 436-010-0265(2)(b). The Director may consider:

a. Whether an IME involving the same discipline(s) or review of the same condition has been completed within the past six months;

b. Whether there has been a significant change in the worker's condition;

c. Whether there is a new condition or compensable aspect introduced to the claim;

d. Whether there is a conflict of medical opinion about a worker's medical treatment or medical services, impairment, stationary status, or other issues critical to the claim processing/benefits;

e. Whether the IME is requested to establish a preponderance for medically stationary status;

f. Whether the IME is medically harmful to the worker;

g. Whether the IME requested is for a condition for which the worker has sought treatment or services, or the condition has been included in the compensable claim. OAR 436-010-0265(3).

3. Appeal Rights. Any party aggrieved by the Director's order approving or disapproving a request for an additional IME may request a hearing by the Hearings Division of the board under ORS 656.283 and OAR 438. OAR 436-010-0265(4).

4. Not Considered an IME For Purposes of the Number of IMEs

a. An examination scheduled but not completed;

b. An examination conducted by or at the request or direction of the worker's attending physician or authorized nurse practitioner;

c. An examination obtained at the request of the Director;

d. An elective surgery consultation obtained in accordance with OAR 436-010-0250(3);

e. An examination of a permanently totally disabled worker required under ORS 656.206(5);

f. A closing examination by a consulting physician that has been arranged by the insurer, the worker's attending physician or by an authorized nurse practitioner in accordance with OAR 436-010-0280;

g. A consultation requested by an MCO for the purpose or clarifying or refining a plan for continuing medical services as provided under its contract. OAR 436-010-0265(5).

C. IME Scheduling Requirements

1. Time and Intervals. Examinations must be at times and intervals reasonably convenient to the worker and must not delay or interrupt proper treatment of the worker. OAR 436-010-0265(6).

2. When scheduling an IME, the insurer must ensure the medical service provider has:

a. an Invasive Medical Procedure Authorization Form 440-3227, if applicable. OAR 436-010-0265(11)(a); and

b. a worker IME Survey Form 440-0858 with instructions to give the form(s) to the worker at the time of the IME. OAR 436-010-0265(11)(b).

3. When scheduling an IME, the insurer must send the worker notice at least 10 days prior to the examination, the notice must be sent simultaneously to the worker and the worker's attorney and sent on insurer's stationary. If the notice does not contain the following elements, a denial of a suspension request may result:

- a. the name of the examiner or facility;
- b. a statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;
- c. the date, time, and place of the examination;
- d. the first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;
- e. if applicable, confirmation that the Director has approved of the examination;
- f. that the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the worker's request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;
- g. that an amount will be paid equivalent to net lost wages for the period which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the work absence;
- h. that the worker has the right to have an observer present at the examination, but the observer may not be compensated in any way for attending the exam; however, for a psychological examination, the notice must explain that an observer is allowed to be present only if the examination provider approves the presence of the observer;
- i. **"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a \$100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits.**

If you object to the location of this appointment, you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombudsman for Injured Workers at 1-800-927-1271." OAR 436-060-0095(5).

4. With each appointment notice sent to the worker, the insurer must include:

- a. a form for requesting reimbursement;
- b. the Director's brochure, Form 440-3923, "Important Information about Medical Exams;" and
- c. Form 440-0858 "Worker Independent Medical Exam (IME) Survey." OAR 436-060-0095(6).

D. Requests for Suspension of Benefits

1. Requirements. Requests for suspension of benefits for failing to attend an IME must be sent to the Division with a copy of the request and all attachments to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons and must include the following or possibly result in a denial of a suspension request:

- a. That the insurer requests suspension of benefits under ORS 656.325 and OAR 436-060-0095;
- b. The claim status and any accepted or newly claimed conditions;
- c. What specific actions of the worker prompted the request;
- d. The dates of any prior independent medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;
- e. A copy of any approvals given by the Director for more than three independent medical examinations, or a statement that no approval was necessary, whichever is appropriate;

- f. Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;
- g. The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;
- h. A copy of the letter required in section (5) and a copy of any written verification received under subsection (8)(g);
- i. Any other information which supports the request; and
- j. The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized." OAR 436-060-0095(8).

- 2. Insurers must assist workers in meeting the requirements necessary for resumption of compensation benefits. OAR 436-060-0095(10).
- 3. Compensation must be reinstated effective the date the worker attends the rescheduled IME. OAR 436-010-0095(9).
- 4. If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the date of the consent to suspend an order, the insurer must close the claim. OAR 436-060-0095(11).

E. IME Report

The insurer must forward a copy of the signed IME report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report. OAR 436-010-0265(18).

F. Diagnostic Films

A medical service provider who unreasonably fails to timely provide diagnostic records required for an IME in accordance with OAR 436-010-0230(9) and 436-010-0240(10) may be assessed a penalty under ORS 656.325. OAR 436-010-0265(8).

