

Working as an independent medical expert: your roles, responsibilities, and liabilities

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Ryan Silk

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Independent medical experts (IMEs) are medical professionals who are contracted by third parties (often lawyers, insurers or courts/tribunals/regulators) to conduct unbiased independent assessments on a range of matters relevant to legal proceedings, such as the quality of care provided by a practitioner, the degree of injury suffered by a patient, or whether a patient's injury was caused or contributed to by a practitioner's alleged negligence. The responsibilities of IMEs differ from doctors in a usual therapeutic partnership. Since they offer information and analysis in areas beyond the court's expertise, their opinion is extremely important.

In many types of legal claims and notifications against health practitioners, independent medical expert evidence plays a crucial role in assisting courts or regulators to determine whether or not a practitioner provided healthcare to an appropriate standard and whether or not they breached the duty of care that they owed to the patient. Despite the absence of a traditional therapeutic relationship, IMEs owe duties to the patient being examined, the party commissioning the report and, importantly, the court or regulator if they will ultimately be considering the evidence provided by the IME. Balancing these competing duties and obligations can be challenging.

In this webinar, we will hear from an IME who will discuss the joys and challenges of this interesting area of medical practice. We will also hear from legal experts who will discuss the legal obligations of IMEs, drawing upon recent case law and the types of calls our medicolegal advisory service receives from IMEs.

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Learning outcomes

At the end of this webinar, attendees will be able to:

- Describe the role of IMEs, the codes of conduct and core legal and regulatory issues that are likely to be on your mind if you are considering, or are new to, this type of work.
- Discuss common dilemmas faced by members who engage in IME work and how we might advise them to respond in different scenarios.
- Discuss how to mitigate your medico-legal risk if you work as an IME.

Q & A

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*This article is relevant at the time of the publication date.

1: General FAQs about being an independent medical examiner:

[⊕ Does MIPS cover independent medical examination work?](#)

⊕ How do I know if I am an expert who can provide an independent medical opinion?

⊕ How do I negotiate fees for my time when I'm asked to attend Court?

⊕ How do I protect myself from claims or complaints when undertaking independent medical examinations?

⊕ What are the expert witness codes of conduct?

⊕ What is the difference if approached by prosecution or defence? Should there be a difference in my approach or otherwise?

⊕ What happens if it transpires that my opinion (for example, in relation to prognosis) was incorrect?

⊕ Do I need to be registered with Ahpra to conduct an independent medical examination in Australia?

⊕ Do I need to quote the medical literature in my independent medical report? Is being an expert enough?

⊕ A lawyer has asked me to examine a patient and provide an opinion that might be used in future court proceedings. To whom do I owe a duty – the patient, the lawyer, or the court?

2. Some situations when independent medical examiners might require advice and assistance from MIPS:

⊕ During the assessment, the patient withdraws consent to the continuation of the assessment or the subsequent provision of any health information to the commissioning party

⊕ Patient completes the assessment but wants to review the report before it is provided to the commissioning party

⊕ Patient does not consent to the report being provided to the commissioning party

⊕ Patient requests to review the proposed report before it is released and does not consent to specific health information being included in the report

⊕ You have assessed the patient, the patient declined to consent to the provision of a report (either in full or in part) and the commissioning party refuses to pay you for your time assessing the patient.

⊕ The member assesses the patient and has concerns about a serious or imminent risk to the patient.

⊕ During the independent medical examination, the patient discloses information to you that makes you concerned that a child is in need of protection because of suspected abuse or neglect.

⊕ The patient is an Ahpra-registered health practitioner, and you form a reasonable belief that the patient has engaged in notifiable conduct (eg drug use in the workplace).

⊕ For how long should I store records or reports collected for the purpose of preparing an independent medical examination report?

⊕ Am I able to video record an independent medical examination?

MIPS resources

- [MIPS on Demand Online modules with CPD](#)

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