

The Nuts & Bolts of Obtaining Independent Medical Examinations and Second Opinions

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Second Opinion/IMEs

Today's Terminology Lesson - In North Carolina:

- **Employees get Second Opinions (not IMEs)**
- **Employers get IMEs (not Second Opinions)**

Second Opinion Examinations for Treatment

§97-25(b): Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

Second Opinion Examinations for Treatment

NCGS § 97-25

- Upon written request of the Employee, the Employer may agree to a second opinion examination:
 - Parties must agree on the doctor;
 - If within 14 days the request is denied, or there is no agreement as to the provider, the Employee can request that the Commission order a second opinion;

Second Opinion Examinations for Treatment

NCGS § 97-25 (cont.)

- The Employer is responsible for the expense of the second opinion, whether agreed to by the employer or ordered by the Commission

Note: An agreed upon or ordered NCGS § 97-25 second opinion exam is for a one time examination only. The Employer is not bound by any findings or further treatment recommendations made by the second opinion doctor.

Second Opinion Examinations for Treatment

NCGS § 97-25 (cont.)

- If the Employer does not approve Employee's request for a second opinion examination – or – of the Employee's suggested second opinion doctors, the Employer can:
 - Formally deny the request;
 - Suggest alternative second opinion doctors; or
 - Ignore the request.

If the parties can't agree, the Employee will likely file a Motion.

Change in Treating Physician

§97-25. (c): Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

Change in Treating Physician

Change in Treatment

- Employee can make a request to the Employer to change the health care provider, subject to the approval of the Commission:
 - The Commission may disregard or give less weight to the testimony of a health care provider who the Employee saw before a request was made for authorization from the Employer, Insurer, or Commission.

Change in Treating Physician

Change in Treatment (cont.)

- If the Employer does not approve Employee's request for a change in treatment, Employee will request permission from the Commission via Motion.

Independent Medical Exams

§97-25(a): Medical compensation shall be provided by the employer.

§97-27(a): After an injury, and so long as the employee claims compensation, the employee, if so requested by his or her employer or ordered by the Industrial Commission, shall submit to independent medical examinations, at reasonable times and places, by a duly qualified physician who is licensed and practicing in North Carolina and is designated and paid by the employer or the Industrial Commission, even if the employee's claim has been denied pursuant to G.S. §97-18(c).

Independent Medical Examinations

- Employers may schedule an IME (or IME's) in an accepted or denied claim with a NC doctor (licensed and practicing).

Independent Medical Examinations

An IME is subject to the following provisions:

- 1 – Employee has right to have physician of his/her choice present;
- 2 – Nothing communicated to IME physician shall be privileged before the Commission;
- 3 – Employer may communicate (orally or in writing) with the IME physician regardless of whether or not there was an actual physical exam;
- 4 – If there is a physical exam, the employer has 10 business days to provide the IME physician's report to the employee;
- 5 – Refusal to submit to, or in any way obstruct an IME, shall result in a suspension of benefits (following a Form 24 ruling).

Second Opinion on the Rating/PPD

§97-27(b): In any case arising under this Article in which the employee is dissatisfied with the percentage of permanent disability as provided by G.S. §97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician of the employee's choosing who is licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by the employee. That physician shall be paid by the employer in the same manner as health care providers designated by the employer or the Industrial Commission are paid.

Second Opinion on the Rating/PPD

§97-27(b) Cont: The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. §97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining the examination shall be paid by the employee.

Second Opinion on the Rating/PPD

- Employee is statutorily entitled to a second opinion of the percentage of permanent disability (rating):
 - Physician must be in NC, unless an out-of-state physician is agreed to by all parties or ordered by the Commission;
 - Commission must disregard or give less weight to opinions given outside the scope of the percentage of permanent disability.

Second Opinions

- Remember:
- There is a BIG difference between a second opinion on the rating – and – a second opinion for treatment in North Carolina