IV. INJURED WORKERS' RIGHTS AND RESPONSIBILITIES

A. Responsibilities

- 1. Workers must submit to IMEs reasonably requested by the insurer or the Director. The insurer may request no more than three separate IMEs for each open period of a claim, except as provided under OAR 436-010. OAR 436-060-0095(3).
- 2. Failure to attend IME
 - a. Monetary Penalty. If a worker fails to attend an IME without notifying the insurer or self-insured employer before the date of the examination or without sufficient reason for not attending, the Director may impose a monetary penalty against the worker for such failure under OAR 436-010-0340. OAR 436-010-0265(10). . A worker may be subject to a \$100 penalty to be taken out of future benefits per occurrence for failing to attend an IME. The request for a penalty must be made to the Director. OAR 436-010-0340(9).
 - b. Suspension of Compensation
 - i. With the Director's approval, a worker may face suspension of compensation for failing to attend an IME. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to or obstructs an IME reasonably requested by the Director. Compensation will be suspended until the examination has been completed. Any action by a family member or friend which obstructs the examination shall be considered an obstruction. OAR 436-060-0095(1);
 - ii. The Division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial. OAR 436-060-0095(2);
 - iii. Suspension of compensation means no temporary disability, permanent total disability or medical and related service benefits shall accrue or be payable during the period of suspension, and vocational assistance shall be stayed during the period of suspension. OAR 436-060-0005(14);

iv. Workers must have the opportunity to dispute the suspension of compensation prior to issuance of the order. OAR 436-060-0095(1);

B. Rights

1. Invasive Procedures

If a medical service provider intends to perform an invasive procedure as part of an IME, the provider must explain the risks involved in the procedure to the worker and the worker's right to refuse the procedure. The worker must then check the applicable box on Form 440-3227, either agreeing to the procedure or declining the procedure, and sign the form. For the purposes of this rule, an invasive procedure is a procedure in which the body is entered by a needle, scope or scalpel. Workers may refuse invasive procedures pursuant to the Invasive Procedure Authorization Form 440-3227. OAR 436-010-0265(12).

2. Location of IME

a. Examinations must be at times and intervals reasonably convenient to the worker and must not delay or interrupt proper treatment of the worker. OAR 436-010-0265(6).

b. A worker who objects to the location of an IME must request review by the Director within six business days of the mailing date of the appointment notice. OAR 436-010-0265(9).

i. A request may be made in-person, by telephone, facsimile or mail;

ii. The Director may facilitate an agreement between the parties regarding location;

iii. If necessary, the Director will conduct an expedited review and issue an order regarding the reasonableness of the location;

iv. The Director will determine if there is substantial evidence to support a finding that the travel is medically contraindicated (i.e. the travel required to attend the IME exceeds the travel or other limitations imposed by the attending physician, authorized nurse practitioner or other persuasive medical evidence, and alternative methods of travel will not overcome the limitations) or is unreasonable based on a showing of good cause (i.e. the travel would impose a hardship for the worker that outweighs the right of the insurer or self-insured employer to select an IME location of its choice). OAR 436-010-0265(9)(a)-(d).

3. Observers

a. A worker may elect to have an observer present during the IME. OAR 436-010-0265(16);

b. An observer is not allowed in a psychological examination unless the examining provider approves the presence of the observer. OAR 436-010-0265(16)(a);

c. The worker must submit a signed observer form (440-3923A) to the examining provider acknowledging that the worker understands the worker may be asked sensitive questions during the examination in the presence of the observer. If the worker does not sign form 440-3923A, the provider may exclude the observer. OAR 436-010-0265(16)(b);

d. An observer cannot participate in or obstruct the examination. OAR 436-010-0265(16)(c);

e. A worker's attorney shall not be observers. Only a person who does not receive compensation in any way for attending the examination can be an injured worker's observer. OAR 436-010-0265(16)(d);

f. The IME provider must verify that the injured worker and any observer have been notified of the requirement that the worker must sign the observer form. OAR 436-010-0265(16)(e).

V. INDEPENDENT MEDICAL EXAMINATION PROVIDERS STANDARDS OF CONDUCT

A. Must Meet Director's Criteria

The insurer must choose a provider to perform an IME from the Director's list. OAR 436-010-0265(1). Any medical service provider wishing to perform an IME or a Worker Requested Medical Exam for a workers' compensation claim must meet the Director's criteria and be included on the list of authorized providers maintained by the Director. OAR 436-010-0265(13).

B. Criteria Requirements

1. Hold a current license and be in good standing with the professional regulatory board that issued the license (for example the Oregon Board of Medical Examiners). OAR 436-010-0265(13)(a)(A);

2. Complete a Director approved three-hour initial training course regarding IMEs. OAR 436-010-0265(13)(a)(B);

a. Exceptions. Any party may request the Director place a provider on the Director's list with less than the three hour training. Providers placed on the list in these circumstances are limited to being on the Director's list only for the time required for the examination at issue. OAR 436-010-0265(13)(B)(i). At the Director's discretion, providers may be placed on the list to perform IMEs with less than the required training under the following circumstances:

i. Extraordinary circumstances. When extraordinary circumstances exist in a given case or if the worker and the insurer agree that a certain provider may perform the examination. OAR 436-010-0265(13)(B)(i); When determining if extraordinary circumstances exist in a given case, the Director may consider, but is not limited to, such factors as: medical specialty needed; number of IMEs the provider has performed in a calendar year; where the worker lives; and factors that would make the three-hour training unreasonable in a given case. OAR 436-010-0265(13)(a)(B)(ii);

ii. Agreement of parties. At the Director's discretion, providers may be placed on the list if the worker and the insurer agree that a provider may perform the examination.

3. Submit the Application for Independent Medical Exam Medical Service Provider Authorization (Form 440-3930) to the Director. On the application, the provider must supply his or her license number, the name of the training vendor, and the date the provider completed a Director-approved initial training course regarding IMEs. By signing and submitting the application form, the provider agrees to abide by:

a. standards of professional conduct for performing IMEs adopted by the provider's regulatory board, or the guidelines of professional conduct for IMEs published by the American Board of Independent Medical Examiners in effect as of January 1, 2006, if the provider's regulatory board does not adopt standards of conduct for IMEs; and

b. all relevant workers' compensation laws and rules. OAR 436-010-0265(13)(a)(c).

4. Follow a professional standard or guidelines of conduct while performing IMEs. The guidelines must be:

a. adopted by the appropriate health professional regulatory board; or

b. the Guidelines of Conduct published by the American Board of Independent Medical Examiners in effect on January 1, 2006 must be followed if the appropriate regulatory board has not adopted standards for professional conduct regarding IMEs. Appendix B-OAR 436-010.

C. Role of IME Provider

The IME provider is to be:

1. an unbiased, neutral third party; and
2. Independent. Appendix B-OAR 436-010.

D. Provider Responsibilities

1. Invasive Procedures. If an IME provider plans to perform an invasive procedure as part of an IME, he or she must explain the risks involved in the procedure to the worker and the worker's right to refuse the procedure. The worker must check the box on the applicable box on Form 440-3227 either agreeing to or declining the procedure and sign the form. An invasive procedure is a procedure in which the body is entered by a needle, tube, scope or scalpel. OAR 436-010-0265(12).

2. Observers

a. A worker may elect to have an observer present during the IME. However, in psychological IMEs, observers are only permitted with the provider's consent. OAR 436-010-0265(16)(a).

b. Workers must submit a signed observer form to the provider acknowledging that the worker understands sensitive questions may be asked during the examination in the presence of the observers. If the worker does not sign the form, the provider may exclude the observer. OAR 436-010-0265(16)(b).

c. An observer cannot participate in or obstruct the examination. OAR 436-010-0265(16)(c).

d. The worker's attorney or any representative of the worker's attorney shall not be an observer. Only a person who does not receive compensation in any way for attending the examination can be an observer. OAR 436-010-0265(16)(d).

e. The IME provider must verify that the injured worker and any observer have been notified that sensitive questions may be asked during the IME. OAR 436-010-0265(16)(e).

3. Recording/Videotaping

The medical service provider conducting the examination will determine the conditions under which the examination will be conducted. Subject to the IME provider's approval, the worker may use a video camera or tape recorder to record the examination. OAR 436-010-0265(14).

4. Provider requirements upon completion of IME:

- a. give the worker a copy of the IME Survey (Form 440-0858) on the day of the examination; OAR 436-010-0265(17)(a);
- b. send the insurer a copy of the report and if applicable, the observer form (440-3923A) or the invasive procedure form or both OAR 436-010-0265(17)(b); and
- c. sign a statement at the end of the report verifying who performed the examination and dictated the report, the accuracy of the content of the report, and acknowledging that any false statements may result in a sanction by the Director. OAR 436-010-0265(17)(c).

E. Provider Sanctions

1. A provider may be sanctioned or excluded from the Director's list of providers authorized to perform IMEs after a finding by the Director that the provider:
 - a. violated the applicable standards or guidelines of professional conduct for performing IMEs under sub-paragraph (a)(C)(I) of this section OAR 436-010-0265(c)(A);
 - b. failed to comply with the requirements of this rule, as determined by the Director OAR 436-010-0265(c)(B);
 - c. has a current restriction on their license or is under a current disciplinary action from his/her professional regulatory board OAR 436-010-0265(c)(C);
 - d. has entered into a voluntary agreement with his or her regulatory board which the Director determines is detrimental to performing IMEs OAR 436-010-0265(c)(D);
 - e. violated workers' compensation laws or rules OAR 436-010-0265(c)(E); or
 - f. failed to attend training required by the Director. OAR 436-010-0265(c)(F).
2. Within 60 days of the Director's decision to exclude a provider from the Director's list, the provider may appeal the decision under ORS 656.704(2) and OAR 436-001-0019. OAR 436-010-0265(d).

VI. IME COMPLAINT PROCESS

A. Procedures

1. A complaint about an IME may be sent to the Director for investigation. The Director will determine the appropriate action to take in a given case, which may include consultation with or referral to the appropriate regulatory board. OAR 436-010-0265(19).
2. Anyone may file a complaint
 - a. anonymously
 - b. in-person
 - c. by letter, fax, telephone or by email

B. IME Complaint Categories

The Director will determine what action to take depending on the severity of the complaint, such as whether the complaint involves a minor irritation versus a violation of the guidelines of conduct for medical providers.